



Semi-Annual - Legal - Judicial

A Reading into the Provisions of Marriage
and Divorce According to the Federal
Civil Personal Status Law

Murabaha Sale (A Sale with Profit)
in Light of the Commercial Transactions
Law No. (50) of (2022)

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In the light of the Federal Law of Criminal
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Ibn Rushd (Averroes) and Ibn
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- A Perplexing, and Complicated Relationship



The Judicial Inspection Division...
**Ensuring the Right to Litigation for
All Under a Fair and Effective Justice System**

محاكم دبي
DUBAI COURTS

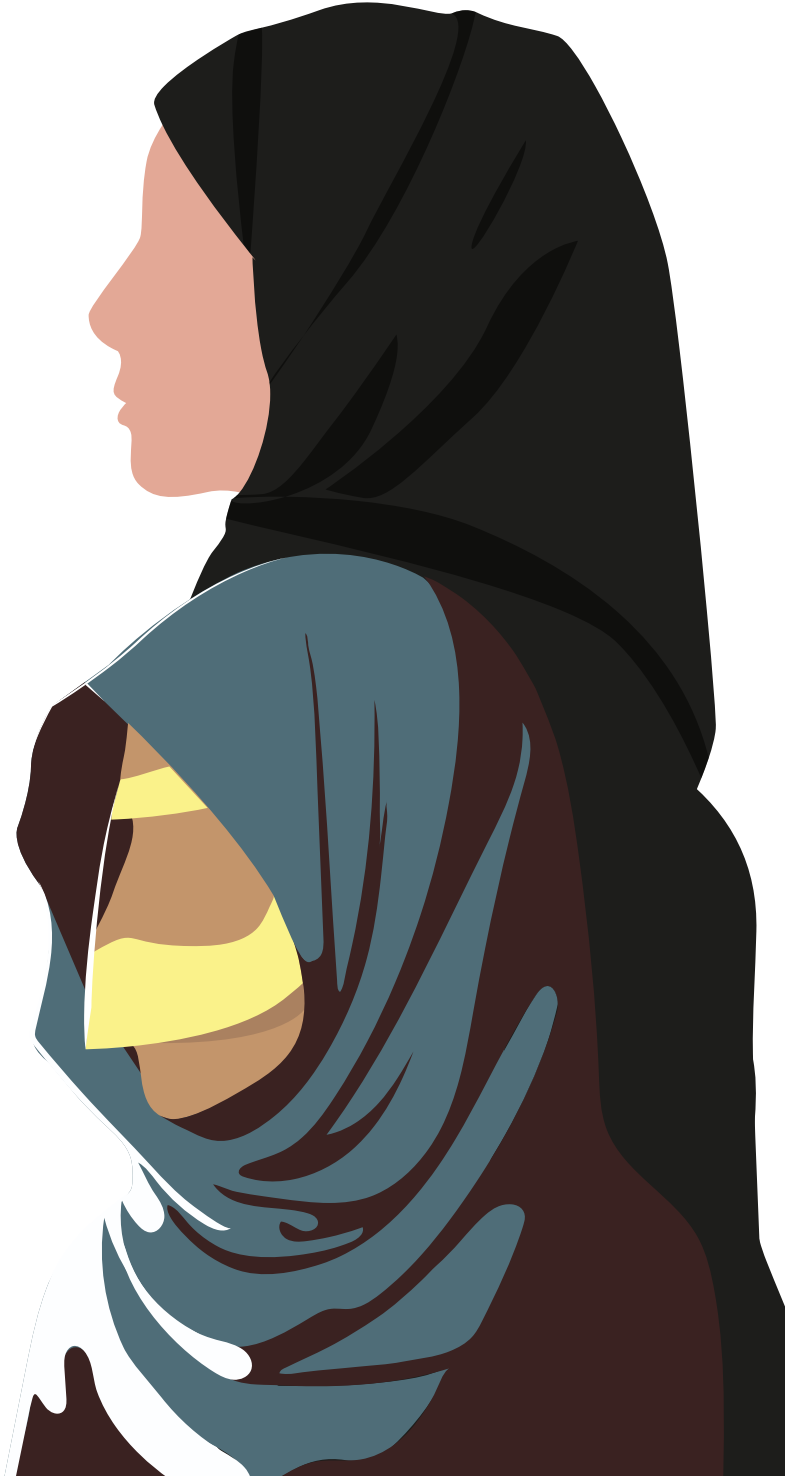


Al Jawhara Women's Council
Congratulates
you on the Occasion of

Emirati
Women's Day

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AUGUST



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

Dissemination of Legal Knowledge

Knowledge is the basis of work, and this concept undoubtedly helps creativity and innovation, as the person who acts without knowledge is prone to error and to being led astray.

And this is in line with what our Magazine Sada AL-Mahakim (Courts' Echo) stands for, as it aims to: Firstly, disseminate legal and sharia knowledge. Secondly, develop social awareness in order to enlighten people about their ways of life, and to be a source of human guidance that preserves people's minds, properties and souls, and this is undoubtedly one of the first purposes of Islamic Law.

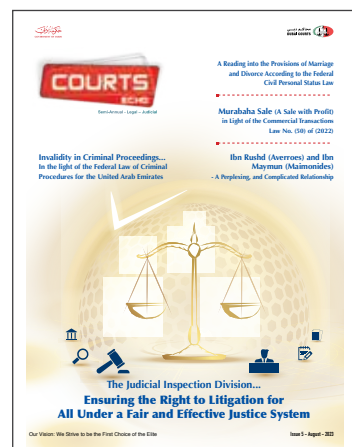
The Magazine of Sada AL-Mahakim (Courts' Echo), which has reached its fifth edition, demonstrates in each edition that it is a beacon of legitimate, legal and humanitarian knowledge, and it has been decorated in this edition with a wonderful bouquet of sober articles that have a rich diversity between Philosophy, Law and Sharia.

We hope that this will satisfy our readers and be a source of knowledge enrichment for them, especially when the authors of this edition are those who represent a distinguished constellation of scholars and experts in their fields of specialties, and those who are owners of erudite pens that have been refined by long experiences, abundant science, and painstaking study in the masterpieces of books and their essence of literature.

Therefore, we present to the dear reader our Magazine "Sada AL-Mahakim (Courts' Echo)" in its latest edition and we are all hope that it is an edition that is worthy of what they aspire to, an edition that will elevate them to the platforms of high erudition, through which life continues in the paths of development and progress to the best and most befitting of the enlightened human mind.

In conclusion, we extend to you (our dear readers) every appreciation and every wish that befits your erudite tastes and aspirations, and we extend also our thanks to the members of the editorial board of the Magazine of "Sada AL-Mahakim (Courts' Echo)" who spare no effort and exert their level best to develop it and enrich it.

To Begin with



Issue 5 - August - 2023

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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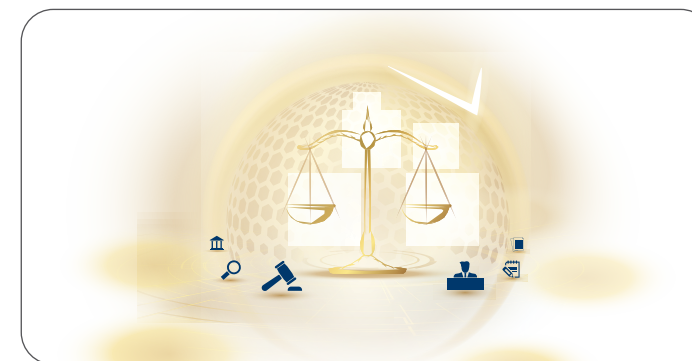
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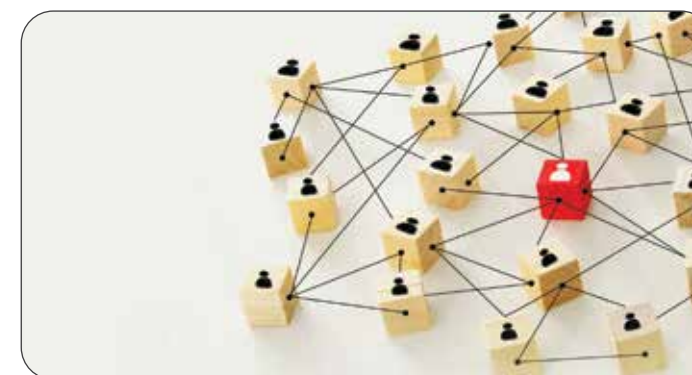
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In front of Mohammed Bin Rashid... New Members of the Judiciary Take the Oath of Office



(36) Judges in Dubai Courts and one Judicial Inspector in the Judicial Inspection Division took the oath of office in front 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 - at Za'abeel Palace in Dubai. His Highness Sheikh Mohammed Bin Rashid Al Maktoum wished the members of the judiciary success in their work and the tasks assigned to them, calling on them to always be the example and role model in upholding the rule of law, while redoubling work to enhance the efficiency of the judicial system in the Emirate of Dubai, and ensuring the smooth functioning and regularity of the Courts and the Public Prosecution in the best way possible, which contributes to ensuring the rights of members of society, entrenching the principle of respect for human beings, and finding controls that preserve his/her dignity.

In addition, his Highness Sheikh Mohammed Bin Rashid Al Maktoum approved the promotion of (41) Judges in Dubai Courts and one member of the Public Prosecution, as the new appointments and promotions come within the framework of His Highness's continuous support for the judicial system in Dubai, and His keenness to find all the necessary ingredients to affirm the rule of law as the basic guarantee for the preservation of rights and gains, achieving justice and enhancing confidence as required in the judicial system in the Emirate of Dubai, by continuing to provide all the requisites that propel the judicial system in Dubai to the highest levels of efficiency performance, in accordance with international standards in this regard, foremost of which is the human being element that represents the essence of this system.

The swearing-in ceremony was attended by His Highness Sheikh Ahmed Bin Mohammed Bin Rashid Al Maktoum, Second Deputy Ruler of Dubai and Chairman of the Dubai Media Council, His Highness Sheikh Ahmed Bin Sa'eed Al Maktoum, Chairman of the Dubai Civil Aviation Authority, CEO and Founder of the Emirates Airline Group, His Highness Sheikh Mansour Bin Mohammed Bin Rashid Al Maktoum, Chairman of Dubai Sports Council, and a number of senior officials.



His Highness Sheikh Hamdan Bin Mohammed Launches Dubai Cyber Security Strategy



His Highness Sheikh Hamdan Bin Mohammed Bin Rashid Al Maktoum, Crown Prince of Dubai and the General Secretariat of the Executive Council - Government of Dubai, launched the Dubai Cyber Security Strategy for its second session, which translates the cyber-security axis of the Dubai Digital Strategy, and aims to create a secure and reliable cyberspace to support the digital infrastructure of the Emirate, reflecting the commitment of the Dubai Cybersecurity Center at the Dubai Digital Authority to protect the digital system and focus on accelerating the pace of digital transformation and smart city initiatives.

His Highness said, quote: “[w]e have launched the second cycle of the Dubai Cyber Security Strategy, with the aim of protecting Dubai’s digital infrastructure and enhancing its digital economy”, unquote.

His Highness added, quote: “[i]n the face of ever-changing challenges and risks, we must continue to develop mechanisms to maintain our electronic security in line with the changes, and this requires a high degree of flexibility, innovation, proactive thinking and digital awareness”, unquote.

The launch of the Dubai Electronic Security Strategy comes in light of the achievements arrived at by the

Emirate of Dubai, through which it has proved its worth as a world-leading destination in the field of electronic security through its secure digital system and advanced technical solutions that keep pace with the latest global developments in the digital space, to ensure that companies and individuals achieve the highest levels of development, growth and excellence, and contribute to the crystallization of features of a promising future vision. The launch of the strategy within its second cycle is in line with the government’s efforts to enhance the technological leadership of the Emirate of Dubai, which contributes to building a society well known for its development, safety, happiness, well-being and prosperity.

The new strategy adopts a centralized approach that includes cybersecurity for the entire city, including government agencies, infrastructure, companies, residents and visitors, given the rapid changes and continuous development that the world is witnessing today, as well as the challenges and opportunities provided by the digital age. The strategy reflects the commitment of the Dubai Cyber Security Center to ensuring the safety of Information, its privacy and compliance with information processing systems, in order to ensure the improvement and development of decision-making processes at the best levels.



Maktoum Bin Mohammed Chairs the Judicial Council Meeting and Adopts the Strategic Plans of the Judiciary

His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum, Deputy Ruler of Dubai, Deputy Prime Minister, Minister of Finance, and Chairman of the Judicial Council chaired the Council Meeting held at the Court of His Highness the Ruler of Dubai, as part of His Highness’s follow-up on the affairs of the judiciary and its members, and His keenness to overcome any difficulties the judicial system may face, in order to ensure the transparency and integrity of the judicial work in the Emirate, and preserve the rights of litigants. During the meeting, His Highness ratified a number of decisions on the appointment and promotion of judges in Dubai Courts, in order to support the Courts with distinguished judicial competencies, which are capable of dealing with all variables in the field of legal and judicial work.

During the meeting, His Highness approved the training plan for members of the judiciary for the year of (2023), which included (83) courses distributed over five programs as per the following: (The Basic Training Programme, the Continuing Training Programme, the Judicial Competence Raising Programme, the Administrative Competence Raising Programme, and the Global Trends and Future Programme). His Highness stressed that the development of the capabilities and competencies of members of the judiciary is the basis for upgrading the judicial authority system to overcome the challenges facing the judicial work in the Emirate, and His Highness the Chairman of the Judicial Council praised the efforts of the task forces that completed the strategic plans that were discussed and adopted and directed to follow up on the implementation of various axes of these plans, and submit relevant periodic reports to the Council.

In addition, and during the meeting, His Highness discussed with the Council members a set of initiatives aimed at developing the judicial work system in the Emirate, where His Highness took a set

of decisions apropos what was presented by the members of the judiciary, and His Highness, the Chairman of the Judicial Council was briefed on the results of the strategic plans of the judicial authorities and future recommendations related to them, and His Highness also approved the strategic plans of the judicial authorities and their supporters, which all come in implementation of the vision of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President, Prime Minister and Ruler of Dubai - may God protect Him - in developing the judicial work system in the Emirate, through objectives, projects, and initiatives that look ahead with regard to the future of this system, where His Highness stressed that, quote: “[a] fair, impartial and independent judiciary means a stable society in which the individual is secure with respect to his/her rights and freedoms”, unquote.

His Highness approved the strategic plan for Dubai Courts (2023-2025), which its road map included six main axes and as per the following: (The Digital Transformation Axis, the Competitiveness Enhancement Axis, the Governance and Business Continuity Enhancement Axis, the Future Foresight Axis, the Judicial Services Development Axis, and the Innovation-Supporting Work Environment Enhancement Axis).

The plan also included eight future initiatives and projects, the most important of which are as per the following: (The “Ifsah {Declare}” Project) aimed at developing the system of implementing civil judgments in the Emirate, by facilitating access to the funds and properties of individuals in a legal manner that achieves a balance between the privacy of people on the one hand, and the rights related to those funds and properties on the other hand, and the plan also included eight areas of support, the most important of which are as per the following: (The Development of Litigation Procedures and the Development of Judicial Settlement Solutions).



Maktoum Bin Mohammed Approves the Strategic Plan

To Develop the System of Execution of Judgments and Civil Bonds in Dubai

His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum, Deputy Ruler of Dubai, Deputy Prime Minister, Minister of Finance and Chairman of the Judicial Council of Emirate of Dubai, has approved the strategic plan for the development of the system of execution of judgments and civil bonds in the Emirate of Dubai, which includes a number of initiatives and improvement projects. His Highness stressed that the strategic plan comes in line with 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 develop the litigation system in the Emirate of Dubai, in a way that enhances confidence in the judiciary in the Emirate and supports its competitiveness at the global level. His Highness Sheikh Maktoum Bin Mo-

hammed Bin Rashid was quoted as saying, quote: “[t]he strategic plan comes within the framework of keenness to introduce qualitative and innovative updates to the judicial system, which plays a leading role in consolidating the values of justice and the rule of law among members of society in Dubai, with the highest levels of accuracy, speed and integrity, which helps to achieve the directives of His Highness Sheikh Mohammed Bin Rashid Al Maktoum to make Dubai the best city for living in the world, and at the same tandem time achieves our endeavors to make the litigation system in the Emirate the best and most efficient in the world”, unquote.

His Excellency Tarish Eid Al Mansouri, Director General of Dubai Courts, emphasized on the keenness of Dubai Courts to implement a system of improvement initiatives

to ensure the speedy implementation of sentences, and to face the challenges that may hinder the services provided to the society, which in turn enhances the efficiency of performance, and works to improve and re-engineer enforcement procedures, which in turn will contribute to providing justice to litigants and ensuring the restitution of rights to their rightful owners, reflecting on the development of an integrated judicial system that enhances its leadership globally through speed and proactivity. On his part, His Excellency Judge Khalid Al Mansouri,

President of Dubai Courts’ Execution Court, iterated the keenness of Dubai Courts to develop a number of qualitative initiatives related to enforcement procedures, in order to reach the best customer experience that ensures the speed of execution of sentences according to the highest standards of integrity, transparency and speed in completing litigation procedures, and at the same tandem time guarantees the rights of litigants, within the framework of the principle of the rule of law, in order to achieve the vision of Dubai Courts to be the best in the world.

... and approves the creation of the «Board of Commissioners»

At the Court of Cassation in Dubai

In the framework of implementing 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 - in strengthening the litigation system in the Emirate of Dubai, His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum, Deputy Ruler of Dubai, Deputy Prime Minister, Minister of Finance, and Chairman of the Judicial Council, relied on the establishment of the “Board of Commissioners” at the Court of Cassation in Dubai, to represent an additional guarantee of litigation guarantees aimed at enhancing confidence in the justice system in the Emirate, and in this regard, His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum was quoted as saying, quote: “[b]uilding a developed judicial system is at the forefront of the priorities of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, as justice, which is the basis for building homelands and their prosperity and stability, in addition to the rule of law, all prevail over any consideration”, unquote.

His Highness went on to add, quote: “[w]e are keen to ensure people’s rights and freedoms through a competent, fair and impartial judiciary, so that our judicial system will become the best in the world, as justice in Dubai is a guaranteed right for everyone without any exception”, unquote.

His Highness Sheikh Maktoum Bin Mohammed Bin Rashid Al Maktoum concluded by stating, quote: “[o]ur goal is to invest in qualified national cadres, in order to strengthen our judicial system and ensure its development in accordance with the highest international standards, and the Board is an important tributary that provides the Court of Cassation with new guardians of justice, which is the basis of all progress, stability, development and launch towards a sustainable future”, unquote.

The Board of Commissioners has a great responsibility to ensure the rights of all parties of any given lodged legal case, and to ensure the proper and fair administration of justice, as they [the Commissioners, that is] have the expertise that ensure that they understand the various issues better and express the right opinions, since they rely in their work on evidence and testimony.

The Board of Commissioners aims to provide a guarantee of justice before litigants by examining appeals before presenting them to the competent department, and also works to speed up litigation procedures for appeals that do not require presentation to the appeal-by-cassation bodies, and seeks to direct the efforts of cassation judges towards full-time consideration of the submitted appeal and its consideration within the procedures of its adjudication. The Board is also responsible for the process of qualifying its judges to join the Court of Cassation in the future. The Board of Commissioners is competent to examine appeals by cassation, seek re-consideration of cases filed with the Court of Cassation, offer conciliation to the parties of the appeal, prove the abandonment of litigation and other factors affecting the continuation of the consideration or resolution of the appeal, and finally to express a legal opinion on applications referred to the Board by the President of the Court of Cassation or the Heads of its chambers.

To this effect, His Excellency Tarish Eid Al Mansouri, Director General of Dubai Courts, said, quote: “[t]he establishment of the Board of Commissioners at the Court of Cassation in Dubai strengthens the principles of justice, equality and the rule of law among all, and contributes to achieving sustainable development in Dubai by providing a sophisticated, effective, fair and impartial judiciary”, unquote.



Dubai Courts Wins the Best Innovation Award in Social Services About the Illustrated Child Wadeema Law

The UAE Government honored the winners of the “UAE Innovates” Award, at the conclusion of the UAE Innovation Month “Emirates Innovates 2023”, the largest national event of its kind, which was organized in all regions of the country throughout the month of February, with the aim of consolidating the culture of innovation, enhancing societal participation in creating experiences, initiatives and effective solutions to challenges, celebrating innovation and innovators in the state, and employing their innovations in improving the standards of life of society. And the Award categories included: “The Best Innovation to Automate Government Procedures, the Best Innovation to Achieve Digital Leadership, the Best Innovation in the Use of Resources, the Best Innovation in Facilitating Procedures, the Best Innovation in Social Services, and the Best Radical Innovation”. The Award also witnessed in its current session the addition of a new category represented by the “Best Innovation in Achieving Sustainability”. In the category of “Best Radical Innovation”, the Ministry of

Interior won the Award for the innovation of “Smart Custody”. The Award was also won in the category of “Best Innovation in Social Services” by the Dubai Courts for the “Illustrated Child Law – Wadeema”, which is the first Law available in the illustrated and interactive electronic way, in which the chapters and materials stipulated in the origin of the Law are represented by drawing, to facilitate the process of delivery and understanding of the child, as the work is comprehensive of all the rights stipulated in the Law without deletion or exclusion. The Award adopted a set of evaluation criteria, namely (Novelty, Degree of Repeatability {Replicability}, Impact, Proactivity and Flexibility {Agility}). The Novelty Criterion focuses on assessing the extent to which the new solution differs from the solutions currently in use, while the Replicability Criterion focuses on solutions and the ease with which they can be adopted in other entities, and the Impact Criterion measures the extent to which the solution contributes to improving the quality of life, and the rapid response to variables.



Dubai Courts Announces the Launch of «Civil Marriage» Service for Non-Muslims

Dubai Courts announced the launch of the “Civil Marriage for Non-Muslims” Service, with the aim of organizing family matters for non-Muslim foreigners in line with the development achieved by the Emirate of Dubai in respect of respecting the diversity of cultures, and in embodiment of the wise vision of the sage leadership, and its keenness to develop an integrated and advanced system of services that achieve leadership and excellence. Taresh Al Mansouri, Director General of Dubai Courts, stated that, quote: “[t]he ‘Civil Marriage Service’ comes within the framework of the Courts’ endeavor to provide a civil law to regulate family matters for non-Muslims, in light of the procedures developed in accordance with the Personal Status Law for non-Muslim foreigners, which support the continuous development efforts of the judicial system, in light of the new procedures of the law and to ensure the provision of distinguished services to non-Muslim residents on the territory of the Emirate of Dubai”, unquote.

Judge Khaled Al Hosani, Head of the Courts of First Instance, explained that the new Law regulates the conditions of marriage and the procedures for concluding and notarizing the contract, and allows non-Muslim couples to marry by law in

a civil manner, provided that there are key conditions for concluding the contract, the first of which is that: The parties to the contract (husband and wife) are non-Muslims, and they are (21) years of age and older, and the second of which is that: One of them must have a residency or residence in the Emirate of Dubai, and the parties must provide a proof of their marital status, and the third of which is that: Personal or agent attendance is required under an ad hoc official power of attorney, with the original identification being provided in order to read the identity data of the individual concerned, and the fourth of which is that: All documents must be electronic and in PDF format, and they must be translated into Arabic by a legal translation approved by the Ministry of Justice of the United Arab Emirates, and if they are issued from outside the country, they must be certified by the official authorities, the Ministry of Foreign Affairs and the UAE Embassy in the country concerned, and the Ministry of Foreign Affairs in the UAE. Judge Al Hosani also pointed out that the service request is done by submitting an electronic application through the accredited centers, and by paying the fees to the relevant service-delivery channels.



Dubai Courts Launches the First Specialized Arab Platform in the Field of Innovation in the Justice Sector

His Excellency Judge Omar Atiq Al Marri, Deputy Director General of Dubai Courts, launched the “Adalah 01” Platform, which is the first specialized Arab platform in the field of innovation in the justice sector, organized by the Strategy and Future Foresight Department in cooperation with the Creative Club Team at Dubai Courts, in order to provide a technological infrastructure that supports, stimulates and consolidates the culture of innovation, and works to keep abreast of accelerated technological developments to enhance the competitive position of the State globally. And on this subject, Mr. Mohammed Al Obaidli, Executive Director of the Litigation Management Sector, and Head of the Creative Club Team at Dubai Courts stated that, quote: *“[t]he launch of the ‘Adalah 01’ Platform comes to promote the development of creative ideas and capabilities, spread the culture of innovation on a large scale, and work to create a national environment that incubates innovation and creative minds”*, unquote.

On his part, Mr. Mohammed Abdul Rahman, Director of Strategy and Future Foresight Department at Dubai Courts, explained that the “Adalah 01” Platform includes (3000) innovative practices from leading governments around the world in various fields, such as: Justice, Legislation, Laws and Government Services, and more than (25) manuals and refer-

ences in the fields of Innovation, Digital Transformation and Institutional Excellence. Mr. Abdul Rahman went on to say that benefits can be attained from the content and tools of continuous development that are provided by the said Platform, and from following up on new innovations in the justice sector and government innovation in general, all through the Platform’s rich and unique components, which includes a library of videos that contains the “Innovation in a Minute” series, as well as the implementation of benchmarking through the employment of documented case studies, the design and implementation of Innovation laboratories, brainstorming sessions based on the content published in the Platform, as well as working on the implementation of variegated case studies of training courses, and he [Mr. Abdul Rahman, that is] explained that the importance of this Platform lies in enhancing readiness for the future, as it monitors and senses international trends and practices in Innovation, Litigation, Laws and Legislation, and other areas such as Digital Transformation, Future Technologies, Integrated Government Services and Future Jobs, and contributes to making Dubai Courts an educated institution that provides advanced mechanisms in the exchange and dissemination of knowledge, enhance the knowledge of its human resources, and introduce them to the best regional and global practices.



Dubai Courts Organizes “The First Forum of the Execution Court with the Community”

To explain the Strategic Plan for the Development of the Civil Sentences Enforcement System in the Emirate of Dubai

The Dubai Courts organized the “First Forum of the Execution Court with the Community” to explain the strategic plan for the development of the System for the Execution of Civil Judgments in the Emirate of Dubai, within the awareness initiative “Khalluk Qanooni Fi Al Khawaneej Majlis” (Be Legal in the Al Khawaneej Council), with the participation of His Excellency Judge Khalid Al Mansouri, Chairman of the Execution Court, a number of Judges of the Execution Court, and Mr. Ibrahim Al Hosani, Executive Director of the Notary Public, Settlement and Execution Sector, in order to ensure that Dubai Courts spreads legal culture among members of the community, and in implementation of the vision of Dubai Courts of being “World-Leading and Distinguished Courts”, where His Excellency Judge Khalid Al Mansouri explained the importance of the Forum in spreading awareness among community members, and its contribution to expanding the awareness of all segments of society, and highlighting the most important legal items among those concerned, to achieve an integrated understanding of the provisions of the law, its spirit and its characteristics, while pointing out, His Excellency, that this initiative provides a clear umbrella in the legal culture. His Excellency also stressed the importance of the Forum in directly communicating with the public, responding to all its inquiries, listening to the community’s feedback, in addition to launching the next development series, to achieve a number of future goals, the most important of which are: (Raising legal awareness among members of society, clarifying legal texts for individuals in a way that is easy for them to understand, as well as raising topics of

importance in public affairs and the public interest, analyzing topics in a legal manner, and expressing opinions in an impartial manner, and applying the best strategies and policies aiming at developing the judicial sector, and turning towards government excellence in accordance with the highest trends in the State, through providing an integrated system of development initiatives that live up to the best international standards and practices in the fields of excellence and development.

At the Forum, the President of the Execution Court explained to the attendees, the keenness of Dubai Courts to develop a number of qualitative initiatives related to enforcement procedures, in a bid to reach the best experience for the customer, to ensure the speedy execution of judgments according to the highest standards of integrity, transparency and speed in completing litigation procedures, and at the same tandem time guarantees the rights of litigants, all within the framework of the principle of the rule of law, with the aim of achieving the vision of Dubai Courts to be the best in the world, while pointing out, His Excellency, that the Enforcement Team at Dubai Courts works according to a specific system, starting by identifying the challenges facing enforcement processes, where the team is keen to go to the field to follow up on the processes, and then putting forward a set of development initiatives, according to a mechanism that optimizes processes, and encourages employees in Dubai Courts to adopt a culture of continuous improvement, to be an essential part of work plans, in effort to achieve excellence in both results and outputs.



Khalid Al-Mansouri: Privatization of Execution Files Before the End of 2023

Judge Khalid Al Mansoori, President of the Execution Court in Dubai, drew attention to the implementation of the new strategy for the execution of sentences in the Emirate before the end of this year, a strategy that includes several initiatives, including the ("Ifsah {Declare}") Platform for Early Inquiry about the assets of the person against whom a judgment is to be executed (Enforcee) and the inventory of his/her property, as well as the privatization of execution files, in order to speed up the execution of sentences, update the executive formula system and the development of smart applications. Judge Al Mansouri also touched upon the new procedures for lawyers and representatives of law firms, which aim to facilitate their appearance before the court, and allocate special entrances for them, all in effort to provide the lawyer (s) with the needed time and space to follow up on all the files of their client (s) in a timely and orderly manner.

All of this came during the "First Forum of the Execution Court with the Community", which was organized by the Dubai Courts at the Al Khawaneej Council, to explain the strategic plan for the development of the system of execution of civil judgments in the Emirate of Dubai, within the awareness initiative "Khalluk Qanooni" (Be Legal), which was attended by

a number of judges of the Execution Court, and Mr. Ibrahim Al Hosani, Executive Director of the Notary Public, Settlement and Execution Sector, out of the keenness of the Dubai Courts to spread the legal culture among members of the community, to achieve its vision of "World-Leading and Distinguished Courts". Judge Al Mansouri said, quote: *"[t]he new strategy will include several initiatives, including the development of the executive formula system, relying on Artificial Intelligence (A.I) to determine the appropriate fees without human intervention, which contributes to facilitating the work of the customer and speeding up the procedures, and the initiative to develop the Smart Services System to facilitate the work of the customer and that of the judge"*, unquote. Judge Al Mansouri also added that the new strategy initiatives include the launch of an ("Ifsah {Declare}") Platform for early inquiry about the property of the person against whom a judgment is to be executed (Enforcee), the inventory of his/her property, and the seizure of funds due from his/her accounts, and the Platform also shows the details of his/her financial accounts, commercial licenses, and in-kind property that he/she owns, as well as providing a statement of his/her property and bank accounts within the State.



Dubai Courts Holds a Co-ordination Meeting with the Community Development Authority (CDA) and the Awqaf and Minors Affairs Foundation (AMAF)

His Excellency Tareh Eid Al Mansouri, Director General of Dubai Courts, held a coordination meeting with Her Highness Hessa Bint Eisa Buhmaid, Director General of the Community Development Authority (CDA) in Dubai, and His Excellency Ali Al Mutawa, Secretary General of the Awqaf and Minors Affairs Foundation (AMAF), during which they discussed enhancing cooperation and coordination among them in projects of mutual interest, discussing the latest developments of the client's journey for minors' files, and for integration and coordination among them in order to achieve the best services, all in the presence of His Excellency Judge Omar Atiq Al Marri, Deputy Director General of Dubai Courts, and His Excellency Judge Khalid Al Hosani, President of Courts of First Instance, and His Excellency Judge Mohammed Jassim Al Shamsi, Head of the Inheritance Court. During the meeting, His Excellency. Tareh Al Mansouri welcomed Her Highness Hessa Bint Eisa Buhmaid, His Excellency. Ali Al Mutawa and their accompanying delegation, stressing the depth of the relationship between the Dubai Courts, the Community Development Authority (CDA), and the Awqaf and Minors Affairs Foundation (AMAF), and the endeavor to enhance the complementary and close role between them, in keeping with the directives of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Vice President, Prime Minister of the UAE and Ruler of Dubai – may God Protect Him - in consolidating the principle of teamwork among all Departments of the Dubai Government, and how it is one of the secrets of excellence of our country. His Excellency Al Mansouri iterated that we in the Dubai Courts are very keen to work in a team spirit, as it is the fifth of the ten commandments that His Highness mentioned to the government administration from the book "My Story", which produces concrete achievements and ensures the achievement of the best results, reflecting the distinctive image of Dubai regarding

quality of life and pioneering services.

Her Highness Hessa Bint Eisa Buhmaid, Director General of the Community Development Authority (CDA) in Dubai, emphasized on the importance of cooperation and joint work between government agencies to develop the quality of services provided to customers and improve their experience, indicating that coordination with the Dubai Courts and the Awqaf and Minors Affairs Foundation (AMAF) continues at various levels, with the aim of developing solutions and reviewing the degree of achievement in the customer's journey development plan, in a way that enhances the happiness of minors and similar customers of equivalent status, and contributes to the transition to new broader stages in providing quality services and programs to them.

His Excellency Tareh Al Mansouri stressed that Dubai Courts have taken many effective steps to strengthen their relations with various government departments and institutions, and work to accelerate the pace in implementing development plans and strategies, within a unified work umbrella, in which the roles are integrated to achieve the principle of partnership in applying the best international standards in effort to facilitate services provided for people, and achieve the highest levels of satisfaction, to make Dubai the smartest and happiest city in the world, and a global model to be followed in the quality of life and pioneering services. On his part, His Excellency Ali Al Mutawa, Secretary General of the Awqaf and Minors Affairs Foundation (AMAF), stated that, quote: *"[t]he Foundation is keen to cooperate and coordinate with the institutions specialized in providing services related to minors, with the aim of developing action plans and conducting improvement initiatives that will facilitate the customers' journey and ensure their access to common services effectively and conveniently"*, unquote.

Invalidity in Criminal Proceedings

In the light of the Federal Law of Criminal Procedures for the United Arab Emirates



His Excellency
Judge DR. Ali Galadari
Judge at Appeal Court, Dubai

Invalidity is: “The penalty imposed by law for violating the rules and procedures that the courts were obliged to observe with the procedure made being rendered as legally ineffective”.

There are other procedural sanctions that are similar to it, namely the (Non-Existence, Fall of Term, Inadmissibility, Error of Law), and despite the multiplicity and diversity of procedural sanctions; Invalidity remains the most common and widespread imposed penalty.

The Theory of Invalidity of Legal Acts is an ancient theory rooted in the depths of history.

And it can be said that: There are several theories regarding Invalidity, and we have seen that the Theory of Invalidity is one of the complex and difficult theories, and this is due to the scattering of its provisions, and the abundance of its jurisprudential and judicial independent reasoning, and to determine Invalidity, a court ruling or a decision much be issued, otherwise Invalidity will have no effect, and this applies to both absolute and relative Invalidity, which does not only affect the invalid procedure, but the effects of this Invalidity also extend to include the previous and subsequent actions to the invalid procedure, and it is natural that the effects of Invalidity are not produced except when the invalidity itself is determined first, as the accessory follows the principal and it is not conceivable that an accessory could exist without the principal, and therefore the procedural action tainted with invalidity does not result in any effect.

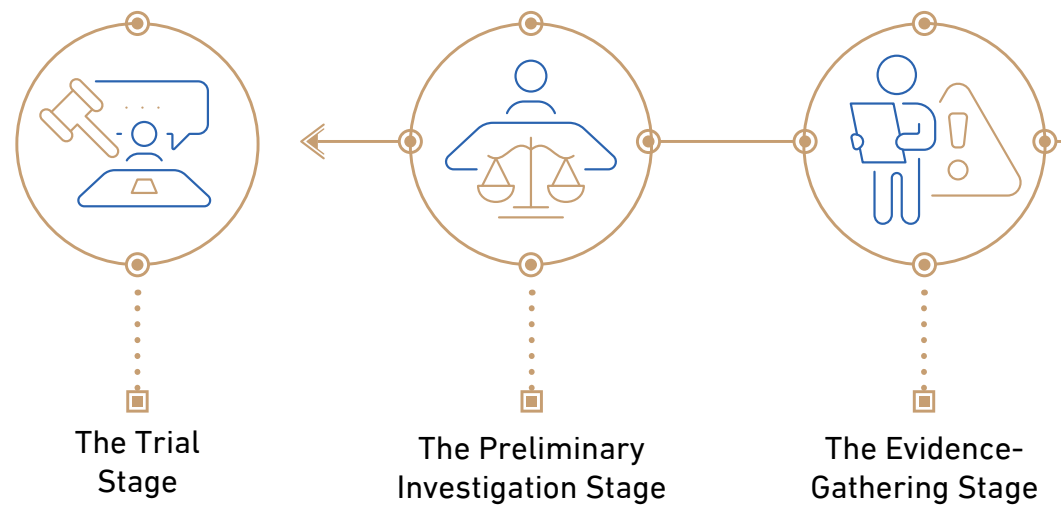
Procedural actions are phased in three stages: (The Stage of Evidence-Gathering, the Stage of Preliminary Investigation,

and the Trial Stage).

The Stage of Evidence-Gathering:

It is not in and of itself one of the stages of the criminal case, but it is a stage in which the so-called acts of gathering evidence are carried out, in order to pave the way for the preliminary investigation, and it also may have an effect of not resulting in undertaking the preliminary investigation, and just referring the accused directly to the criminal trial based only on this evidence-gathering stage.

The judicial officer must prove all the procedures that he/she performs and the venue of their occurrence in records signed by him/her, and he/she can carry out the process of collecting evidence for committed crimes through several procedures, even if not in cases of flagrante delicto (being caught in the act/red-handed), and he/she can also collect information without the need to seek the permission of the investigating authority, and he/she can also collect evidence after the commission of a crime, and accept reports and complaints at any time, and then immediately send them to the Public Prosecution, and he/she must also take all



The Trial Stage

The Preliminary Investigation Stage

The Evidence-Gathering Stage

The Theory of Invalidity in legal Acts is an Ancient Theory Deeply Rooted in the Depths of History

necessary precautionary means to preserve the evidence of the crime, and all actions carried out by judicial officers must be documented in records signed by them, indicating in them when and where such actions were taken, and those records must also include the signature of the accused, witnesses and experts, and they must be sent to the Public Prosecution along with all the papers and items seized.

As a general rule of thumb, the normal competencies of the judicial police are limited to collecting evidence and do not extend to the investigation. However, the legislator has taken into account that the judicial police is an auxiliary organ of the Public Prosecution in achieving its mission in order to get to the truth, and therefore it allowed the judicial officers in certain circumstances to initiate investigation procedures on an exceptional basis, which is the case of existence of sufficient evidence indicating the commission of certain crimes by certain persons, as well as cases of flagrante delicto, and finally the case of assignment for investigation.

The Stage of Preliminary Investigation:

It is a set of procedures aimed at prospecting

for evidence of a crime that has occurred, and then evaluating it to determine its adequacy to refer the accused to trial. As such, the Preliminary Investigation represents the first stage of the criminal case, and the importance of this stage seems to be anchored in the fact that it leads to the preparation of the case, and the extent of its justiciability.

The law required in cases of felony crimes - due to their seriousness - that a Preliminary Investigation be conducted before the case is submitted to the referral court and then the Criminal Court. Since the federal legislator has necessitated the undertaking of a Preliminary Investigation before filing the case to the Criminal Court, then the invalidity of this Preliminary Investigation in the felony crimes will result in the invalidity of all the procedures for filing the case, which will result in turn in a ruling of non-acceptance, and since the Preliminary Investigation involves carrying out coercive and forceful measures in order to get to the truth, the legislator in consequence of that has surrounded such investigation with certain guarantees, which should be observed so that individual rights and freedoms are not unnecessarily diminished, and these guarantees



are nothing but a set of basic principles of the Preliminary Investigation, which the investigating authority must adhere to, otherwise the investigation shall be considered as invalid, or at least to consider what was undertaken of its procedures as just evidentiary procedures, and not investigatory procedures.

The procedures of the Preliminary Investigation can be divided into two types: (Procedures for Prospecting for Evidence and Precautionary Measures Against the Accused).

Similarly, the Preliminary Investigation is based on a set of procedures: (Procedures for Prospecting for Evidence, and Precautionary Measures Against the Accused), and these two types of procedures represent the essence and content of the Preliminary Investigation, as the investigation is nothing but a set of procedures, and we have dealt with these procedures within the limits that allow the clarification of what may cause these procedures to be tainted with invalidity.

The Trial Stage:

It is a set of procedures aimed at scrutinizing all the evidence of the case, whether it is in the interest of the accused, or against his/her interest, leading to an eventual acquittal or conviction verdict. The Trial Stage is a phase independent of the evidence-gathering and investigation stages and this independence is expressed by the principle of separation of the investigative and sentencing powers, and some call this stage the "Final Investigation".

There are many and varied trial procedures, where the court has the right to take all the measures that reveal the factual truth in relation to the crime

attributed to the accused and the extent of the validity of attributing it to him/her, and it [the court, that is] does not adhere to what is recorded in the Preliminary Investigation or in the records of evidence collection, unless there is a provision in the law that states otherwise. Therefore, we are of the view that:

Invalidity in the issued judgment shall apply to any invalidity dictated by the judgment itself as the last action by which the case leaves the hands of the trial court.

This invalidity may be due to a violation of the rules related to the deliberation of sentences, their pronouncement, the dates of their issuance, or the validity of their signatures, and it may also be due to a lack of the necessary data for it in the editing of its preamble, or in its reasons in terms of the illustration of the incident that necessitated the punishment, or the circumstances in which it occurred, or the text of the law that was signed, and the invalidity may be due to the omission of a response to an important request or a substantial defense, or the failure to demonstrate with evidence the validity of the findings of the judgment with evidence that has a valid trail of documents, which is something that can be found within the general meaning of the failure to reason (causation of the judgment) the criminal sentence, and in this scope, the Court of Cassation assumes a degree of control and supervision over the trial court and it is necessary to confirm the correctness of the legal application, as it is impossible to separate the aspects of the trial's subject matter and the law from each other. In other words, the Court of Cassation monitors the subject matter of the case within the limits of supervising the correctness of the application of the law to the established facts in the case, by supervising the accuracy of the presentation of evidence in the criminal judgment regarding the availability of all elements of the crime as required by the law. Invalidity may also extend to affect the procedures. The law expressly required that such Invalidity should have an effect on the judgment, in the sense that the procedure should be substantial and result in the judgement of being considered as Invalid as well, whereas the non-substantive invalidity is not considered as a reason to challenge the rendered judgement.

Invalidity in the judgment applies to any invalidity dictated by the judgment itself as the last action by which the case leaves the hands of the trial court

The Murabaha Sale (A Sale with Profit)

In Light of the Commercial
Transactions Law No. (50) of (2022)



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

In order to complement the system of legislation related to the Islamic Economy, the Commercial Transactions Law issued by Federal Decree-Law No. (50) of (2022) has regulated the provisions of commercial transactions of Islamic financial institutions and it has allocated to them the sixth part of the third chapter on banking operations, and Articles Nos. (468-497) have been allocated to this effect. The said Law has defined an Islamic Financial Institution as an institution whose Statute or Contract of Incorporation stipulates that it conducts its business and activities in accordance with the provisions of Islamic Sharia, as well as an institution that is licensed to practice some of its business in accordance with Islamic Sharia. The Law also provides for special provisions for some types of contracts and obligations to which Islamic financial institutions are a party, and one of those contracts is the Murabaha Sale (A Sale with Profit) Contract⁽¹⁾.

The Law dealt with the regulation of the Murabaha Contract due to its importance in several aspects, including:

- 1 - Replacing Usurious (High Interest-Based) Contracts⁽²⁾.
- 2- Dispensing with some sales because of the legitimate Sharia caveats.
- 3 - Because it is part of transactions that take on other names such as the Sale of Tawarruq⁽³⁾ and Murabaha to the Purchase Orderer and Financial Leasing⁽⁴⁾.
- 4- To prevent Riba (Usury) from being circumvented, since this sale encompasses two types of sales (Prompt and Deferred Sales), and it is not permissible to circumvent Riba by using prompt and deferred sales as a means of making a transaction lawful. Therefore, the law has regulated the Murabaha Contract with provisions and controls. And before illustrating these terms and conditions, Murabaha must be defined in the language as a stand-alone term (linguistically and terminologically). Murabaha in the language comes from the word "Ribh" (Profit), and an example of which is: "He made a ribh/profit and money in his trade, as he is good at it, hence he is a rabbah/winner [who made profit]". And also: "I sold him the chattel and goods and purchased it from him in a Murabaha sale, having specified a certain ribh/profit for each part of the price"⁽⁵⁾. Murabaha as a vocabulary, and as stated at the top, is the transfer of what is owned through the first contract at the specified price with an additional amount added as a ribh/profit⁽⁶⁾. Ibn Jazi said, quote: "[i]t is for the owner of the commodity to let the buyer know at which price he/she (Owner) bought it, and with an additional amount set as a ribh/profit [to be added when the sale transaction is

finalized between the two parties]", unquote⁽⁷⁾. Ibn Qudamah defined it as, quote: "[s]elling at the purchase price {capital} with additional amount set as a ribh/profit", unquote⁽⁸⁾. And Murabaha in the Law in accordance with the text of Article No. (481) of the Commercial Transactions Law is defined as: (A contract whereby the seller sells an asset to the purchaser, having been owned and possessed by the seller in fact or constructively, based on a request of finance by the purchaser. Sale shall be made at cost in addition to a fixed amount of profit specified in the contract, and their total shall be the price of murabaha sale)⁽⁹⁾. We conclude from these definitions that the Sale of Murabaha consists of only two parties, namely the seller and the buyer, without any third parties entering with them, and the seller through Murabaha seeks to sell his/her commodity at a known profit on capital, because he/she intends to engage in trade, as he/she buys the commodity at a price later known as capital, and then adds a known profit on it so that he/she can develop his/her money through trade⁽¹⁰⁾. The above-mentioned definitions have included several things, the First is: The entry of the commodity into the property of the seller in a Murabaha way, as a way of steering away from a sale in which a seller sells that which he/she does not own⁽¹¹⁾. The Second is: The mentioning of the price of the commodity, as one of the Trust-Based Sales. The Third is: An increase that is known to the buyer. The Fourth is: Satisfaction or agreement on this increase. The Fifth is: That the buyer does not want the commodity itself per se, but buys it for the purpose of reselling it⁽¹²⁾. It also appears from the Law's definition of Murabaha that it overlooked the contemporary forms of

Law No. (50) of (2022) defined an Islamic Financial Institution as an institution whose Statute or Contract of Incorporation stipulates that it conducts its business and activities in accordance with the provisions of Islamic Sharia

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The price of the Murabaha Sale must be fixed, and it cannot be variable/changeable or dependent on or affected by an indicator/factor

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The Judge must refer in the interpretation and clarification of legal texts related to Murabaha to the Shari'a standards and controls issued or adopted by the Higher Shari'ah Authority (HSA)

Murabaha, namely: (Simple Ordinary Murabaha and Reverse Murabaha), and we mentioned the definition of Simple Murabaha earlier on. As for the Reverse Murabaha, it is where the customer is the creditor and the bank is the debtor⁽¹³⁾. And I mention here the definition of Murabaha to the Purchase Orderer which is used by Islamic banks, and it differs from the definition of Simple Murabaha mentioned by the jurists as stipulated previously, and the illustration of it that it was stated in the definition [of Murabaha to the Purchase Orderer] that the seller owns the commodity at the request of financing from the buyer, and in Simple Murabaha the seller does not necessarily have to buy the commodity at the request of financing from the seller [buyer]; therefore, the Law had to call the Murabaha Contract as Murabaha to the Purchase Orderer or simply adjust the definition in proportion to the meaning of Murabaha that is not preceded by an order and a promise to buy. As for the Murabaha to the Purchase Orderer, it is one of the contemporary transactions practiced by financial institutions and its form is for: one of the contractors, known as the orderer or the requester, to request from the other, known as the ordered or the requested, to buy him/her a named and described commodity that is not owned by the requested party, with the promise made by the Orderer that he/she will purchase this commodity at the capital price with an additional known profit, and if the requested party agrees to this request and purchases the commodity in question as per the made request and sold it in turn to the Orderer, then such sale shall be considered as Murabaha to the Purchase Orderer⁽¹⁴⁾. Therefore, there is a big difference between the two types of Murabaha, because in Ordinary Murabaha, the seller owns the commodity that he/she sells at the time of negotiation and upon sale, while the one who is required to sell the commodity in the Murabaha to the Purchase Orderer does not own the commodity at the time of it being ordered and negotiated on. And the Sale of Murabaha is one of the sales that are agreed upon that they are permissible according to Sharia and Law⁽¹⁵⁾, and there is no disagreement apropos its validity⁽¹⁶⁾, and it is treated as a normal sale and its known conditions, and because the need for this type of sale is urgent, as some are not well-versed in buying and selling, and could be in need of someone to rely on and on their honesty and experience [when conducting a sale transaction], especially when the seller must be forthcoming when stating the value of

the capital and the amount of profit he/she is aiming for⁽¹⁷⁾. Article No. (506) of the Civil Transactions Law stipulates that it is permissible to engage in the Murabaha Sale⁽¹⁸⁾, provided that the capital of the seller is known at the time of entering into the contract, and that the amount of profit is specified⁽¹⁹⁾, and since the Murabaha Sale is considered as a Trust-Based Sale, the First Paragraph of Article No. (482) of the Commercial Transactions Law stipulated that the price of the Murabaha Sale must be fixed, and it cannot be variable/changeable or dependent on or affected by an indicator/factor or the like, and the seller must also be forthcoming with the buyer when determining the price⁽²⁰⁾. Therefore, the Law has given the buyer the leeway to lower the increase on the capital if it appears that the seller has increased in his/her statement the amount of capital. Furthermore, he/she -the buyer, that is- may terminate the contract⁽²¹⁾, by reason of becoming dissatisfied with the contract and the seller's dishonesty, if this seller's capital was unknown at the time of entering into the contract, and

it became known later on to the buyer the amount of this capital, and the same judgment here will be applied if the seller has failed to mention something that would affect the sale or capital⁽²²⁾. Additionally, and in accordance with the provisions of Articles Nos. (468, 473 and 474) of the Commercial Transactions Law, and in the event of the debtor's delay in payment, it is then not permissible to pay down any interest or benefit, including the Deferred Interest, even if it is a compensation to the benefit of the Islamic financial institution or a traditional institution that is licensed to practice some of its business in accordance with the provisions of Islamic Sharia, and any agreement to the contrary shall be considered as null and void. Consequently, the financial obligations arising from financial transactions and commercial contracts concluded by these institutions of both types must be specific and of a certain amount specified, and it is not permissible to increase their amount in exchange for postponing their maturity, and any agreement to the contrary shall be considered as null and void, and it should be noted that in accordance with the text of Article No. (470) of the Commercial Transactions Law, the Judge must refer in the interpretation and clarification of legal texts related to Murabaha to the Shari'a standards and controls issued or adopted by the Higher Shari'ah Authority (HSA) stipulated in Federal Decree-Law No. (14) of (2018) and not contrary to the provisions of Law No. (50) of (2022).

* Footnotes

(1) The UAE Civil Transactions Law also regulates the provisions of the Murabaha to the Purchase Orderer through the so-called "Assisted Sale" in accordance with the provisions of Article No. (584) of the law, which states: "An assisted sale is one which takes place between a person who holds himself out (as being available) to place a purchase order for goods which are not (immediately available) between him and the person asking for the goods, and who, if goods are ordered from him, purchases them and sells them to the person who has ordered them with an increase over the purchase price thereof, and such a sale is permissible unless it amounts to a loan with interest, which is when the person from whom the goods were ordered sells the goods to the person ordering them at a deferred price exceeding the price agreed between them, and if the sale takes place in this manner the second purchase shall be cancelled and the goods shall pass at the price agreed between the two parties to the original sale, with the addition of the least commission payable by way of profit for arranging such deals". What this text shows is that the Law adopted the opinion that opines that it is permissible to conduct an "Assisted Sale" in the manner specified in Article No. (584), which was authorized by the Malikeyyah [followers of the Maliki School of Thought], if that sale is free of Riba [usury], and Riba is considered to be practiced when the party requested to provide the needed commodity sells it to the one who requested it at a price higher than the purchase price agreed on between the requester of the commodity and the requested, and that is why the Law has imposed the proper penalty for this conduct by cancelling the second purchase contract and obligating the selling of the commodity to the requester at the price of the first purchase, in addition to the least commission payable by way of profit for arranging such deals and also by way of the usual profit according to the current custom, in other words, to add to the one who is requested less than the fair equivalent price and the profit of the second purchase. And the sale according to this manner, and according to what is adopted by the Islamic banks, goes through two stages: The First Stage of which is: The request by the purchase orderer and the bank's acceptance of it, and it is called the Stage of the Promise of Contract stipulated by Article No. (475) of the Commercial Transactions Law, in which one of the contractors undertakes to conclude a certain contract in the future, and such an undertaking is binding only to the party who made the promise, and the Second Stage of which is: The Contracting Stage, where the contract between the bank and the purchase orderer is realized on the basis of Murabaha and in accordance with its accredited conditions.

(2) Appeal No. (378) of (2013), Real Estate, Cassation Court, Dubai, Session Dated (16-3-2014).

(3) This is achieved if the Sale of Murabaha is a means or a way to Tawarruq Sale (Commodity Murabahah), where the Mistawriq

(buyer) bought a commodity through Murabaha and agreed with its first seller to buy it with a known profit for a known term, and the value of each installment and the due date are determined, then the Mistawriq sells this commodity to someone other than the first seller so that he/she [the Mistawriq] will achieve his/her ultimate objective from the two purchases through Murabaha, and then he/she will sell at a set price to get cash, and in this example, the Sale of Murabaha was a way through which the Tawarruq Sale (Commodity Murabahah) was carried out. For detail on this issue, please see: Judge Dr. Jassim Mohammed Al Hosani, 'Al-Heyul Al-Fiqheyyiah Wa Bai'e Al-Tawarruq' (Jurisprudential Tricks and the Sale of Commodity Murabahah), Dubai Judicial Institute, Edition of (1436-2015), Page No. (224).

(4) Appeal No. (378) of (2013), Real Estate, Cassation Court, Dubai, Session Dated (16-3-2014).

(5) See: Ahmed Bin Mohammed Bin Ali Al-Fayoumi, 'Al-Misbah Al-Muneer' (The Illuminating Lamp), Page No. (131). And Ibn Manzoor, 'Lisan Al-A'arab' (The Tongue [The Mother Tongue Arabic Language] of the Arabs) Volume No. (4), Page No. (31).

(6) See: Burhanuddin Ali Bin Abi Bakr Bin Abd Al-Jalil Al-Farghani Al-Marghinani, 'Matn Bedayut Al-Mubtadi'e Fi Fiqh Al-Imam Abi Haneefah' (The Text of the Beginning of the Novice in the Jurisprudence of Imam Abi Hanifa), Library and Printing House of Mohammad Ali Sobh, Cairo, without Edition Number and Date, Part No. (1), Page No. (137). And Ibn Abdin, 'Hasheyut Rud Al-Muhtar - Hasheyut Ibn Abdin' (The Footnote of the Response of the Undecided - The Footnote of Ibn Abdin), Part No. (5), Page No. (132). And Al-Kasaani, 'Badai'e Al-Sana'i'e' (The Marvels of Crafts), Part No. (5), Page No. (135).

(7) See: Mohammad Bin Ahmad Bin Jizi, 'Al-Qawaneen Al-Fiqheyyiah' (Jurisprudential Laws), Page No. (286).

(8) See: Ibn Qudamah, 'Al-Mughni' (The Enricher [Improver]), Part No. (4), Page No. (280). And Al-Mardawi, 'Al-Insaf Fi Ma'arifut Al-Rajih Min Al-Khilaf A'ala Muthehub Al-Iman Ahmad Bin Hanbul' (The Fairness of Knowing the Most Correct Relevant to the Disagreement Over the Doctrine of Imam Ahmad Bin Hanbal), Part No. (4), Page No. (438). And Ibn Rushd, 'Bidayit Al-Mojtahid Wa Nihayut Al-Moqtasid' (The Beginning of the Diligent and the End of the Moderate), Part No. (3), Page No. (1317). And Abu Al-Barakat Ahmad Bin Mohammad Al-Adawi, Known as Al-Dardareer 'Al-Sharh Al-Kabeer Ma'a Hasheyatuh Lil-Dasooqi' (The Great Explanation with its Footnote for the Al-Dosooqi), Part No. (4), Page No. (257). And Ibrahim Bin Ali Bin Yusuf Al-Shirazi Abu Ishaq 'Al-Muhaththub Fi Fiqh Al-Imam Al-Shafi'i' (The Well-Mannered in the Jurisprudence of Imam Al-Shafi'i), Dar Al-Fikr, Beirut, Without Edition Number and Date, Part No. (1), Page No. (288).

(9) According to the contemporary transactions, Murabaha has started to come in different forms and names, namely Ordinary or Simple Murabaha, Murabaha to the Purchase Orderer and Reverse Murabaha, and these types are different in terms of their definition, adaptation, legal nature and Shari'a and legal judgment, and under this definition, it turns out that the Law overlooked these types, and only defined Murabaha in the form

of Murabaha to the Purchase Orderer, which is applied by Islamic banks, and therefore I propose to specify the definition to be commensurate with the definition of Murabaha or rename Murabaha to Murabaha to the Purchase Orderer.

(10) The opposite of the Sale of Murabaha is the Ba'i al-Wadhi'ah (Sale at a Loss), i.e. the Sale of the Commodity at a Loss, which is considered as a valid sale by jurists provided that its pillars and conditions are fulfilled. See: Dr. Mohammed Othman Shabir 'Al-Tawarruq Al-Fiqhi Wa Tatbeeqatuh Al-Masrafiyyiah Al-Moa'sirah Fi Al-Fiqh Al-Islami' (The Jurisprudential Tawarruq [Tawarruq Sale (Commodity Murabahah)] and its Contemporary Banking Applications in the Islamic Jurisprudence), Page No. (21), Articles Nos. (506) of the UAE Civil Transactions Law, (530) of the Iraqi Civil Law, (462) of the Kuwaiti Civil Law, (480) of the Jordanian Civil Law, and (542-546) of the Yemeni Civil Law.

(11) See: Appeal No. (367) of (2012), Real Estate, Cassation Court, Dubai, Session Dated (2-6-2013).

(12) See: Judge Dr. Jassim Mohammed Al Hosani, 'Al-Heyul Al-Fiqheyyiah Wa Bai'e Al-Tawarruq' (Jurisprudential Tricks and the Sale of Commodity Murabahah), Page No. (221).

(13) It is not possible here to simplify and detail the provisions of this picture in this article.

(14) Ibid., Page No. (360).

(15) Appeal No. (559) of (2016), Commercial, Cassation Court, Dubai, Session Dated (27-11-2016).

(16) Some scholars have argued that the judgement on the Sale of Murabaha is that it is considered as one of the forms of 'Makruh Tanzih' or 'close to halal' (An act that is not strictly forbidden according to scholars, but is disliked if done), but with the sale considered as valid, and an example of which is when the seller says to the buyer: "I sell it to you with the price that includes what I paid (Capital) in it, which is one hundred, and you shall make a profit at the rate of one dirham for every ten dirhams". And this was narrated by Al-Imam Ahmad school of thought, through Ibn Umar, Ibn Abbas (may Allah be pleased with them), and Masrooq, Al-Hasan, Sa'id Bin Jubayr and A'ata'a Bin Yasar. And the disliked aspect of this not-strictly forbidden act is illustrated in the notion that the buyer needs the full information about the sale so that he/she can lift the lack of information aspect that may befall him/her as a result of the seller not providing the full relevant information, which leads to the buyer not being able to calculate the amount of profit that is to be eventually made. See in the illustration of this: Ibn Qudamah, 'Al-Mughni' (The Enricher [Improver]), Part No. (6), Page No. (266). The Author here is of the view that the lack of information in this case is temporary and ends upon conducting the needed calculation, and no harm will then remain, and this is all the more reason not to describe this sale as lack of information, but as being done contrary to what should have been done, which is what the Malikis (follower of the Al-Maliki school of thought) had aimed for when they said that what is more preferable should have been done or followed or 'Khilaful Awla' or 'Makruh Tanzih'. See: Al-Hattab 'Mawahib Al-Jaleel' (Talents of the Sublime),

Part No. (4), Page No. (488), and Abu Al-Barakat Ahmad Bin Mohammad Bin Ahmed Al-Dardeer 'Al-Sharh Al-Sagheer A'ala Aqrib Al-Masalik Ila Mathhub Al-Imam Malik' (The Small Explanation on the Closest Paths and onto the Doctrine of Imam Malik), Edition of the Ministry of Justice and Islamic Affairs of the United Arab Emirates, Islamic Year of (1410 AH) - (1989 A.D.), Part No. (3), Page No. (215).

(17) See: Kamal Al-Din Mohammad Bin Abdul Wahid Al-Siwasi 'Sharh Fath Al-Qadeer' (Explanation of the Introduction of Al-Qadir [The All-Powerful]), Dar Al-Fikr, Beirut, Without Edition Number and Date, Part No. (6), Page No. (9), and Page No. (497), and Al-Shirazi 'Al-Muhaththub' (The Well-Mannered), Part No. (1), Page No. (288), and Ibn Qudamah Al-Maqdisi, 'Al-Mughni' (The Enricher [Improver]), Part No. (4), Page No. (280).

(18) The Sale of Murabaha is also authorized by the Iraqi Civil Law in accordance with the text of Article No. (530), the Jordanian Civil Law, in accordance with the provisions of Article No. (480) and the Kuwaiti Civil Law, which states in Article No. (462) thereof that: "It is permissible to sell at the price of purchase 'Bay' At-tawliyah" (Sale at Cost), or to sell some of the commodity and not all of it "Bay' Al-Ishrak" (Part Sale), or to sell at the cost price in addition to a certain profit "Bay' Al-Murabaha" (Murabaha Sale) or to sell at cost price after deducting an amount or a rate "Bay' Wadiah" (Sale at Specified Loss), if the price at which the seller bought the commodity is known at the time of the contract, and the amount of profit in the Murabaha Sale and the amount of loss in the Sale at Specified Loss is specified and if it is proved that the price at which the seller bought the commodity is less than what he/she stated, the buyer reserves the right to stick to the real price, and it is considered fraud on the part of the seller not sharing with the buyer the circumstances surrounding his/her purchase of a commodity if this would affect the buyer's satisfaction.

(19) See: Appeal No. (620) of (2003), Civil Court, Dubai Cassation Court, Session Dated (20-6-2004), Journal of Judiciary and Legislation, Issued by the Technical Bureau, (2004), Part No. (15), Pages Nos. (1372-1377).

(20) Therefore, the seller in a Murabaha Sale should avoid betrayal as ordered by the Al-Mighty Allah in His Holy Book when He said, quote: "[o] you who have believed, do not betray Allah and the Messenger or betray your trusts while you know [the consequence", unquote. (Al-Anfal {The Spoils of War}, Chapter 8, Verse 27).

(21) However, the buyer's right to terminate is limited by the survival of the commodity (the subject of the sale) and its non-destruction or consumption, such as flour being made into bread, or by being dispensed with in a way that removes it from his/her ownership after receiving it through sale or gift, and the burden of proof falls on the plaintiff.

(22) See: Dr. Wahbe Al-Zihaili, 'Al-O'qood Al-Musammah Fi Qanoon Al-Mo'a'amalat Al-Madaneyyiah Al-Imarati Wa Al-Qanoon Al-Madani Al-Ordini' (Nominate Contracts in the UAE Civil Transactions Law and the Jordanian Civil Law), Pages Nos. (46-49).



**His Excellency Counselor
Dr. Arif Al-Sheikh**
Family Matters Consultant
- Dubai Courts



Rights of Women and Children

They Say That Mothers Are The Cradle Of Virtue,
And I Say, ' Only If You Made A Good Choice In Choosing Her',
As Not Every Mother Possesses A Virtuous Mettle,
And Not Every Land You Will Be Able To Reap Its Fruits,
And This Transpires If You Have Not Been Able To Raise A
Daughter,
On the Grounds of Morality And Stature That Brings Joy
To Your Heart,
Mothers Have the Right To Be Raised Well From Their
Early Childhood,
And Her Parents Ought To Be Good At Testing Her,
Nourish Her Through Faith And Bring Her Up On Piety,
And Make Her Proud Of Her Veil Day In And Day Out,
And If She Goes Out To Study, She Will Do It With Chastity,
And She Will Not Acknowledge Those Who Would Irritate
Her,
As She Is The Girl That Is To Be Married Off Right On
Time To A Husband, Otherwise Who Would Be Interested
In Her,
Married To A Husband Who Is Righteous And Mature,
And Who Lives With Her With Dignity And Creates A

Household Of Vivacious Life,
Where She Runs It And Takes Care Of Such Household,
By Spending Her Day Taking Care Of Her Children,
And Expressing Her Intimate Feelings To Her Husband,
As He Yearns For Her Inventive Heart,
And Longs For Her Passionate Hand,
Otherwise, It Will Be Like A Worthless Desert Without
Daffodil,
Hence, Her Not Leaving Her Children To Be Raised By A
Stranger Nanny,
Who Will Bring Them Up Without Their Mother's Atten-
tion,
Would Such A Mother Leave Her Children To Be Taken
Care Of By A Stranger Nanny,
And Leave Her Children Spend Their Lives Wondering
Where Their Mother Was,
Who Spends Her Time Out Shopping,
Not Knowing In Doing So She Already Lost A lot,
A Mother Is Ethics And Not Capital,
And Cannot Leave Her Child Waiting On Her Attention,
As The Father Will Be Saying To Such Mother That By

Being Absent, It Is As If She Has Torn Down The Building
Block Wall Of The House,
When She Should Have Been The Children's Protection,
Their Guardian, And Their Counsellor,
And Mothers Do Not Shirk Their Responsibilities And Do
Not Neglect Their Households,
As She Is Still A Woman No Matter How Sage She Is,
And She Would Be Taken Aback Once The Children
Become Unruly,
And If A Woman Is The Other Hoped-For Half Of The
Society, But She Is Absent, Then Who Would Populate
Heaven With Its Ponies,
But The Mind Cannot But Reject That,
And Accept A Family Whose Slogan Is Good Care,
As It Is With Love And Not With Money We Raise Chil-
dren,
And We Take Care Of An Adolescent Who Is Coming Up
In This World,
And If Both Parent Are Absent, The Family As A Whole
Will Become Dysfunctional,
And If Any Little Disagreement Arises, It Can Be Dealt
With Head On And Life Will Then Become A Blessing,
Otherwise, It Will Become A Dread,
And If Separation Occurs After All That Was Built,
Everyone Will Be Saddened And Life Will Become Bitter.

Yes, Our Time Calls For Both Of Us To Work,
And The Aura Of Yesterday's Prominence Is All But Gone,
You See People At Markets Milling Around Day And Night,
While Their Homes Are Empty And Neglected,
And People Eat And Drink At The Markets Which Became
Their Wowed Admiration Of The New Age,
But I Go Ahead And Say To All Of You,
That Sooner Or Later We, including The Strongest Of Us,
Will All Weep,
[My Advice To You Is] To Take From This Life That Which
Is New And Build Your Households On Religion And
Ethics As Both Are Getting Squeezed,
Our Families Are Responsible For Our Offspring,
And Each Family Should Shoulder Its Responsibility Ac-
cording To Its Wherewithal,
And "Shindagha" Became A Breeding Ground of Every
Virtue,
Hence Our Thanks To Our "Policemen And Policewoman"
For Their Good Choice Of Choosing It,
Here Lived The Forefathers Whose Lives Are Memorial-
ized In "Museums",
Which Informed Us About Them As They Welcomed Us
When Visited Them,
And The "Visitors Center" Welcomed Us In,
As It Became A Shrine To "History's Shindagha".



A Reading into the Provisions of Marriage and Divorce



Mr. Mohammed Abdulrahman
Case Manager - Dubai Courts

According to the Federal Civil Personal Status Law

Due to the large number of citizens and foreigners (non-Muslims) residing on the territory of the State, the UAE Legislator decided to enact a law regulating the provisions of this category in matters related to personal status, such as marriage and divorce, and their consequences, and a non-Muslim has become able to get married in the State courts in accordance with the legislation of the State, without the need for him/her to go to another destination or another country.

A non-Muslim is now able to get married in the courts of the State according to its legislation

In this regard, the Head of the State -may Allah protect Him- issued a Federal Law Decree No. (41) of (2022) on civil personal status, so that its provisions apply to non-Muslim citizens of the state, and to foreigners residing on the territory of the State, (unless one of the parties to the lawsuit requests the adherence to the application of his/her home country law, i.e. his/her nationality law), in matters related to marriage, divorce, verification of lineage, inheritances and wills, all without prejudice to the provisions of Articles Nos. (12) to (17) of the Federal Civil Transactions Law, which regulated some issues related to per-

sonal status, and it is clear from the foregoing that the Civil Personal Status Law, which in its provisions non-Muslims are addressed, is in agreement with the personal status law on the right of any of the parties to request the adherence to the application of his/her home country law, and then he/she must submit a certified copy of his/her home country law to the court competent to consider the dispute in order to apply its provisions, and the Federal Personal Status Law No. (28) of (2005) has already stipulated that (its provisions) apply to non-Muslim citizens unless they have provisions specific to their sect and their

religion, and therefore the Civil Personal Status Law has not brought anything new here in this regard, as the Personal Status Law preceded it by stipulating this about (18) years before the issuance of the other Law.

On the other hand, in the Civil Personal Status Law, the Federal Legislator gave those who are addressed by its provisions the right to agree on the application of other legislation regulating the family and personal status in force in the State instead of it, in other words, according to this clause, non-Muslim citizens or residents may agree to apply the provisions of the Federal Personal Status Law No. (28) of (2005) if they so wish to do so without any legal impediment, and in this specificity there is a great deal of flexibility and a great deal of freedom to choose between the legislations in force in the State to be applied to personal matters specific to that category. It is also noted that the Civil Personal Status Law has adopted the Gregorian Calendar on calculating the terms stipulated in it, while the Personal Status Law for Muslims has adopted the Islamic Calendar (Lunar or Hijri Calendar) in the periods contained therein, unless any of its Articles

stipulate otherwise, and by extrapolating the Civil Personal Status Law, it is clear that it excluded divorce and divorce cases from being submitted to the Family Guidance Committee, but they are registered directly before the competent court, where the judgment is issued from the first session unlike the situation in personal status cases filed on the basis of the provisions of the Federal Personal Status Law No. (28) of (2005), in which the legislator stipulated in accordance with the provisions of Article No. (16) of it that the case is not admissible before the court in personal status matters unless it is put before the Family Guidance Committee first, with the exception on matters of wills and inheritance issues and the like, urgent (act on petition) and temporary lawsuits, urgent and temporary orders in alimony, custody and guardianship, and lawsuits in which conciliation is not envisaged such as in proof of marriage and proof of divorce cases.

Conversely, and according to the concept of (Argumentum A Contrario) -(Argument From the Contrary), this means that only divorce cases are excluded from being submitted to the Family Guidance Committee when the case is filed in

The agreement of the Civil Personal Status Law for Muslims and non-Muslims on the right of any of the parties to adhere to the application of his/her home country law

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The federal legislator has given in the Civil Personal Status Law those who are addressed by its provisions the right to agree on the application of other legislation regulating family and personal status matters in force in the State instead of it

accordance with the provisions of the Civil Personal Status Law, whereas issues related to wills, inheritances, verification of lineage and expenses, for example, they are required to be passed to the Family Guidance Committee before filing the case before the competent court, otherwise they will be ruled inadmissible. On the other hand, there are also some provisions related to witness testimony, inheritance, custody and the right to request divorce, that have a different status of their own. And according to the Federal Personal Status Law No. (28) of (2005), the legislator based the validity of a lawful testimony on what is stated in the Holy Verse No. (282) (Verse of Loan) from Surah Al-Baqarah (The Heifer or The Cow Chapter), as the Al-Mighty Allah Said, quote: *And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of them [i.e., the women] errs, then the other can remind her*, unquote. The UAE Judiciary has confirmed that the Quorum of the testimony in personal status is the testimony of two men or a man and two women, while the matter is different in the Civil Personal Status Law, where Article No. (4) of it equalizes between women and men in testimony, as the testimony of a woman before the court is considered the same as the testimony of a man without discrimination, or the requirement of a certain quorum, as is the case in Islamic Law, and as it is the case with inheritance, where its provisions are regulated in detail in the Holy Quran of Allah the Almighty, specifically in the Surah An-Nisa (The Women Chapter), and those provisions have distinguished between the male and female share, and the provisions of Federal Personal Status Law No. (28) of (2005) have explained this in detail, while the Civil Personal Status Law equated between a woman and a man in the inheritance, in the sense that men do not have twice the share of females according to the provisions of this law.

As for the provisions of custody in accordance with the provisions of the Federal Personal Status Law No. (28) of (2005), the basic principle here is that custody is shared as long as the marriage exists, and if separation occurs between the spouses, whether by the husband's sole will or by divorce by way of abdication (The wife obtaining divorce by relinquishing the divorcee rights) or separation



by way of judicial ruling whatever its cases, then custody will not be joint, but one of them shall solely have it without the other, while matters such as sighting, seeing, and visitation are determined accordingly, and the basic principle here is that custody in accordance with the provisions of this law should remain with the mother after the separation has occurred, and shall remain with her in the event of a dispute until the judiciary decides otherwise, and this is all in the best interest of the child in custody. However, the matter is different in the Civil Personal Status Law, where the legislator decided equality of the spouses in custody, meaning that both have the right to custody, in other words, custody is shared between them until the child reaches the age of eighteen and then he/she will be given the choice to choose, taking into thorough account that the parties have the right to ask the court to prove custody to whoever is worthy of it in accordance with the interests of the child in custody or that one of them requests a written waiver before the court of his/her right to custody, then custody will be full for the other, and either of them may also file a request to dismiss the other from joint custody, accompanied by reasons of such request, such as the onset of any of “Awārid Al-Ahliyyah”

(Impediments to Legal Competence), or danger of participating in custody, or the failure of the other to perform his/her duties, and in the event of disagreement on any of the matters in connection with joint custody, any of them has the right to submit a request to the competent court for objection, or to request the intervention of the judge to adjudicate on the subject of the dispute. It is worth mentioning that giving the choice to children after reaching a certain age is not provided for in the Federal Personal Status Law No. (28) of (2005), where the latter stipulates the conditions of the custodian, whether those conditions relate to men or women. It also stipulates the age of termination of custody for women, cases of extending the age of custody of women until the male reaches the age of puberty or the female marries, and other detailed provisions related to custody in accordance with the interests of the child in custody, all in line with the discretion of the court in this regard.

The other issue in this part concerns the right to file for divorce or divorce for marital discord and according to the provisions of the Federal Personal Status Law No. (28) of (2005), the husband has the right to effectuate divorce of his own free volition, and the wife may also file a

suit for divorce by abdication and separation for non-performance of the dowry, separation for not providing nafaqah or maintenance, separation for absence and loss, separation for imprisonment, and separation for “Ila’ ” and “Zihar” (constructive divorce). In addition, there are special provisions for separation by a court ruling, namely: separation for incurable disease, separation for harm and marital discord and those rights are accorded to both spouses, in the sense that divorce may be by the sole will of the husband, or at the request of one of the spouses through the Family Guidance Authority, while the matter is different according to the provisions of the Civil Personal Status Law, where it is possible to go to court directly through a separation request submitted to the competent judge without the need to be presented to the Family Guidance Committee, and the divorce is effectuated directly as soon as the notification of the other party is verified by any of the means of notices provided in accordance with the provisions of Article No. (9) of the Federal Civil Procedure Law, such as recorded calls or text messages, for example, and even more so without the need to provide justifications for the desire to separate, all without prejudice to their rights related to divorce effectuated by the husband or

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The Civil Personal Status Law excluded cases of divorce effectuated by the husband or divorce effectuated by either of both spouses from being presented to the Family Guidance Committee

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New provisions on witness testimony, inheritance, custody and the right to request a divorce effectuated by the husband or divorce effectuated by either of both spouses



divorce effectuated by either of both spouses.

As for the conclusion of a civil marriage contract, it is required that both spouses have reached the age of at least (21) Gregorian years, and it suffices to verify that they have reached this age by submitting an official document issued by the country to which each of them belongs by virtue of his/her nationality, while the eligibility for marriage according to the Federal Personal Status Law No. (28) of (2005) is established by reason and sanity and reaching the age of puberty of eighteen years of age for those who have not reached puberty according to Sharia before, and those who have not reached puberty according to Sharia and have not completed eighteen years of age shall not marry, except in accordance with certain legal regulations, and both laws agree on the prohibition and inadmissibility of marriages between relatives (Incestuous Marriage). In a civil marriage, the conditions considered in Islamic marriage, such as witnesses, the consent of the guardian, providing a certificate proving the absence of diseases, and other conditions stipulated in the Federal Personal Status Law No. (28) of (2005), are not required, as in a civil marriage, it is sufficient for both spouses to reach the age of (21), and to disclose their

desire to marry before the competent notary public, and the spouses must disclose whether either of them has been married before, and the date of divorce, and the wife must submit her declaration of the absence of an existing marital relationship, and the husband must submit his declaration of the absence of an existing marital relationship unless his home country law allows him to have multiple marriages, and in all cases, he must disclose this, if any, and they both may submit their terms without restrictions, in accordance with the provisions of this law and its executive regulations. One very important thing needs to be clarified here, which is related to the verification of lineage, as the Civil Personal Status Law regulates issues related to lineage verification, where lineage is proven according to its provisions by marriage or by way of confirmation on the part of parents, as well as it is proven by the person claiming it by conducting a DNA test in the event that the child is of unknown lineage, and the difference between the claimant and the child is likely to lead to ascribing the lineage of the child to him, while the provisions of the Federal Personal Status Law No. (28) of (2005), have specified methods of proving lineage, namely conjugal bed (the establishment of matrimo-

ny), acknowledgement, evidence and scientific methods in the event that the conjugal bed is proven, provided that the conditions of each of those methods are fulfilled in accordance with what is stipulated by the law, in other words, it is not considered for lineage to have been proven by scientific methods if pregnancy occurred out of wedlock, and this is opposite of what the provisions of the Civil Personal Status Law have called for.

The last thing we are happy to touch on in this regard is alimony, since according to the Federal Personal Status Law No. (28) of (2005), there is no alimony for the divorcee after divorce, but there is an alimony for the divorcee who is in seclusion period after divorce (Udda) [In Islam, also iddah or iddat, is the period a woman must observe after the death of her husband or after a divorce, during which she may not marry another man], and there is alimony for the divorcee as a woman in charge of a child, and not as a divorcee per se, and the legislator has regulated this in detail, while the matter is different in civil marriage, as by extrapolating the provisions of Article No. (9) of the aforementioned Personal Status Law, it turns out that: After the divorce verdict is issued, the divorced woman may apply to the court for an

* List of References:

- The Holy Quran.
- Jaber Bin Ali Al Hosani, 'Al-Ta'aleeq A'ala Qanoon Al-Ahwal Al-Shakhseyyiah Al-Imarati Wa Muthakkaratuhu Al-le'dhaheyiah' (Commentary on the UAE Personal Status Law and its Explanatory Memorandum), Department of Justice, Abu Dhabi, Part I, 2020.
- Jaber Bin Ali Al Hosani, 'Al-Ta'aleeq A'ala Qanoon Al-Ahwal Al-Shakhseyyiah Al-Imarati Wa Muthakkaratuhu Al-le'dhaheyiah' (Commentary on the UAE Personal Status Law and its Explanatory Memorandum), Department of Justice, Abu Dhabi, Part II, 2020.
- Jaber Bin Ali Al Hosani, 'Kitab Al-Fatawi Wa Qanoon Al-Ahwal Al-Shakhseyyiah Al-Imarati' (Edicts Book and the UAE Personal Status Law), Department of Justice, Abu Dhabi, 2020.
- Federal Law No. (5) of (1985) Promulgating the Civil Transactions Law of the UAE.
- Federal Law No. (29) of (2005) on Personal Status.
- Federal Law Decree No. (41) of (2022) on Civil Personal Status.
- Federal Law Decree No. (42) of (2022) Promulgating the Civil Procedure Law.
- Appeal No. (52/2028), Personal Status, Hearing Session Dated (20/3/2018), Dubai Court of Cassation.

alimony request against her former husband (Divorcer), if this is not agreed upon in advance in the marriage contract, and the competent judge considers her request according to his/her discretion taking into account the number of years of marriage, as the more years of marriage there were, the more the amount of alimony will increase, as well as the age of the wife, as the older she is, the more her alimony will increase and vice versa, also, when estimating alimony for a divorced woman, the judge considers the financial conditions of both spouses, after an expert is designated to assess their economic situation, and also considers the extent to which each of them contributed to the divorce or to submitting a divorce request, and the compensation for any material damage suffered by either of them due to the divorce, and the financial damages incurred by either of them as a result of the divorce being requested by a sole will, the custody costs and the degree of the mother's care for the children, taking into account that this alimony is forfeited in the event of her marriage to another man, or in the event of the end of her custody of the children, stressing that both may submit annual requests to consider the amendment of alimony either by increase or decrease as the case may be.

Judicial Inspection Division

Ensuring the Right to Litigation for All Under

Effective Justice with a Fair Judiciary

- **Al Sabousi:** Following up on the work of the judicial authority by conducting a variety of inspections.
- **Al-Kathiri:** It is imperative to have a clear roadmap that brings together the judge and the Judicial Inspection Division.
- **Al-Qaydi:** Monitoring the technical and behavioral problems of judges, and conducting the necessary studies to identify their causes and treatment.
- **Bakri Abdullah:** The cooperation of the Public Prosecution members with the Judicial Inspection Division in order to carry out their mission easily and effortlessly.
- **Al-Hosani:** The Court of Cassation ensures the correctness of the application of the law, while the Judicial Inspection Division improves the performance of the member of the judicial authority subject to inspection.



Investigation – Sada AL-Mahakim (Courts' Echo)

With the aim of providing a safe environment for well-being and a serene life through ensuring the right to fair litigation for all, so that the judiciary is the epitome of the effectuation of the truth, and the guarantee for the establishment of justice; the Emirate of Dubai embarked on its relentless pursuit with the aim of achieving justice and positive equality between its citizens and residents, and among each other without any discrimination.

The Emirate of Dubai translated its quest to establish justice on the ground by establishing the Judicial Inspection for the first time through the issuance of the Judicial Inspection Law No. (2) of (1992), which aimed to establish a Judicial Inspection Department, with the sole objective of specializing in inspecting Court Judges and members of the Public Prosecution in the Emirate, followed by the issuance of Law No. (13) of (2016) relating to the judicial authority in the Emirate of Dubai, pursuant to which the Judicial Inspection Department was tasked with clear competencies and distinct tasks, only to be followed by the issuance of a regulatory regulation (by-law) concerning the department through Judicial Council Resolution No. (15) of (2022), and the issuance of Law No. (24) of (2022), which elevated the “Judicial Inspection Department” to become the “Judicial Inspection Division”, and this has enriched and increased the strength of the Judicial Inspection Division, and placed on its shoulders great responsibilities in order to carry out its assigned tasks and achieve them to the fullest. To learn more about the nature of the work of the Judicial Inspection Division, its competencies, tasks and goals, the Sada AL-Mahakim (Courts' Echo) Magazine spoke with His Excellency Consultant Mohammed Al Sabousi, Director of the Judicial Inspection Division:



His Excellency Consultant
Mr. Mohammed AL Suboosi
Director of the Judicial Inspection
Department - Dubai



“The Judicial Inspection Division maintains the effectiveness of the Judicial Authority, regulates the professional and occupational behavior of members of the Judicial Authority”

Q. What is the nature of the work of the Judicial Inspection Division?

A. The Judicial Inspection Division has an important role in maintaining the effectiveness of the judicial authority, and working to develop the competence of members of the judicial authority by identifying weaknesses in the performance of their work, and recommendations addressed to them from the reality of periodic inspection reports, and developing this by providing them with the insight into the shortcomings in their judgments, and working to raise their technical competence, and developing it through participation in the necessary training courses and workshops required to raise the efficiency of performance in coordination with the Dubai Judicial Institute in this regard.

The Judicial Inspection Division also works on preparing efficiency reports of members of the judiciary for promotion purposes and verifying that their conditions are met, through an evaluation that starts with the top official, assessing training courses, and appraising inspection reports, in which it is required that a member of the judiciary must receive at least

a very good rating in order for him/her to be promoted, all in a bid to ensure the development of the work performance of members of the judiciary.

The Judicial Inspection Division monitors the professional and occupational conduct of members of the judiciary, by investigating complaints filed against members of the judiciary, paving the way for holding accountable any misconduct or misbehavior, both at the behavioral and professional levels, without prejudice to what needs to be taken legally upon the occurrence of any violation or act that constitutes a crime according to the pertinent criminal laws, thus, contributing to the creation of a tight oversight over the behavior and ethics of members of the judiciary, who are perceived and expected beforehand to be at their best with regard to their conduct, behavior, manners, ethics, and high morals.

Q. What are the objectives of the Judicial Inspection Division?

A. The Division works to follow up on the work of the judicial authority and the progress of its completion, by conducting a variety of inspections on the work of its members, to assess their court performance and evaluate their technical competence, in order to determine their level of understanding of the facts presented to them, and then applying the laws in force correctly, so that they are provided with the farsighted points of improvement required in their performance of the judicial work, and in developing their competence in all technical, professional and behavioral aspects, in an effort to ensure the effectiveness of the judicial authority to perform its mission in the administration of Justice.

Q. What are the powers of the Judicial Inspection Division?

A. -The Judicial Inspection of the Judges of the Dubai Courts and the Public Prosecution, including the Court of Appeal, the Courts of First Instance in the Dubai Courts, and the actions of those who are in similar rank or below from the members of the Public Prosecution.

-Preparing reports that include the appropriate suggestions and recommendations.

-Receiving and investigating complaints against members of the judicial authority related to their job duties or behavior, submitted to it by individuals, or referred to it by the Judicial Council, and submitting the necessary recommendations to the Council for taking what it deems appropriate regarding them.

-Proposing training and qualification programs for members of the judiciary.

-Preparing statistics and data on the work of members of the judiciary and submitting them to the Council.

-Providing opinion, rendering advice, and preparing periodic reports on the progress and regularity of work in the Courts and the Public Prosecution, and elevating them to the Council.

Q. How did the Judicial Inspection Division contribute to the progress and success of the Judicial Authority in the Emirate of Dubai?

A. Since its inception, the Judicial Inspection Division has been following up on the work of the judicial authority and the progress of its work by conducting a variety of inspections on the work of its members, with the aim of evaluating their objective performance and assessing their technical competence, measuring the quality of work, the extent of applying laws and developing the efficiency of judges, and the Division continues with its new evolution in following up on the judicial work to achieve the best of results.

Q. What is the percentage of digital transformation at the Judicial Inspection Division?

A. The Strategic Planning and Digital Transformation Leadership Team of the Division has developed frameworks and rules to create an advanced technical system to govern all procedures and operations of the Division, in addition to applying the requirements of the information security system, and its controls approved by the Digital Government of Dubai, to protect the information security assets and support systems at the Division, and the team is currently working to develop a digital platform for the Division.

Duties of the Director of the Judicial Inspection Division:

- Preparing the strategic plan of the Inspection Division, elevating it to the Council, and following up on its implementation.
- Submitting periodic reports to the Council on the progress and regularity of work in the Courts and the Public Prosecution, the degree of efficiency and evaluation of members of the judiciary, and the drafting of the annual budget of the Inspection Department.
- Supervising the judicial inspectors and the staff of the Inspection Division, and their proper implementation of the tasks assigned to them.
- Issuing executive decisions related to the work of the Judicial Inspection Division and its human resources, and organizing work procedures in it.
- Establishing rules and procedures related to the inspection of members of the judiciary, investigating complaints filed against them, assessing their competence, and elevating them to the Judicial Council for approval.
- Representing the Judicial Inspection Division in front of others, and concluding the necessary contracts and agreements to achieve its objectives, and enable it to exercise its functions.

Q. Can Artificial Intelligence (A.I) be used in the service of the Judicial Inspection work?

A. Yes, A.I can be employed to serve the work of the Judicial Inspection Division. And in recent years, developments in the field of A.I and data analysis have shown tremendous capabilities in improving judicial processes, as A.I can use machine learning technologies, and statistical analysis to help analyze big data, and build on saved data to develop the judicial inspection work.

Q. What is the percentage of indigenization (Emiratization) within the Judicial Inspection Division?

A. The general Emiratization rate is (42%) in the Division, of which (71%) is in the administrative staff, and (28%) in the judicial staff.

The Sada AL-Mahakim (Courts' Echo) Magazine has also met with Judge Dr. Naim Al Kathiri, a Judge at the Court of Appeal in Dubai Courts, who spoke about the impact of the Judicial Inspection Division on the work of judges in the Courts:

His Excellency Judge
Dr. Naeem Al Kathiri
Judge at Appeal Court, Dubai



“ Judicial Inspection and
Effective Justice ”

Q. How did the Judicial Inspection Division contribute to the acceleration of the judicial process, and the development of the work of judges?

A. The Judicial Inspection in all judicial institutions worldwide has an active and tangible role in achieving effective justice, whether directly or indirectly, through developing the performance of the judge in the issuance of his/her judgments, and shortening distances to reach the level hoped for judicially in a shorter time, and this is realized by developing a clearly defined roadmap for each judge by the Judicial Inspection Division to identify the strengths of the judicial personality, to strengthen them, and its weaknesses to fix and develop them, and such paramount objective is achieved through several things:

- 1-Periodic reports prepared by the judicial inspector on the work of judges.
- 2-Holding regular meetings between judges and the Judicial Inspection Division, each in their jurisdiction, to listen to the judge, and what he/she wants from this important sector, for the purpose of improving his/her performance level.
- 3-Proposing the appropriate scientific courses that meet the actual need of judges by the judicial inspector, whether they relate to procedural or substantive aspects or any other courses to be used by him/her to perform his/her duties, which are assigned to him/her by the legislator, including that he/she is the supreme expert in the disputes submitted to him/her, in coordination with the Dubai Judicial Institute.
- 4-Creating an integrated Artificial Intelligence System that contributes to speeding up the Judicial Inspection process, especially with regard to periodic reports on the work of the judge (s), so that the Emirate of Dubai, as it is invariably the case, remains a pioneer in such initiatives.

In an opinion poll on the contribution of the Judicial Inspection Division to the development of the work of the Public Prosecution, His Excellency Dr. Bakri Abdullah, Senior Advocate General at the Public Prosecution in Dubai, spoke about the role of the Division in enhancing confidence in the judicial system to contribute to the achievement of Justice:

His Excellency Counselor
Bakri Abdullah
“Senior Advocate General at the Public
Prosecution in Dubai -Public Prosecution Dubai



“ The Judicial Inspection is one of the wings of the Judicial Authority in the Emirate of Dubai, along with the Courts and the Public Prosecution ”

Q. How did the Judicial Inspection Division contribute to the development of the work of the Public Prosecution?

A. The Judicial Inspection Division is one of the wings of the judicial authority in the Emirate of Dubai, along with the Courts and the Public Prosecution, and it was found to enhance confidence in the judicial system, thus contributing to the achievement of Justice. His Excellency Consultant Issam Issa Al Humaidan, Attorney General of the Public Prosecution of the Emirate of Dubai, directed the members of the Public Prosecution to cooperate with the Judicial Inspection Division in order to perform their mission easily and effortlessly, where several meetings were held between the Judicial Inspection Division and the Public Prosecution under the supervision of His Excellency the Attorney General and His Excellency the Director of the Judicial Inspection Division, and the judicial inspectors clarified their roles, the way by which the Division functions, and answered the queries of Prosecutors, in order to provide them with the insight on the points of improvement required in their performance, which is consistent with the vision of the Public Prosecution in Dubai (The Rule Of Law With A Global Excellence), and its mission to achieve effective justice and protect rights and freedoms.

To find out about the contribution of the Judicial Inspection Division in informing judges about mistakes, shortcomings and drawbacks and avoiding falling into them, Judge Salem Al Qaedi, Head of the Real Estate Court at Dubai Courts, spoke to the Sada AL-Mahakim (Courts' Echo) Magazine:



J/Salem Mohdamed Alqaydi
Chief Justice of Real Estate Court
of First Instance



“ Improving the performance of the member of the Judicial Authority subject to inspection, by proposing and identifying developmental and training requirements ”

Q. How does the Judicial Inspection Division contribute to informing judges about mistakes, shortcomings and drawbacks in order to avoid falling into them in the future?

A. The Judicial Inspection Division works to make judges aware of mistakes, shortcomings and drawbacks in order to avoid falling into them in the future, and to develop and improve the performance of the member of the judicial authority subject to inspection, by proposing and identifying the developmental and training requirements that he/she needs, in addition to developing the behavioral, ethical and professional competence of judges, to be the basis for development towards better performance, and to enable the member of the judicial authority subject to inspection to plan his/her performance based on clear and predetermined criteria, in addition to maintaining the effectiveness of the judicial authority, to perform its mission in the administration of justice and the preservation of rights in society, and achieving high efficiency and outstanding performance in the judicial work, by developing the performance of the member of the judicial authority subject to inspection.

The Judicial Inspection Division has a great role in monitoring the technical problems of judges, conducting the necessary studies in order to identify their causes, and finding appropriate solutions to address them, which directly reflects on the development of the judicial work, and maintaining the effectiveness of the judicial authority, to fulfill its mission in

If a report is issued on the results of the work of the Judicial Inspection Division, does the judge have the right to appeal and file a complaint and to whom?

The Director of the Judicial Inspection Division shall notify in writing (via e-mail) the member of the judicial authority of the degree of assessment of his/her competence, within fifteen days of filing of such degree assessment in the judge's file, and the member of the judicial authority shall have the right to complain before the Judicial Council regarding this degree of assessment of his/her competence within thirty days from the day that follows the day of notification of the degree of assessment of his/her competence, under a grievance/appeal sheet.

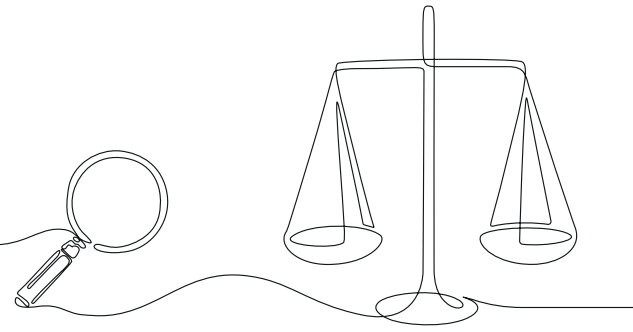
The grievance is considered by a Committee headed by the Director of the Inspection Division, and the membership of inspectors who are not the ones who prepared the report. The Committee submits the recommendation that it reached to the Judicial Council for adjudication of the grievance, after reviewing the grievance sheet, the report of the Judicial Inspection Division, the recommendation of the Committee, and any data or documents requested by the Council or submitted to it, and this is all after the Complainant's statements made upon launching the litigation have been heard, and the decision of the Council in this regard shall be final and not subject to appeal before any other party.

the administration of justice and the preservation of rights in society, in addition to maintaining public confidence in the judiciary, through the development of the judge's professional performance, examining the direct and indirect reasons that enhance this confidence, and providing its conclusion and recommendations based on research and studies to the responsible authorities to do the necessary, and working to put the judiciary – through the development of technical performance – in a prestigious international position, which contributes to raising the ranking of Dubai Courts in the international ranking issued by the relevant international institutions. On the difference between the work of the Court of Cassation in Dubai Courts and the Judicial Inspection Division, His Excellency Judge Dr. Jassim Mohammed Al Hosani, a Judge at the Court of Cassation in Dubai Courts, spoke to Sada AL-Mahakim (Courts' Echo) Magazine in detail about the role and tasks of each of them:

His Excellency Judge
Dr. Jassim Mohammed Al Hosani
Judge at Supreme Court, Dubai



“ The need for the complementarity of members of the judicial authority, including judges, members of the prosecution and judicial inspection, in order to achieve effective justice ”



Q. What is the difference between the work of the Court of Cassation in Dubai Courts, and the Judicial Inspection Division?

A. According to the Judicial Authority Law No. (13) of (2016) and its amendments, the Court of Cassation is the highest Court in the Emirate, and one of its functions is judicial oversight over the rulings of the rest of the Courts in terms of their proper application of the law, and it also considers the subject of appeal in the event of a second appeal, regardless of the reason for such an appeal, and the Court of Cassation also decides on the reason for the appeal if the appeal is filed by the Attorney General in the interests of the law, in accordance with the provisions of the Federal Civil Procedure Law. The Court of Cassation also deals with the judicial judgment that is appealable by cassation, and verifies its integrity and that it is free from errors, both in terms of form and/or merits, in accordance with the settled provisions and appealable of the Court of Cassation, and therefore the Court of Cassation has nothing to do with the behavior, efficiency, achievement and promotion of the judge. So, within the framework of the integration (complementarity) of the tasks and functions of members of the judiciary, the Law has entrusted the Judicial Inspection Division to monitor the integrity of judgments issued by judges of the Court of Appeal and judges of the Courts of First Instance, whether those judgments are appealable by cassation or not according to the settled provisions and appealable of the Court of Cassation.

The purpose of the existence of the Court of Cassation is to ensure the correctness of the application of the law, while the purpose of the Judicial Inspection Division is to develop and improve the performance of the member of the judicial authority subject to inspection, from the technical, behavioral, ethical and professional aspects, by proposing and identifying the needs of his/her development and training based on the results of the judicial inspection report, in order to improve his/her performance to achieve high efficiency and outstanding performance, through linking the individual performance plan of the member of the judicial authority and the strategic objectives of the Courts or the Public Prosecution.

What are the most prominent efforts of the Judicial Inspection Division in (2022)?

- Periodic inspection of all (43) judges of Dubai Courts subject to periodic inspection.
- Periodic inspection of all (45) members of the Public Prosecution subject to periodic inspection.
- Inspection of the members of the judicial authority for the purposes of promotion, by preparing promotion reports for a number of judges at the Dubai Courts, which is (62) judges.
- Preparation of promotion reports for a number of members of the Public Prosecution, which is (59) prosecutors.
- Examination of complaints, as (227) complaints were received and examined by the Judicial Inspection Division, which ruled of dismissing most of them due to lack of prima facie evidence, and processing the rest of them for being valid complaints.

The Judicial Inspection Division has a major role in empowering the member of the judicial authority subject to inspection through planning his/her performance based on clear and predetermined criteria, such as the number of cases or appeals presented to the judge, the percentage of completion, the accuracy and proper wording of the judgment, its sequence and coherence, the integrity of its language and the strength of expression in all its paragraphs, as well as the number of investigations presented to the member of the Public Prosecution, their adequacy and proportionality, the correctness of their decisions, and the proper disposition of them in accordance with the applicable legislation in force, which all lead to supporting the decision of promotion of the member of the judiciary when it is due, as well as the comparison and contrast between members of the judiciary subject to inspection for purposes of promotion, remuneration, transfer, secondment, loan and taking up positions.

Administrative Decision Between Legality and Stability In The United Arab Emirates



Mrs. Amira Mayouf
Technical Office Specialist - Dubai Courts

Administrative Decisions represent the main and fundamental manifestation of the Management's means in the conduct of its activities, as the Administrative Authority cannot do without them, since they are the effective used means and tools by the Management through which it obtains its other means.

Administrative Decisions are considered as one of the most important legal means that are used by the Management to deal with members of society in their daily conduct of their lives, and in their work, property and freedoms, in some other times.

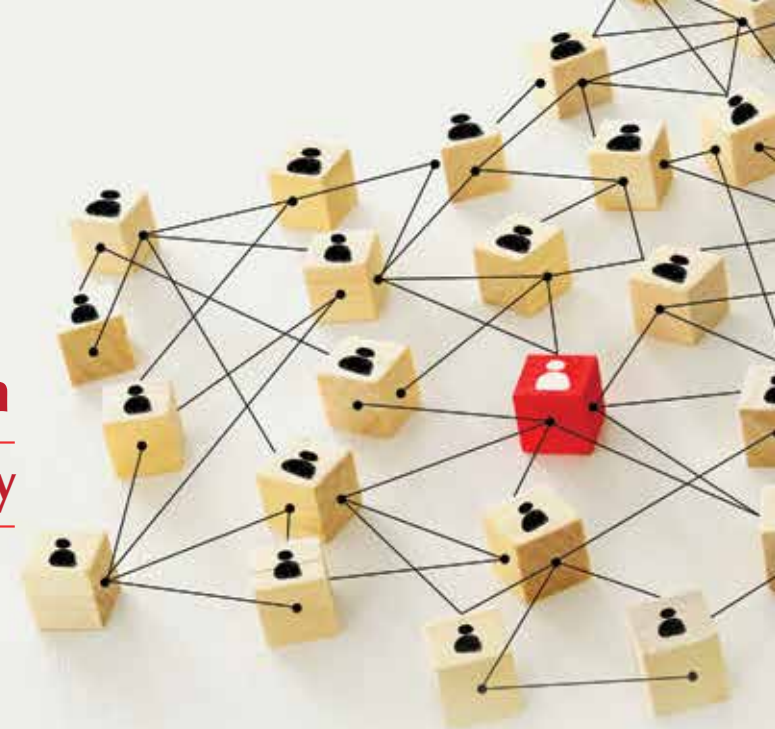
Therefore, the Administrative Decision is the most important manifestation of the Management's communication with individuals, by disclosing its binding will, in line with its authority accorded to it under the pertinent laws and regulations, with the aim of creating a certain legal status, whenever possible and legally permissible, provided that it is motivated by the obtaining of a public interest. Administrative Decisions are also manifestations of the powers and privileges enjoyed by the Management, which it derives from public law, and they are considered as its preferred means of carrying out its multiple and active functions at the present time, because of the speed and effectiveness achieved in administrative work as a result of issuing them.

And if these decisions are issued and enforced by the sole will of the Management, then they are naturally prone to error, which may affect the rights and freedoms of individuals or groups, and therefore the legislator subjected them to oversight by a competent body, and provided for certain mechanisms to appeal them just like judicial rulings that allow the stakeholder (s) to challenge them through appeal.

In order for the Decision to be correct, its conditions must be met, and if one condition of these conditions is absent or marred by defect, the decision will be considered as defective or flawed,

and it is necessary then to cancel the legal effects of this decision, or compensate for them, which is the main role of judicial oversight over the Administrative Decision. And this is all expressed through the term of "Legitimacy of the Administrative Decision" when its valid pillars and conditions are fulfilled, in effort to preserve the rights of individuals and achieve the stability of their legal statuses.

The jurists of administrative law define an Administrative Decision as: "The expression by the Management of a binding will with the intention of creating



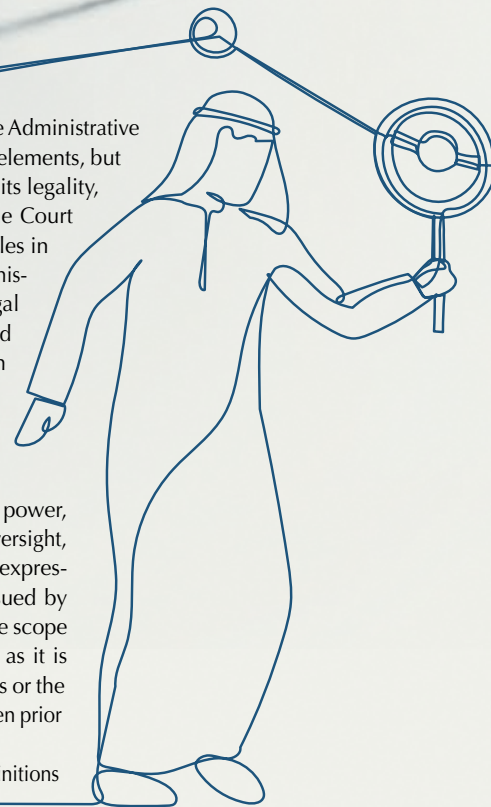
Administrative Decisions are a manifestation of the powers and privileges enjoyed by the Management

a legal effect, either by issuing a rule that creates, amends or cancels a legal or objective situation when the work is a regulation, or by creating an individual situation, amending or canceling it for the benefit of a particular individual or individuals or against them in the case of an individual Administrative Decision, whether the decisions are regulatory or related to individuals, and then it is possible to cancel it, and to compensate for it if it is carried out and resulted in a harm, damage or loss, since it will be then marred with deviation".

At the judicial level, the Federal Supreme Court of the UAE defined in one of its rulings the Administrative Decision as "The disclosure by the Administration, in the form prescribed by law, of its will, in consequence of the public authority granted to it under the relevant laws and regulations, with the intention of creating a certain legal status whenever possible and permissible, and the motive was to achieve a public interest" (Appeal No. 295 of 2012, Administrative, Session of Wednesday, Dated December 5, 2012). It is noted in the definition of the Federal Supreme Court of the Administrative Decision, that it did not limit itself

in determining the meaning of the Administrative Decision to the illustration of its elements, but also indicated the conditions of its legality, and based on this definition, the Court established several legal principles in which it considered that the Administrative Decision is a unilateral legal act, and that its validity is required to be based on a legitimate reason justifying it, issued by the competent authority within the scope of powers prescribed to it by law, and that it is clear of the flaw of arbitrariness or abuse of power, and that it is subject to judicial oversight, and that it is different from the expressions of sovereignty that are issued by the sovereign authority within the scope of its political function, as well as it is distinguished from material works or the preliminary proceedings undertaken prior to the issuance of decisions.

It is clear from the two previous definitions



that the element that is accepted legally, jurisprudentially and judicially is the Element of Will, as it is an indispensable pillar for the existence of the Administrative Decision and its issuance, which the law does not interfere with by requiring any condition in it. As for the other elements, they are the conditions of Validity or Legality of the Decision when it is required that such validity and legality must be consistent with the law, otherwise the pertinent decision shall be open to being annulled. However, if the law does not interfere with the said validity, the Management in this case shall enjoy its discretion over it.

Characteristics of the Administrative Decision:

A set of characteristics must be available in the Administrative Decision, and they are as per the following:

- 1- An Administrative Decision is a legal action, in which the Management seeks to effectuate a certain legal effect, whether by creation, amendment or cancellation.
- 2- The Administrative Decision is issued by an administrative authority or legal public person, thus decisions issued by persons governed by the private law are not considered as Administrative Decisions even if their purpose is for the benefit of the public good, as well as decisions issued by foreign states or their representatives in that state, and decisions implemented by citizens working for one of the foreign countries, and Administrative Decisions that fall outside the scope of Administrative Decisions that are issued by other non-administrative authorities, such as legislative acts, judicial acts and others.
- 3- The Decision must be final, and the finality of

In order for the Administrative Decision to be correct, its conditions must be met, and if a condition of these conditions is absent or marred with a defect, the Decision is considered flawed

the Administrative Decision means that it is not canceled, and it is not in need of being commented on, discussed, or ratified by an administrative authority higher than the authority that issued it, and it must have exhausted all the stages of administrative progression necessary for the legal existence of Administrative Decisions, and this excludes preparatory (preliminary) work, or subsequent work such as recommendations and clarifications, which means that these works are not subject to appeal by annulment before the Administrative Judiciary.

- 4- The Decision should be issued by the sole will of the Management, and the sole will of the Management does not mean that there is only one person behind this will, as it may be from several people but they all belong to one administrative entity, and this is what distinguishes an Administrative Decision from an Administrative Contract that requires the confluence of two wills to produce a legal effect relevant to the status of the contracting parties, whereas the Administrative Decision affects the legal status of the individuals addressed by it.
- 5- The Decision must have an impact on the legal status of individuals, as the Administrative Decision issued has an effect on the legal statuses and the consequent rights and obligations resulting from them, and in the event that it did not affect the occupational status of individuals, it cannot be considered then as an Administrative Decision. So, as a rule of thumb, to appeal the Administrative Decision, it must produce a legal effect.

Elements of the Administrative Decision:

The Administrative Decision has five pillars that must be available for the decision to be made, namely: (Jurisdiction, Form and Procedures, Legal Effect, Reason, and Purpose).

- 1- **The Pillar of Jurisdiction:** The function of the Jurisdiction Pillar in relation to the Administrative Decision is to identify a specific employee or certain administrative entity that have the authority and the possibility of issuing a specific decision exclusively, and the work and competencies are distributed to the employees in order for the performance to be at its best, so Administrative Decisions must be taken by the competent authority or the authorized employee. The Federal Supreme Court has ruled that "For the validity

The Administrative Decision is: A disclosure by the Management of a binding will with the intention of effectuating a legal effect

The Federal Supreme Court defined the Administrative Decision, and did not limit itself in determining the meaning of the Administrative Decision to the illustration of its elements, but indicated the conditions of its legality

Five Pillars of the Administrative Decision

of an Administrative Decision to be achieved, it is required that it be issued by the competent authorized person, within the limits and powers legally vested in him/her, and in the form required by law". (Federal Supreme Court, Appeal No. 204 of 2010, Issued in Session Dated 11/3/2010). The Pillar of Jurisdiction in the field of Administrative Decision is: The administrative capacity of the entity or person who issued it by law, and it also means the availability of the authority to issue the decision.

2- **The Pillar of Form:** The Administrative Decision is: A voluntary legal action issued by the Management out of its own volition, and the said action should take a certain external form or appearance regardless of the descriptions of this form, meaning that the form of the Administrative Decision represents the picture in which the decision is placed in writing, oral or otherwise.

In this direction, the Federal Supreme Court of the United Arab Emirates said that "The Administrative Decision is not required to be issued in a specific form, or a specific position, but it is sufficient that it is issued by the competent authority, within the limits and powers prescribed by law, and that it fulfills the components of the Administrative Decision. (Appeal No. 191 of 2008, Administrative, issued at the Hearing Session Dated 27/1/2008).

3- **The Pillar of Legal Effect:** It is the direct legal effect of the Administrative Decision, i.e. the content, topic and subject of the decision, and the Management should not deviate in its actions from the limits established by law, or what is known as the "Management Adherence to the Limits of Legality", and in order for the Administrative Decision to be legitimate, it must be issued in full legal accordance with the provisions of the law, and in order for the Administrative Decision to be sound in its subject, two conditions are required, the first of which is that the subject of the Administrative Decision is legally permissible or legitimate, and the second of which is that the subject of the Administrative Decision must be feasible in practice.

The defect in subject (legal effect) is one of the most important and frequent annulment aspects that occurs in practice, and the oversight of the judiciary over this defect is focused on the essence of the Administrative Decision and its subject to reveal its conformity or violation of the law, and the forms of violation of the law either in the form

of direct violation of the legal rule in terms of its subject, or error in its interpretation or explanation, or error in its application.

4- **The Pillar of Purpose:** It is the Management's goal of issuing an Administrative Decision, or it is the legal result that the issuer of the Administrative Decision aims to achieve directly. So, Administrative Decisions should be issued in order to achieve a public interest.

The defect of the Purpose is directly related to the intent of the issuer of the decision, therefore, the illegality in it does not have an external character, and does not appear in the decision itself, but rather overlaps with psychological matters that may not be easy for the judge to bring to the surface or for the plaintiff to prove, therefore, its judicial applications are usually few, and examples of which include: The use of power for personal benefit, the exercise of power with the intention of revenge or harming others, targeting political purposes far from the public interest, or violating the Principle of Allocation of Targets.

5- **The Pillar of Reason:** The Reason Pillar in the Administrative Decision is: The set of legal and material cases preceding the issuance of the decision, which prompts the Management to issue it, and therefore the Management cannot make the decision unless there is a legal or factual reason that prompts the Management to make a legal effect through the issuance of the Administrative Decision.

The Reason for the Administrative Decision is also the motivation that drives the Management to express its will by issuing it, or the legal situation that precedes the action, which is a necessary prelude to every decision made by the Management, which is obliged to base its decision on a legitimate reason, provided that the reason remains in place until the time the decision is issued.

To clarify this, the Federal Supreme Court ruled that "The reason for the Administrative Decision is: The set of factual or legal elements that compel the Management to issue its decision, and that this reason must be legitimate, meaning that it must be in accordance with the law in form and substance, otherwise the decision will be marred by the defect of violating the reason pillar". (Federal Supreme Court, Appeal No. 127 of 2020, Administrative, issued at the Hearing Session Dated 20/10/2010).

Thus, the reasons of the Administrative Decision are

either legal, or material, and the First may take the form of a constitutional text or legislative text or one of the principles of law, a judicial ruling or other rules that serve as a legal principle that forms the legal basis for the decision, whereas the material or factual reasons are: The set of actions, conducts or material facts that prompt the issuance of an Administrative Decision, as in the case of submitting a resignation.

The End of the Administrative Decision:

The Administrative Decision - as everything in existence - is subject to coming to an end, and we would not be exaggerating if we would say that every Administrative Decision has an inevitable end, due to a logical justification which is only one of the aspects of the administrative activity, which is without a doubt renewed, changing and always evolving, and when a decision is issued during a certain circumstance or a certain stage, it is actually issued to be suitable for such circumstance and such stage. However, and after the passage of time, whether long or short, such decision may become unsuitable for such circumstance and such stage, which means the inevitable end of this decision completely, either by cancelling it, withdrawing it, or partially amending it, unless there would be other reasons that would lead to its end.

The Administrative Decision may be terminated by the Management itself through cancelling it, by either withdrawing it or the counter-decision, and it would also end by the judiciary through the annulment of illegal Administrative Decisions.

We conclude by saying that the Administrative Decision is: The most prominent manifestation in which the authority of the Management is embodied, and through which, by its own will, it [The Management, that is] can issue binding orders to individuals to do something, or to refrain from doing something, and they are obligated to submit to these orders voluntarily or involuntarily. Additionally, the Administrative Decision is also considered the Management's preferred way to carry out its multiple and active functions at the present time, because of the speed and effectiveness it achieves in the administrative work, and the purpose here of the issued Administrative Decisions is for the Management to decide on its part alone on a matter without the need to obtain the consent of those concerned, or even their cooperation, by establishing the rights of individuals, or arranging their obligations, in addition to the ability of the Management to implement them directly and with coercive force.



The Administrative Decision is the most prominent manifestation of the authority of Management

Administrative Decisions are also considered one of the most important legal means that enable the Management to exercise its activities to achieve the public good, and if these decisions are issued by unilateral will, and coercively enforced, then they are naturally prone to error, which may affect the rights and freedoms of individuals or groups, where on many occasions some mistakes could be made without vision or in a hurry, or some of the rules enacted by the legislator to protect the interests of individuals may be ignored, when they should have been observed, and here the Management may backtrack on the decision (s) that it issued, and its means in this is to withdraw the decision (s), which turned out to be unlawful or unsuitable, and in doing so, it withdraws from its rubric of rules and regulations that which is no longer in line with the factual and legal circumstances, thus, the legislator have subjected them to oversight by a competent body, and provided for certain mechanisms to appeal against them, such as it is the case with judicial rulings, where the stakeholders are allowed to appeal against them.

Specific Characteristics of the Administrative Decision



Ibn Rushd (Averroes) and Ibn Maymun (Maimonides) - A Perplexing, and Complicated Relationship



Mr. Ibrahim Abdullah Burshashen
Professor, Mohammed bin Zayed University
for Human Sciences - Abu Dhabi

The approaches that can be taken up to explore the relationship between Ibn Rushd and Ibn Maymun are bountiful, and I have chosen an entry that I think can contribute to understanding this complicated relationship between two contemporary men who grew up together in one country and in one city, and between their outlooks there are strong overlapped intersections, however, there is no mention of any face-to-face encounter between them, although the reasons for necessitating such a meeting were strong due to the convergence of interest and shared concerns between them, and perhaps the most important feature that distinguishes the two men is this strong sense of perplexity that lies in their two modi operandi, and their keenness to lift it off in order to seek psychological and social inner peace, through asserting the strongly held doctrines and arguing on their behalf in a way that seeks moderation in both expression and interpretation.

Why 'Perplexity' is chosen as an entry point?

Perplexity is usually associated with ignorance and misguidance, and since confusion and the inability of minds to make a firm decision is due to conflicting opinions and statements and their intersections, this has made "Perplexity" a cognitive and existential condition that makes the perplexed individual in a very anxious position, which causes him/her to fumble both in word and deed, and the word 'Perplex' comes from the word 'Perplexity' (In Arabic 'Hayrah'), which is: Hesitation, confusion and doubt, and Perplexity is associated with a rich semantic field of concepts such as (ambiguity, confusion, suspicion, doubts, paranoia, miscreance, hesitation, amazement, wonderment), which are all concepts that revolve around the sense of the word 'Perplexity' and touch the perplexed person with a sense of loss of direction.

Perplexity in philosophy has been associated with the question of meaning, and here the effect of perplexity becomes the building block of the question, as, quote: "[p]erplexity towards the world makes a person flee from himself," unquote, as the Swiss philosopher Emil Angehrn was quoted as saying, but this escape from oneself is an escape to interpretation to make the world meaningful, as interpretation heals perplexity, and that's what we found in the Perplexity of Al-Ghazali in his book the "Al-Munqidh mina ad-Dalal" (The Savior from Misguidance)". And by the same token, the most important work that Ibn Rushd and Ibn Maymun introduced has become their way of interpretation to address perplexity and deviation and how to find guidance for oneself.

And at first there was Perplexity:

Ibn Rushd's legitimate works in particular, as well as the works of Ibn Maymun, especially his book "Dalalat Al-Hā'irīn" (The Guide for the Perplexed), cannot be separated from the concept of Perplexity expressed by the Hebrew philosopher in the title and in the preface to his book, and we find it ever present in the text that Ibn Rushd wrote to show the connection of philosophy with the Sharia Law.

The book was titled "The Guide for the Perplexed", and the person for whom the book was written was described as "Al-Ha'ir" (The Perplexed)¹¹. And we are faced with Perplexity that is embodied in the "Al-Til-meethe Al-Azeez Yousif Allathi Ya'bud Allah" (Dear Disciple Yousif Who Prays to God", who was singled out with a book that separates his perplexity from him, and simplifies a way for him to lift it.

And Ibn Rushd, before him, moves in his books "Fasl al-Maqal fi ma bayn al-Hikma wa Al-Shariah min Itti-

sal", often translated as (Determining the Nature of the Connection between Religion and Philosophy) or (The Decisive Treatise), and "Kashf 'an manāhij al-adillah fi 'aqā'id al-millah" (The Exposition of the Methods of Proof)" in particular to lift the confusion in the Sharia, as he says, so the intention is the same, and the methodological tools of proof and the lifting of confusion are almost all the same.

The Perplexity in Ibn Maymun's book is inseparable from bewilderment¹², and perhaps this is what makes it a source of questioning, that is, the origin of philosophical consideration, and perhaps this is what made Ibn Maymun bestows on the seeker characteristics that qualify him/her to respond in kind to wisdom and science, because Ibn Maymun's speech that lifts confusion is not addressed to the public, and it is not intended for those who started learning philosophy, and it is not also directed at those who limited their science to the Sharia only, and because of their lack of scientific knowledge, and the limits of their horizons, they do not feel perplexed and do not experience wonderment, hence the question what is the use in addressing them? Therefore, the book was addressed to those who combined the Islamic jurisprudence with the Hebrew law, in addition to the perfection of religion and the ethics of knowledge of philosophy, and the leadership of the mind, and then the mind becomes the ruler, that trims the tentacles of bewilderment and wonderment that result from the opposition of the mental consideration to what the phenomena of legitimate texts give. So, the speech is addressed to those who feel an intellectual anxiety that they want to lift by deciphering the Sharia texts so that he/she can overcome the bewilderment and wonderment that they feel and this is only arrived at by having a seeker or follower that have their own uniqueness; a follower who is characterized by extreme listening ability, who celebrates the words of the wise and the sage, and who directs the heart to the knowledge of the Sheikh¹³, and if this speech comes from Ibn Maymun in the introduction of his book, it is also true for Ibn Rushd, since Ibn Rushd addresses only those who combine innate intelligence, lawful justice, scientific, practical and moral virtue¹⁴, and his book "The Exposition of the Methods of Proof", which is a book on the interpretation of Sharia that is addressed to this category of people, as it is shown in the introduction of the book, is a book in which he [Ibn Rushd, that is] addresses those who are endowed by the Al-Mighty Allah with His wisdom, and Who blessed them with the intellectual capacity to understand His law, follow His Sunnah, as the Al-Mighty Allah let them in on His knowledge, the concept of His revelation, and

|| The legitimate works of Ibn Rushd, and the works of Moses Ibn Maymun, especially his book "The Guide of the Perplexed" cannot be separated from the Concept of Perplexity

|| Ibn Rushd addresses only those who combined the intelligence of natural instinct with the legitimate justice and the scientific, practical and moral virtue

Ibn Rushd criticized Al-Ghazali for being responsible for the Perplexity suffered by the Muslim community by revealing interpretations to the common people

the purpose of His prophet's message to His creation¹⁵¹. As for those who are not scholars, he/she must adhere to the manifestations of the Sharia, and his/her faith should not be approached by way of interpretation, so as not to fall into the confusion trap, which he/she has no tools with which he/she can get out of, hence Ibn Rushd made the disclosure of interpretation to the common people blasphemy¹⁶¹, and therefore it is the characteristic of scholars that they are cognizant of the fact that some interpretation is not permitted by Allah¹⁷¹, and in this capacity, they are capable of lifting their perplexity and the perplexity that befalls the Sharia Law.

Causes of Perplexity:

In this context, Ibn Rushd criticized Al-Ghazali for his responsibility for the perplexity suffered by the Muslim community, making him one of the reasons that caused confusion to the Muslim mind; by revealing interpretations to the common people, and bringing such interpretations closer to the common people by employing rhetorical and poetic methods, resulting in the spreading of bewilderment among the people so much so the scientific community had split into three categories: (a category that castigates reason, a category that criticizes Sharia, and a category that sought to combine the previous two categories)¹⁸¹, and Ibn Rushd made a scathing criticism of Al-Ghazali in his book 'The Exposition of the Methods of Proof' for this very reason, although Al-Ghazali was not the only one that caused confusion in what Ibn Rushd called the "First Sharia".

Ibn Rushd coined the Concept of the "First Sharia" to confirm the existence of a measure by which he perceives the legitimate of Sharia from its corrupt

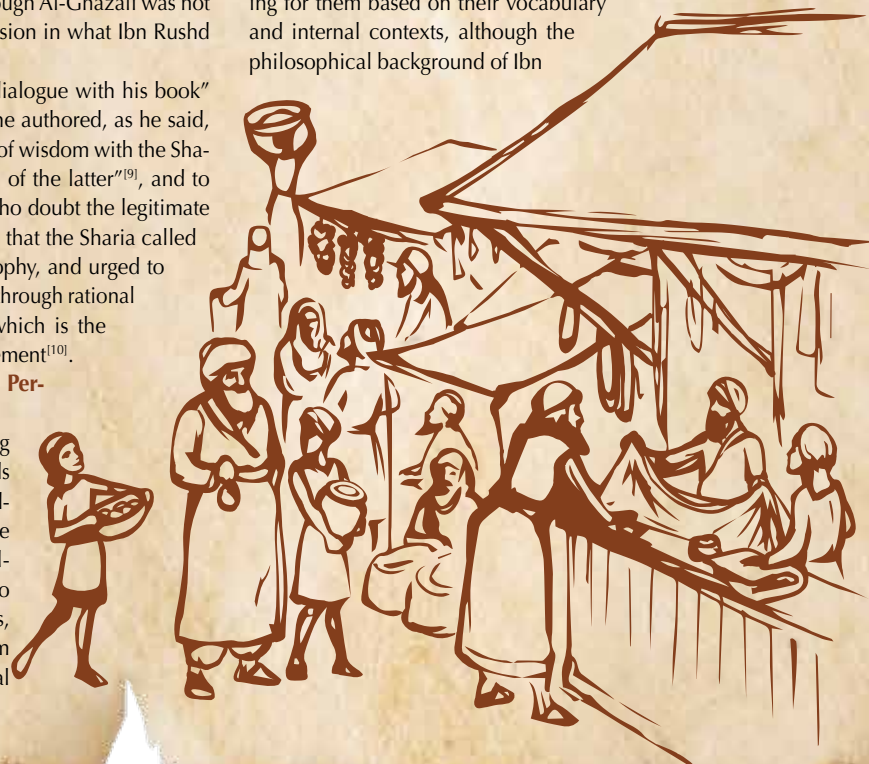
Ibn Rushd contributed to this dialogue with his book "The Decisive Treatise), which he authored, as he said, to demonstrate "the conformity of wisdom with the Sharia and the former's affirmation of the latter"¹⁹¹, and to lift the confusion off of those who doubt the legitimate value of philosophy, by proving that the Sharia called for the consideration of philosophy, and urged to consider the existence of things through rational measurement, and by proof; which is the most complete types of measurement¹¹⁰¹.

The Methodology of Lifting Perplexity:

Ibn Rushd believes that removing confusion from the Sharia depends on people stopping at the boundaries of the manifestations of the Sharia, which it called on its followers to abide by, and not to go beyond them with interpretations, stressing that the departure from this approach caused a great deal

of confusion and turmoil in the Sharia that led to the existence of groups that led astray and led others astray too, due to their abandoning of the manifestations of the Sharia and its intended intention, and created interpretations and explanations that did not exist before. Ibn Rushd coined the concept phrase of the "First Sharia" to confirm the existence of a measure by which the true Sharia is perceived separately from that which corrupts it, and the closer people get to the First Sharia, the truer their faith will become, and the quicker their confusion will disappear, and the farther they get away from it, the more their perplexity will increase and their confusion will multiply and will end up treating each other using material and symbolic ways of communication.

When Ibn Rushd applied this measure on the groups that Muslims knew, he found that they had diverged to different degrees from this First Sharia, and thus they caused confusion and commotion in understanding the Sharia, when they first decided on different beliefs and then turned to interpretations of the verses to make them address already settled doctrinal matters all over again. In his book (The Exposition of the Methods of Proof)", Ibn Rushd proposed what he estimated to be closer to the First Sharia and consistent with it, and his approach to this is completely different, since he stands at the manifestations of Sharia and contemplates an understanding for them based on their vocabulary and internal contexts, although the philosophical background of Ibn



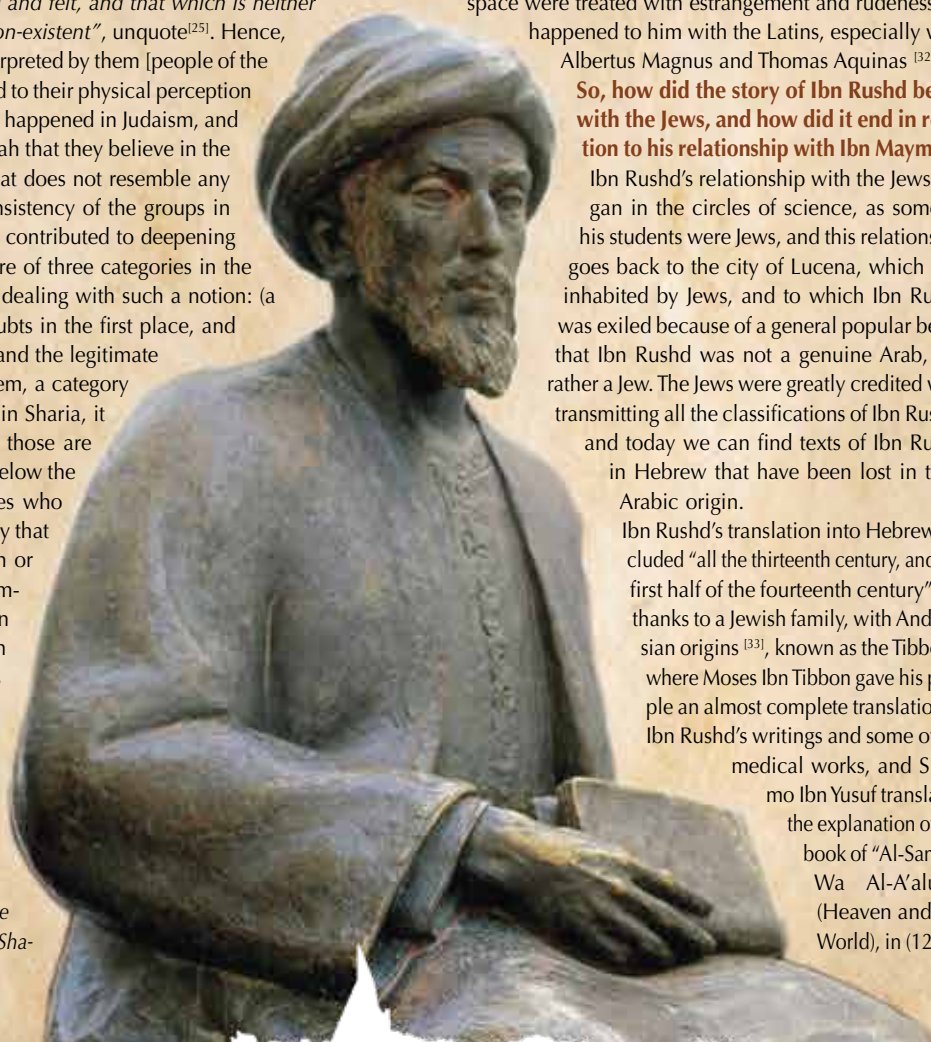
Rushd does not lack guidance in interpretation¹¹¹, because the purpose of his book (The Decisive Treatise) still inhabits the intention of the book (The Exposition of the Methods of Proof)", and this background may have caused another confusion that will be spotted by some of the scholars who observe the manifestations of Shari'a more and claim to respect them in an absolute manner. But when Ibn Rushd reflects on the causes of confusion in the Sharia, he also finds it in the interpretation of the "Al-Hashawaiah" (The ones who fill and it is a negative description used by some groups to slander or paint another group with a negative light) who say that Allah is known through hearing only, and he also finds it in the unlawful ways taken by the Al-Mutakallimeen (The Speakers who speak or argue dialectically and they are scholars of 'Ilm al-kalām', which is the Science of Discourse), who considered that knowing Allah through hearing only is the only way, although they are non-evidential methods that do not lead to certain knowledge, which indicates that they are not suitable for Scholars either¹²¹, and what is more surprising is that these approaches, despite their plurality and deep doubts, which scholars may stand in front of helplessly, call on the public to know God through them, even though they [the people, that is] do not possess the required scholarly capabilities that will assist them in taking up such a stand¹³¹, because of their incomplete instinct, as well as such a claim may argue against the will and power that is shown by the maker to His creatures¹⁴¹. So, the way of knowing God is clearer with Ibn Rushd than it is with the Al-Mutakallimeen¹⁵¹, and from here he confirms that the way of knowing God is not only the way of movement as expressed by Abraham (peace be upon him), which is a certain way and the way of the senses, which is the same way of Aristotle, which highlights the philosophical background of Ibn Rushd in his reading of the manifestations of the Sharia¹⁶¹. However, Ibn Rushd claims that it is one of the simple ways through which the Sharia has entrusted people to believe in Allah, since his proof is simple that the public easily understands, and it is also the way of senses, and it is the way of certain knowledge, as the Sharia did not delve into matters of dogmas with the public, and it simplified methods of persuasion that combined simplicity with certainty, i.e., the lack of introductions¹⁷¹, moreover, they are evidence consistent with instinct¹⁸¹, but the various groups of Islam with their unlawful methods and their writings that are far from the First Sharia caused confusion in souls and tumult in minds, and Ibn Rushd mentions these groups as the (Kharijites, Mu'tazilah, Al-Ash'ariyya, Aş-Sūfiyya,



and Al-Hashawaiah), and then there was Abu Hamid Al-Ghazali, to whom Ibn Rushd attributed a major role in causing confusion in the Sharia by sharing his interpretations with the public¹⁹¹, where, according to Ibn Rushd, he [Al-Ghazali, that is] came up with "dubious and semi-confusing arguments that led many people astray from wisdom and from the Sharia"²⁰¹, and he [Ibn Rushd, that is] accused these groups of steering away from the first knowledge when dealing with matters of doctrine and their proof, stating that the science that they espoused "can only lead to misleading the public rather than guiding them"²¹¹, meaning that it is a teaching of confusion and not a teaching of guidance and righteousness, and the nullification of the manifestations of Sharia is nothing but an effort to weaken its influence in the souls, and it worked to tear them apart and invalidate the wisdom intended from them²²¹, as the Sharia was originally created in such a way that it performs its function (s) in a manner that achieves practical virtue and gets the people to adhere to it, and "the first purpose of Science concerning the public is to get people to be active, and what goes towards achieving this goal is worthy of being resolutely emphasized on"²³¹, and Ibn Rushd did not author his two books "The Decisive Treatise", and "The Exposition of the Methods of Proof" but for this very purpose, namely, the illustration of the conformity of wisdom with Sharia, and to show that the principles of Sharia are identical to those of wisdom, while calling for a return to the First Sharia, all in an attempt to lift the confusion in the Sharia, which Ibn Rushd attributed to "stating in the Sharia that which was not authorized by Allah and His Messenger"²⁴¹. The perplexity of all of the people of the book was as-

Ibn Rushd's way of knowing God is clearer than the way of the Al-Mutakallimim (The Speakers)

sociated with their holy books, which are books that have external and internal meanings, and each letter of them has an interdiction, and every interdiction has a source of reference, just like what was stated in a famous prophetic Hadith, and it was the description of the Quran too, as the words of Allah in every book are taken as the manifestations of such books, which are apparent to all, and they have in them also secrets that are only discerned and detected by the fact-based minds, and there are also mysteries in relation to which the thought hesitates and is hardly certain, and there is nothing wrong with describing the words of the Almighty in all of His heavenly books with those words, but this perplexity before anything else is an existential perplexity caused by the predominance of imagination among people over their theoretical mind, as people all throughout history cannot perceive of the God that they worship but in the form of a shape and an image, and this is not only before the advent of the prophets, but even after that, and Ibn Rushd confirmed this meaning by saying, quote: “[t]he public sees that what exists is that which is imagined and felt, and that which is neither imagined nor felt is basically non-existent”, unquote^[25]. Hence, the verses of the book were interpreted by them [people of the holy book, that is] to correspond to their physical perception of the divine self, and this what happened in Judaism, and Ibn Rushd said of Al-Hashawaiah that they believe in the Creator that He is an object that does not resemble any other object^[26], and the inconsistency of the groups in the interpretation of the divine contributed to deepening this confusion, and people were of three categories in the way that they would go about dealing with such a notion: (a category that does not feel doubts in the first place, and they are the common people, and the legitimate education is more useful to them, a category when it is subjected to doubts in Sharia, it is not able to solve them and those are above the general public and below the scholars, and they are the ones who are perplexed,^[27] and a category that is not presented with suspicion or bewilderment, and they are firmly anchored in science^[28]). Ibn Rushd’s conversation was with the second category, which is the same category that Ibn Maymun’s conversation will also be with. So, the question of philosophers in the person of Ibn Rushd and Ibn Maymun was: *How shall this perplexity be lifted, and make the Sha-*



ria clearly understandable to everyone? And they both have tried to answer this by contributing to the field of legitimate philosophical consideration. And the question then became: *Did Ibn Rushd and Ibn Maymun have an influential and influenced connection, or were they separated?* Before we address the relationship of those philosophers, we will take a look at the presence of Ibn Rushd among the Jews. Ibn Rushd enjoyed a distinguished position among the Jews, expressed by the descriptions given by the Jews to Ibn Rushd, as they described him as the (wise philosopher, the great sage, the head of the Interpreters, the divine wise philosopher, the one-and-only judge, the perfect judge, the only-able-revered jurist, the omniscient sage, and the divine judge)^[29], and his books were celebrated, described of “great usefulness, clarity, statement, good selection, and nobility and depth of knowledge, as well as seriousness and renewal in Jewish thought”^[30]. The Jews were greatly credited with introducing Christians to Islamic philosophy^[31], but this beautiful celebration did not last, and Ibn Rushd and his family in the Hebrew space were treated with estrangement and rudeness, as happened to him with the Latins, especially with Albertus Magnus and Thomas Aquinas^[32].

So, how did the story of Ibn Rushd begin with the Jews, and how did it end in relation to his relationship with Ibn Maymun?

Ibn Rushd’s relationship with the Jews began in the circles of science, as some of his students were Jews, and this relationship goes back to the city of Lucena, which was inhabited by Jews, and to which Ibn Rushd was exiled because of a general popular belief that Ibn Rushd was not a genuine Arab, but rather a Jew. The Jews were greatly credited with transmitting all the classifications of Ibn Rushd, and today we can find texts of Ibn Rushd in Hebrew that have been lost in their Arabic origin.

Ibn Rushd’s translation into Hebrew included “all the thirteenth century, and the first half of the fourteenth century”, all thanks to a Jewish family, with Andalusian origins^[33], known as the Tibbons, where Moses Ibn Tibbon gave his people an almost complete translation of Ibn Rushd’s writings and some of his medical works, and Shlomo Ibn Yusuf translated the explanation of the book of “Al-Sama’a Wa Al-A’alum” (Heaven and the World), in (1259),

and in (1284) Zarhiya Ibn Ishaq Al-Barshanlui translated the “Shorooah Al-Tabee’iyyiat” (Explanations of Naturals), (Heaven and the World) and “W Ma Ba’id Al-Tabee’ah” (Beyond Nature), and in (1293), Jacob Ibn Makhir translated the “Khulasat Al-Mantiq” (The Compendium of Logic), and in (1300) he translated the annotations of volumes (11-19) of “Tareekh Al-Haywan” (The History of Animals)^[34].

In the thirteenth century, as many as three different translations of the same annotations were found, and in the first half of the fourteenth century, a group of translators introduced new translations of earlier translations as a result of the difficulty of obtaining the old ones^[35]. Frederick II played a major role in encouraging the translations of Ibn Rushd’s work and the introduction of the Arabic science in general^[36]. A mention should also be made here of Anatoli, who translated the “Khulasat Al-Mantiq Al-Arabi” (Arabic Compendium of Logic), and translated “Mukhtasur Al-Majis” (The Almagest Treatise) of Ibn Rushd^[37].

But the strong foundation on which the Jews built their relationship with the Arab-Islamic heritage in general, the philosophical heritage in particular, and with Ibn Rushd to be specific, is due to their desire to build a Jewish thought, and the Arab-Islamic philosophical heritage had a great role in their interpretations of the religious text, and this heritage was read by them with great voracity, whether in its Arabic letter or in what they transferred in their Hebrew script.

When the Jews emigrated from Andalusia, loaded with philosophical manuscripts, and settled in northern Spain, southern France and Italy, they worked to bring this scientific heritage closer to those Jews who did not know Arabic, and this resulted in a huge translation into Hebrew, in which Ibn Rushd became familiar to the Hebrews and in their culture, a translation that was encouraged by politicians from Europe, and religious authorities and universities, and which produced “many Hebrew manuscripts beyond counting”^[38], hence, Jewish philosophy became based on two foundations: (Books of Aristotle, and the Annotations of Ibn Rushd), who became known as “Al-Sharih Al-Akbar” (The Greatest Commentator), and he owes this fame to the Jews, and even owes them the title of “Aristotle’s Soul and Mind”, which was later officially endorsed by the University of Badu^[39], and when Ibn Rushd and the Peripatetic school in general won in the synagogue a final victory; the Jewish people became the representative of the main Cognitive Theory in the Middle Ages, and the Arabs owe so much to the Hebrew heritage for the preservation of

Ibn-Rushd’s works that were lost in their Arabic origin, such as the books of “Summary of the Nicomachean Ethics” and “Plato’s Political Symposium”, which were brought back from their long hiatus by Professor Ahmad Shahlan, and the first book was a book on the moral side of Practical Philosophy, looking into the virtues from a pure theoretical research interesting stand point, whereas the political book was a research into the ways that should be considered in order to be disciplined on virtues and their consolidation in the souls, and the two books together, when they entered the Hebrew space, contributed to the development of the political and moral term among the Hebrews^[40].

The culture of the Jews, especially the literary ones, is only a reflection of the Islamic culture, which is more similar to their scientific tendencies and concerns than it is found in the civilization of the Christians^[41]. Jews have written books in which they were inspired by Ibn Rushd such as: The Book of ‘Ara’a Al-Falasifah’ (Opinions of Philosophers) by Shmuel Ben Tibbon, The ‘Mawsooa’ut Altib’ (Encyclopedia of Medicine) by Judah Ben Shlomo, the works of Ibn Falaqiya, the Book of ‘Al-Samawat’ (Heavens) by Gershon Ben Shlomo^[42]. The Jewish philosophy has acquired the color of the philosophy of the Arabs^[43], and it has become a particular type of proof among the Jews as recommended by Ibn Maymun^[44], who recommended that Aristotle’s books were not to be read except with Ibn Rushd’s commentary added to them, hence the influence of Ibn Rushd on Ibn Maymun being immense, *but how?*

Ibn Rushd and Ibn Maymun:

The Rushdian effect was strong among the Jews, and the greatest evidence of this was Ibn Maymun, whom the Jews considered as the “Second Moses”, due to the impact that he left on the Jewish communities during history through his book “A Guide for the Perplexed”, in relation to which one of the historians of philosophy said, quote: “[t]here is no Hebrew book after the Bible and the Scriptures of the Talmud that has had such a profound impact on the lives of Jews as the “A Guide for the Perplexed”, unquote, because the supporters of Moses during his life and even after his death read it in churches and studied it in the temples, and it became the mainstay of guidance, and even the hands of the opponents themselves circulated it even if to demonstrate [as they believed] the disbelief, fallacy and contradiction in it”^[45], and the School of Ibn Maymun remained faithful to the Peripatetic Rushdian Thought^[46]. So, the book of “A Guide for the Perplexed” is “a compendium of the Jewish thought imbued with the philosophical scientific

“ The Sharia is constructed in such a way that it fulfills its function of achieving practical virtue and getting its followers to abide by and adhere to it

“ The question of philosophers in the person of Ibn Rushd and Ibn Maymun is how to lift off Perplexity, and to make the Law clearly understandable to everyone

“ Ibn Rushd’s relationship with the Jews began in the circles of science

“ Jewish Philosophy is based on two Foundations: (The Books of Aristotle and the Commentaries of Ibn Rushd)

“ Jewish Philosophy Acquired the Color of the Philosophy of the Arabs

“ The Book of the ‘A Guide for the Perplexed’ for Ibn Maymun is a compendium of the Jewish Thought imbued with the philosophical scientific spirit as defined by Muslims



spirit as defined by Muslims”^[47], and this book was considered a great challenge “since no Jewish philosopher was able to integrate the views of Aristotle and the views of leading Muslim philosophers into Jewish thought, as Ibn Maymun did in his book”^[48]. And Ibn Rushd had a major role in the way Ibn Maymun formulated his book, and that is why Sheikh Mustafa Abdul Raziq considers him as one of the philosophers of Islam^[49].

Ibn Maymun was very familiar with the philosophy of Ibn Rushd, and he himself stated that he had looked at everything that Ibn Rushd wrote in philosophy except the book of “Al-Hāss Wa-l-Mahsūs” (Sense and Sensibilia), and Ibn Maymun benefited a lot from the book of “The Decisive Treatise” in particular, and Dr. Ahmad Shahlan made a comparison between the two books, and pointed out that Ibn Maymun, while presenting his book’s program, was only inspired in his principles and theoretical foundations by the book of Ibn Rushd, especially that the two books of Ibn Rushd, “The Decisive Treatise” and “The Exposition of the Methods of Proof”, were translated into Hebrew, and the two books through which Ibn Rashed aimed to arrive at a reconciliation between Sharia and philosophy, which was the same goal that Ibn Maymun aimed at in his book of “A Guide for the Perplexed”, which was counted as the “Torah of the Jews”, as we have already mentioned.

The Perplexity that Ibn Rushd worked to lift from himself is the same one that Ibn Maymun was keen to lift off of his people, although there were some differences between the two approaches.

So, how did Ibn Maymun lift the Perplexity off of his people?

Ibn Maymun identified the source of his people’s confusion

in common names that are “given by the ignorant to some of the meanings to which those common names are given,” and Ibn Maymun demonstrates this by a speech given by Suleiman (peace be upon him), in which he made a speech “with common names to be used by the people each according to the extent of his/her understanding and their weak perception, whereas such common names are utilized in full and with different usages by those who are scientific in their approach”^[50], and this was the case with the assumed names ‘pseudonyms’, which are “used by the people according to the first usage from which they were borrowed”, and also the mistrusting terms, which on “one hand, they are thought to be said in a colluding manner, and on the other hand, they are used in a joint way”. Perplexity could also emanate from very hidden proverbs that came in the books of the prophets and were not illustrated that they are as such, just proverbs, but they seem to the ignorant and the stunned that they are to be taken at face value with their external meaning (s), but without their internal meaning (s), when on the other hand, when they are contemplated on and delved into by those who see through them and who combine both their internal and external meanings in their contemplation, they would actually end up feeling very confused”. And to get rid of the confusion, Ibn Maymun deliberately paused at the semantics of words, and pointed out the proverbs and indicated that they are as such, and it is rather telling that the title of the book is actually derived from this illustrative act that Ibn Maymun adopted in his book^[51]. And it is an act that is not claimed through which that Ibn Maymun will be able to lift off any obscurity, as he is aware of the limits of his work, which does away with

the greatest of problems, but not all of them, hence his words will not be employed by way of expatiation, and to explain at length, and some have justified this approach of his, as his [Ibn Maymun, that is] desire not to disclose knowledge so that it does not become “a target for every ignorant person who is thought of as being scientific, and who would pelt such knowledge with the arrows of his/her ignorance”^[52], which is a common philosophical approach among the philosophers of Islam, and Ibn Maymun summarizes his approach through what he described as “Ro’ous Al-Fawasil” (Positions of Markings), by pointing out that not all knowledge is given to everyone unless he/she is wise and self-understanding”^[53]. Ibn Maymun also warns that his writing style is not tidy, but rather he spreads in his book what he wants to disclose to the sage without order, so the facts are revealed to those who deserve them and are hidden from those who are not qualified to receive them, which is a method explored by Ibn Tufail in his book “Hayy ibn Yaqzān”, (The Improvement of Human Reason), which seems to have influenced Ibn Maymun in his education, and what motivated him to that is that “he does not resist the divine purpose that cannot be resisted, and who made the facts specifically related to His perception hidden from the public”, meaning “the secret of the Lord for His pious believers”^[54]. So, in full accordance with the Divine, he [Ibn Maymun, that is] writes his articles, and it is not a question of not disclosing divine truths as much as it is even natural truths are prone to concealment and being deviated from and not “authorizing the teaching of some of those truths as they are, and such “meanings came in the books of prophecy in the form of proverbs, and “the sages spoke of them in riddles, to “trace the books’ trails”, and the reason for this is their great connection with the divine science, hence these natural things became “secrets of the divine science”^[55], and what also deepens perplexity for the wise is the impossibility of establishing the complete truth of divine things, which they sometimes appear like lightning, and sometimes disappear into thin air, and people in receiving such lightning react differently, where for some of them the night becomes day with this lightning, just like the prophets, as they discern the full facts, and some of them had lightning luck in one night, while some of them have many and short periods between lightning and lightning, and some of them have never seen lightning light, and they are the “general public”, who “do not know and do not understand”^[56] and there are those who have realized some of the secrets from this lightning, and remain unable to translate them verbally

as they are, so they seek to teach others that which they have come to know only for reasons of sharing, “as if the nature of this matter is great and rare”^[57], and they cannot convey but examples and riddles, as does “every divine sage, with the truth [intent] to teach something of this art”^[58], and when the examples and riddles become dear, mystery and brevity will prevail, as if all is obeying the divine will, which holds back its secrets. The source of bewilderment is the semantic linguistic phenomena, especially for those whom Ibn Maymun called “The Perfect Virtuous”, as the masses of people do not pay attention to such semantic linguistic phenomena because of their ignorance and folly^[59], and for this reason, Ibn Maymun does not cease to declare that his book “The Guide of the Perplexed” is directed in the first intention to those whose zeal aspired to the act of philosophizing with the theoretical and practical science of his/her religion, but he/she suffers from bewilderment, which taints the meanings of doctrines through mistrusting words and proverbs that evoke confusion, mystery, and hesitation^[60], and if perplexity is to be lifted off, well, this depends on “understanding all that the prophets said [and their frequent use of proverbs], and knowing the truth is to understand the proverbs and their meaning and the interpretation of their words, [the intention here is to understand mysteries]”^[61].

Rather, the prophets themselves declare “that the internal meanings of the Torah are the essence of it, and the external meanings of every saying are of no value on the face of it”^[62]. So, the central core of the Torah among the heavenly books is that speech has both its internal and external meanings, and in the study of the law by Ibn Maymun, the student may become confused with certain external meanings of the law for which he/she does not know an interpretation, and this may lead to his/her incertitude and Ibn Maymun’s over-all premise is to work towards lifting off such perplexity.

This confusion existed at least according to Ibn Maymun, due to the failure to understand the vague meanings of several biblical terms, and the identification or specification of common, borrowed, doubtful names and proverbs with which the book of “The Guide of The Perplexed” began, leads to accuracy in understanding the Torah, and Ibn Maymun reminds us that the lifting off of the perplexity from the law leads to an understanding of what is true, and leads us to believe in the wisdom and majesty of the divine^[63], which is the same intention that Ibn Rushd had intended before, while always noting that the beneficiary of their words is “The wholesome of scientific and perplexed people” as Ibn Maymun says, as this is

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“ The source of bewilderment is the semantic linguistic phenomena, especially for those whom Ibn Maymun called “The Perfect Virtuous”, as the masses of people do not pay attention to such semantic linguistic phenomena because of their ignorance and folly

“ The Monad in the Heavenly Books is that Speech has Internal and External Meanings

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Lifting off Perplexity of the Sharia leads to understanding what is true, and directs us into believing in the Wisdom of Allah and His Majesty

//
When the Jews were unable to stop the interest in Ibn Rushd, they confronted him with Abu Hamid Al-Ghazali

the one who benefits from the articles written in the subject of interpretations, benefits from them, rejoices by them, and delights when hearing them, while he/she who is under the illusion that they are of solid scientific background when they are not, just steer away from them^[64]. And just as Ibn Rushd expressed his reluctance to mention interpretations in his book "The Decisive Treatise", we find that Ibn Maymun expressed the same notion, where he expressed his fear of stating hidden things, in which "no book has ever been authored in his religion", sensing the danger of coming up with a way in his understanding of the Torah that had never been done before, but concurrently hoping for the approval of at least one virtuous person who seeks completion and peace of mind even if he/she would be criticized for it, but he/she would understand Ibn Maymun's words and save him from his confusion^[65], as the purpose of his book "The Evidence of the Perplexed" is to calm the souls, delight the eyes and relax the bodies, and this can only be done by liberating the mysterious meanings and indicating their truth, and by addressing the mysterious things through indicating the meanings of some of them and hiding the meanings of some other, all while taking care that the readers will not notice any contradiction, and that the pen is clever in hiding it, and those are the fifth and seventh reasons that lead to the occurrence of any contradiction, or discrepancy in any of the books,

and not only in the book of Allah alone^[66].

The Conclusion:

Ibn Maymun's book "A Guide for the Perplexed", which is filled to the brim with the fragrance of the Rushdiyyah thinking, had a great contribution to the spread of the Islamic philosophical tradition among the Jews, whom no sooner they read it than they adopted its rational doctrine, which opened up to them the gate to solve the intractable problems of the Bible, and supported the importance of mental sciences in reading the religious text, hence the Jews starting to study philosophy, and Ibn Rushd's texts had the lion share of this, better yet, such texts became "an instrument of Jewish religious understanding, and a science of the Torah sciences," as evidenced by the eloquent letter written by Abu Al-Hajjaj Yusuf, a disciple of Ibn Maymun, to his Sheikh, in which he acknowledged the authority of Ibn Rushd over him, and this is what most highlights the high esteemed place occupied by the philosophy of Ibn Rushd among the sects of Jews^[67], as if Ibn Rushd was not far "from the spirit of the Torah and the thought of the scholars of the Talmud"^[68], as demonstrated by the statement of Ibn Qulfra in the introduction of his explanation of the book of the "A Guide for the Perplexed", where he was quoted as saying, quote: "[i] quoted from the words of the scholars of science who are engaged in these sciences, as well as from the opinions of the philosopher Ibn Rushd, and it

is clear from his words that he is closer to the opinions of our blessed scholars", unquote,^[69]. So, Ibn Rushd's influence was not limited to Ibn Maymun only, and this explains the high intensity of quoting Ibn Rushd by Jewish scholars, where for example we find Yousif Kuspi who quoted a lot from the sayings of Ibn Rushd to prove "that Aristotle and Arab philosophers are not in disagreement with Jewish traditions"^[70]. The fourteenth century witnessed that the influence of Ibn Rushd reached its zenith, where the Jewish philosopher Levi Gerson explained "the various commentaries of Ibn Rushd and his own writings, and his explanation was in lockstep with Ibn Rushd as the latter's explanation was to Aristotle's text, so much so the doctrine of Levi Gerson was to become "the pure Arab watercolor, where Ibn Rushd was revered by the Jews as was Aristotle revered by them"^[71]. Ibn Rushd's dominance among the Jews was manifested in its influence on the Karaites (Qaraite Judaism), and so the so-called "Freethinkers" appeared among them, and this was established in the book "The Magic of Life" by Ahron Ibn Elia Al-Niqomedi, in which the Author took the "A Guide for the Perplexed" as an example, and presented a theory of the mind close to the theory of Ibn Rushd^[72], but just as Ibn Rushd was destined to be alienated by his family, so was he [Ahron Ibn Elia Al-Niqomedi, that is] when he was shunned by many Jews, especially those who saw in his books a departure from the teachings of the law, as shown by a letter addressed to one of the rabbis of the Jews in which it was stated, quote: "[m]ost of the scientific books that we have in our hands are Ibn Rushd's explanations and commentaries,

and I saw at the beginning of his explanation of the book of 'Heaven and the World' that he proves the immortality of the heavenly bodies, which are proofs leading to the belief in the immortality of the world", unquote,^[73], and when the Jews were unable to stop the interest in Ibn Rushd, they confronted him with Abu Hamid Al-Ghazali, and that's what one of the Jews pointed out to when he said, quote: "[i] found Ibn Rushd's opinions very popular, but I also found among my friends a lot of appreciation for the 'Incoherence of the Philosophers' book of Ghazali", unquote^[74], where the Jews translated all the books of Al-Ghazali to counter the Rushdi thinking within the Jewish religious field, and actually betrayed Ibn Rushd while translating him, as noted by Renan when Jews translated the book "Tahafut Al-Tahafut" (The Incoherence of the Incoherence), in which Ibn Rushd spoke of the "Divine Providence" in a colloquial manner, and in an unusually grandiose style, however, this way of writing was dangerously changed by the Jewish translator"^[75]. Ibn Rushd passed away in Marrakesh, and his remains were transferred to Cordoba, and a wave of indifference and avoidance by his people followed (as mentioned in the translation of the will of Ibn Al-Khatib to his son), and his grave's exact location is unknown. On the other hand, Ibn Maymun died in Cairo, and his remains were transferred to Tiberias in Palestine, and he was buried in the tombs of the great Jews with honor and dignity, and the inscription on his grave reads "From Moses to Moses, only Moses Rose".

* Footnotes

[1] Ibn Maymun says, quote: "[a]nd I realized that you had taken something of this from others but not from me, and you are perplexed and surprised, and your honorable self is demanding you to say perplexing things, and I still nudge you into not doing that, as I try to get you to take things in a certain orderly way with the intention of getting you to perceive things by way of direct explanation and not indirectly", unquote, Page No. (7).

[2] Ibn Maymun says, quote: "[a]nd you are perplexed, so surprised", unquote, Page No. (7), and also says, quote: "[a]nd remained perplexed and surprised", unquote, Page No. (9).

[3] Ibn Maymun says, quote: "[p]erk up your ear, listen to the words of the wise, and direct your heart to my science", unquote. The same source, Page No. (9).

[4] Ibn Rushd, "The Decisive Treatise", the same source, Page No. (94).

[5] Ibn Rushd, "The Exposition of the Methods of Proof", Published by Mahmoud Qasim, Page No. (132).

[6] Ibn Rushd, "The Decisive Treatise", the same source, Page No. (113).

[7] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (132).

[8] Ibn Rushd, "The Decisive Treatise", the same source, Page No. (113).

[9] Ibn Rushd, "The Exposition of the Methods of Proof", Published by Mahmoud Qasim, Page No. (132).

[10] Ibn Rushd, "The Decisive Treatise", the same source, Pages Nos. (85-87).

[11] This background appears in the midst of the pages of the book, both by showing the insufficiency of the speech and words formulated in the service of the Sharia, from which the power of the philosophy making in this is derived, and he even states this when he talks about the power of philosophy in getting rid of doubts that the power of the speech making simply cannot get rid of. Pages Nos. (135 and 137).

[12] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (135).

[13] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (137).

[14] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (145).

[15] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (140).

[16] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (140).

- [17] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (148).
- [18] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Pages Nos. (153 and 155).
- [19] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (82).
- [20] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (182).
- [21] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (166).
- [22] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (173).
- [23] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (180).
- [24] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (189).
- [25] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (171).
- [26] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (171).
- [27] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (180).
- [28] Ibn Rushd, "The Exposition of the Methods of Proof", the same source, Page No. (179).
- [29] In talking about Ibn Rushd here, we mostly rely on the Book of Dr. Ahmad Shahlan: "Ibn Rushd Wa Al-Fikr Al-Ibri, Al-Waseet, Fi'el Al-Thaqafah Al-Arabeyyah Al-Islameyyah Fi Al-Fikr Al-Ibri Al-Yahoodi" (Ibn Rushd and Hebrew Thought, The Mediator: (The Act of Arab-Islamic Culture in the Hebrew-Jewish Thought), in two parts, the National and Paper-Producing Press, first edition (1999), Page No. (214).
- [30] The same source and the same page.
- [31] See the introduction by Sheikh Mustafa Abdel Razeq to Israel Wolfensohn's Book entitled "Mousa Ibn Maymun: his life and body of work", the Press of the 'Lajnat Al-Ta'leef' (Committee of Authorship) for Translation and Publication, first edition, (1936.)
- [32] Refer to Ibn Rushd's 'Ibn Rushd Al-Muqliq' (Ibn Rushd the Disquieting) Book, by Jean-Baptiste Brunet, Published by the Dar Al-Kitab Al-Jadeed (The New Book Publishing House).
- [33] Ernest Renan, 'Ibn Rushd Wa Al-Rushdeyyah' (Ibn Rushd and Al-Rushdeyyah), translated by Adel Zaiter, Dar Al-Tanweer (Enlightenment Press) for Printing and Publishing - Beirut, (2013), Page No. (155).
- [34] The same source, Page No. (157).
- [35] Renan, the same source, Page No. (157).
- [36] The same source, Page No. (156).
- [37] The same source, Pages Nos. (156-157).
- [38] Ahmad Shahlan, the same source, Page No. (148), and we point out that we relied a lot on this valuable book in presenting the relationship of Jews with the Arab heritage in general, and Ibn Rushd in particular.
- [39] Ernest Renan, the same source, Page No. (154).
- [40] Aristotle's Book of Nicomachean Ethics played a major role in shaping the moral perception among Muslims, and the most illustrative example of this is the 'Mizan Al-Amal' (Balance of Action) Book by Abu Hamid Al-Ghazali, in which he looked at Islamic ethics with an Aristotelian stand point, and Aristotle's Book on Ethics was his mirror through which he saw Islamic ethics.
- [41] Renan, the same source, Page No. (145).
- [42] The same source, Page No. (156).
- [43] Renan, the same source, Page No. (154).
- [44] The same source, Page No. (151).
- [45] From Ahmad Shahlan, Page No. (142).
- [46] Renan, the same source, Page No. (152).
- [47] The same source, Page No. (138).
- [48] The same source and the same page.
- [49] Introduction to the Book "Ibn Maymun: his life, and body of work", the same source, Page No. (138).
- [50] The Guide of the Perplexed, Page No. (12).
- [51] The Guide of the Perplexed, the same source, Pages Nos. (9-10), and Page No. (12).
- [52] The same source, Page No. (10).
- [53] The same source, Page No. (10).
- [54] The same source, Page No. (10).
- [55] The same source, Page No. (10).
- [56] The Guide of the Perplexed, the same source, Page No. (11).
- [57] The same source, Page No. (11).
- [58] The same source, Page No. (11).
- [59] The Guide of the Perplexed, the same source, Page No. (12).
- [60] The Guide of the Perplexed, the same source, Page No. (13).
- [61] The Guide of the Perplexed, the same source, Page No. (13).
- [62] The Guide of the Perplexed, the same source, Page No. (13).
- [63] From an Article entitled 'About the Ambiguous Terms in the Quran and the Torah', by Terence J. Kleven.
- [64] Ibn Maymun, The Guide of the Perplexed, the same source, Page No. (16).
- [65] The same source, Page No. (17).
- [66] The same source, Pages Nos. (17-18).
- [67] Ahmad Shahlan, Page No. (210.)
- [68] Ahmad Shahlan, Page No. (211).
- [69] Ahmad Shahlan, Page No. (212).
- [70] Ahmad Shahlan, Page No. (210).
- [71] Renan, the same source, Page No. (160).
- [72] Renan, the same source, Page No. (161).
- [73] Ahmad Shahlan, Page No. (215).
- [74] Ahmad Shahlan, Page No. (226).
- [75] Ernest Renan, the same source, Page No. (99), Footnote No. (6).



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There is no doubt that the government and private sectors are witnessing many changes in various administrative, financial and technological fields, and these changes have been reflected in the government work environment, especially in the field of legislation that requires fundamental amendments to keep pace with what is transpiring in the world around us, and among the government sectors that are seeking change, we find that the judicial sector is working hard so that it can express the State's strategy and ensure global competitiveness, and this requires the development of some curricula, and the renaming of courses at universities and law faculties, especially as there has been a development in the performance of legal workers, which has become not limited to enacting legislation, monitoring and applying it, in addition to providing legal advice, but this has been extended to include the administrative work, which requires familiarity with many things and lots of technical and administrative information, where law graduate has become one of the influential figures in the fields of development and economy in many countries, which requires the preparation of a new generation of legal experts with the competence, skill and ability that are

required to manage state institutions in various fields of their work, and we are confident that our universities in the country will be able to fill this void, by introducing specialized academic programs in Law and Administration, according to which a bachelor of law and business administration is opened in Arabic and especially in English. The Ministry of Higher Education and Scientific Research is making concerted efforts to develop the education sector to keep pace with global developments, reflect the aspirations of the up-and-coming young generations, and meet the requirements of practical reality, and the wise leadership in its plans to prepare future leaders leads the way in all fields, especially since the infrastructure for Legal Studies is almost complete and solid with the presence of many law schools, which play an important role in the preparation and qualification of UAE legal cadres, and support them in various fields of legal and judicial work.

Finally, we note that today's world requires everyone who occupies technical and specialized positions, especially in senior management and leadership positions, to have a level of knowledge in various business and people management tools.

Insulting Islamic Sanctities Is not Freedom of Expression



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Insulting religions and their values and symbols in various media outlets is contrary to what is contained in the principles of international law at the global and continental levels, which prohibits insulting religions, calls for tolerance, and renounces various forms of discrimination, whether racial, ethnic or religious, based on the principles of the Universal Declaration of Human Rights and the treaties and charters emanating from it.

The United Nations has recognized the importance of the idea of Religious Tolerance, and it has drawn attention to its place in preserving the principles of international peace and security, stressing respect for freedom of thought and conscience, and freedom of religion and belief of any kind, and therefore announced its affirmation that the abuse of religions may be a direct or indirect cause of fueling wars that have brought humanity great tragedies.

Recently, some Western media outlets in some European

countries have been fueling the phenomenon of Islamophobia and insulting the Islamic religion, its symbols and its sanctities, with the stereotypical images they have published and continue to publish about Muslims and Arabs, so calls have begun to escalate from within the United Nations, represented in the General Assembly and in the Human Rights Council, for the development of a binding international law to deter and prevent the spread of this phenomenon, in line with the idea of respect for religions, and in accordance with the stated

principles on the subject and the international declarations.

On October (25), (2018), the European Court of Human Rights issued a court ruling that insulting the Prophet Mohammad (peace and blessings of Allah be upon him) does not fall under freedom of expression.

And this is confirmed by Decree-Law No. (2) of (2015) on Combating Discrimination and Hatred, as amended by Federal Decree-Law No. (11) of (2019), which criminalizes acts associated with contempt for religions and their sanctities, combats all forms of discrimination, renounces hate speech through various means and methods of expression, prohibits abuse of the divine self, religions, prophets, apostles, holly books or houses of worship, or discrimination between individuals or groups on the basis of religion, doctrine, creed, sect, denomination, race, color, or ethnic origin.

Resolution No. (65/224) on Combating Defamation of Religions issued by the Sixty-Fifth Session of the United Nations General Assembly on April (11), (2011), especially Recommendation No. (16), which urges all states to provide adequate protection from all acts of hatred, discrimination, intimidation and coercion resulting from the degradation of religions, and incitement to religious hatred in general, in order for peace to prevail, and for humanity to witness stability accompanied by the dissemination of the principles of democracy and the supremacy of the concepts of human rights, transparency and sustainability. The insult of Islamic holy sites provokes the feelings of millions of Muslims around the world, who have expressed their indignation and disapproval of this tampering with these holy sites in order to offend Islam and Muslims.

And here we go again when only a few days ago some extremists burned a copy of the Holy Quran under the pretext of democracy and human rights, only for the very angry reactions from all Arab and Islamic countries, without exception, to this heinous act, to quickly follow.

The United Arab Emirates has condemned with great anger the burning of a copy of the

Holy Quran by these fanatics, confirming in a statement by the UAE Ministry of Foreign Affairs the UAE's permanent rejection of all practices aimed at destabilizing security and stability, and which are contrary to humanitarian and moral values and principles.

"Al-Azhar Al-Sharif" (The Noble and the Shining) (Sunni Islam's oldest and foremost seat of learning) also reiterated that these criminal acts will not affect the sanctity of the Holy Quran in the heart of every civilized person, and it will remain in its highest stature a guide book for all humanity, directing it to the values of: "Goodness, Truth and Beauty", and its sanctity shall not be compromised by the hatred of the criminal miscreants, and the actions of small-minded bigots and rabble-rousers of hatred, and people with sick souls, holders of black records in the history of intolerance, hatred and wars of religions, and the humanitarian community, international institutions and the wise people of the world should all stand up against attempts to tamper with religious sanctities, condemn these criminal acts, and put an end to the chaos of the term "Freedom of Expression", and its exploitation in the world of politics and elections, and its misuse in relation to provoking Muslims and offending their sanctities.

It is well known that the scope of freedom of expression is not absolute as stipulated in Article No. (19) of the Universal Declaration of Human Rights, and most importantly, Articles Nos. (19) and (20) of the International Covenant on Civil and Political Rights, that clearly stipulate that freedom of expression is not an absolute freedom and right, as its exercise requires special duties and responsibilities to ensure communal cohesion, as well as respect for the right, reputation and freedoms of others. The increasing level of xenophobia and intolerance in Europe in particular and in the world as a whole can be countered only through the promotion of a culture of tolerance and respect for cultural and religious diversity and the promotion of interreligious and intercultural dialogue at all levels and in all directions, and this is something for which my country, the United Arab Emirates, always strives with all its weight at all international events and forums.

Insulting religions with their values and symbols in various media outlets is contrary to what is contained in the rules of international law

The United Arab Emirates has condemned with great anger the burning of a copy of the Holy Quran by fanatics

Freedom of Expression is not an absolute freedom and right, as its exercise requires special duties and responsibilities to ensure communal cohesion, as well as respect for the right, reputation and freedoms of others

Trustee, Guardian and Caretaker



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In the name of Allah, praise be to Allah, prayers and peace be upon the Messenger of Allah...

This is a brief reading of some of the provisions related to some of the terms contained in the law, which are defined in the Federal Civil Transactions Law No. (5) of (1985) as amended, as well as in detail in the Federal Personal Status Law No. (28) of (2005) as amended, which relate to the persons entrusted by law with the care and management of the affairs of minors in society, and as per the following:

Trustee, Guardian and Caretaker:

Article No. (163) of the Personal Status Law No. (28) of (2005) stipulates in the section on Legal Competence and the management of the affairs of the Legally Incompetent that the affairs of the minor shall be handled by a representative, who shall be called, as the case may be, a (Trustee or a Guardian), including (the Selected Guardian, the Judge's Guardian or a Caretaker). In this text, we find that the said Article has identified three categories that take care of the affairs of a person who is incompetent or has been incapacitated, which is referred to with the term of (Minor), and they are represented by: (Trustee, Guardian, Caretaker), and these three categories assume the same role, and their goal is to perform one purpose, which is to take care of the minor and manage his/her affairs, and this categorization undoubtedly involves a clear difference in the description of each of them depending on the type of incompetence that befalls an individual, and makes him/her incapable of managing his/her affairs by himself/herself, and to be in need of someone to provide and care for him/her. And before touching on these terms, we consider it important to get acquainted with the term Legal Capacity and its Impediments (Awḥid Al-Ahliyyah) (Impediments to Legal Competence).

(Al-Ahliyyah) 'Competence': It means in the language (linguistic meaning) as the authority to issue something by a person and to claim it, or be entitled to it, which is what is meant by it in the words of the Al-Mighty Allah in His Holy Book when he said, quote: "[a]nd they were well entitled to it and worthy of it", unquote, (Al-Fath {Victory} Surah, Chapter 48, Verse 26)⁽¹⁾. As for its meaning as a vocabulary (terminological meaning): It is the ability of a person to perform legal actions, in other words, to receive rights or assume responsibilities, or to do both⁽²⁾.

And since this ability is not the same for everyone, therefore, jurists have always divided it into two types:

1. Capacity to Dispose:

It is the capacity of a person to perform all of his/her legitimate rights and to assume all of his/her responsibilities, and the natural person acquires this capacity upon reaching the age of majority by completing (21) lunar years⁽³⁾, and it is then described as "Full Legal Competence", with all of the legitimate effects that will come along with it, unless it [the capacity to Dispose, that is] is tainted with any of the impediments that limit or incapacitate it, such as (Insanity, Lunacy, or Coercion).

As for the legal person, it acquires the Capacity to Dispose as soon as it is formed, and the pertinent decision to create it is made by law.

And when we talk about capacity in legal acts in general, the meaning by which it is meant is: The Capacity to Dispose.

2. Capacity for Entitlement:

It means: The ability to receive rights from others without assuming any responsibilities or obligations, and it is determined for the natural person only, when he/she is incompetent, and it is

accorded to a person while he/she is a fetus in his/her mother's womb, and it does not end not until after his/her death and the settlement of his/her succession, and thus it is a description of the person that the law takes into account, whether natural or moral.

Loss/Deprivation of Legal Competence:

The basic principle here is that every person is entitled to transact with others unless his/her legal competence is revoked, or limited by law⁽⁴⁾.

But a human being, from the beginning of his/her creation and existence until his/her death, is subjected to changes, whether as a result of his/her normal development from a child to an adult, or as a result of impediments that occur later on such as:

- 'Al-Jonoon' (Insanity): For those who have lost their minds, and ceased being able to differentiate between good and evil, and they end up being feared by others in the society.
- 'Al-Atah' (Lunacy): It is a weakness of the mind and cognition that is not described as Insanity, and the person concerned still retains some degree of cognitive judgement, and does not pose a danger.
- 'Al-Safah' (Foolishness): Wasting money in what is useless⁽⁵⁾.
- 'Al-Ghafalah' (Carelessness): Weakness of the mind and perception, so that it is easy for such a person to be deceived and defrauded, so he/she is deceived for his/her well intention, and is treated the same as the foolish person.
- 'Al-Ikrah' (Coercion): By causing undue pressure, whether by intimidation or fear, which leads the coerced person to accept a certain transaction.

And such individual fluctuates from a lack of capacity to full capacity or simply be deprived of it, and in any case, he/she is unable to enter into any legal transaction.

- Legally Incompetent Person:

1. The Discerning Child: Who has passed the age of seven and has not reached the age of majority, and his/her behavior is treated as per the following⁽⁶⁾:

- Every act that causes him/her pure harm, such as a 'Hiba' (Gift), 'Tanazul' (An act to waive certain rights of claim in favor of another party in a contract), and 'Ibra'' (Waiver on right of claim), is considered invalid.
- And every act that causes him/her pure benefit such as accepting a gift and a will are considered valid.
- Actions that alternate between being beneficial and being harmful, such as sale and partnership, are considered as contingent on his/her approval upon reaching the age of majority, or the approval of his/her guardian (father).
- Actions such as disposal of the money earned by the discerning child himself/herself, the payment of a dowry, the conclusion of an employment contract, and his/her personal expenses are all considered valid.

2- The Foolish and the Careless: The actions that he/she had carried out before the interdiction or guardianship decision was issued



against him/her are considered correct and valid, unless it is proved that they were based on exploitation, fraud and complicity⁽⁷⁾.

- Legally Incapacitated Person:

1- The Non-Discerning Child: From being given birth to alive until he/she reaches the age of seven.

2- The Insane and the Lunatic.

And those are placed under interdiction or guardianship in their persons, and their actions that are divided between benefit and harm, or straight up pure harm are invalid, but at the same tandem time they have the right to receive rights and donations⁽⁸⁾. Based on this, and according to the concept of Argument from the Contrary (Argumentum A Contrario), apropos Legal Competence, the minor, as defined by the Personal Status Law is:

“A person who has not reached the age of majority or has reached the age of majority, a person who is legally incompetent, a person who is legally incapacitated, or a person who is legally placed under interdiction or guardianship, and they are all considered minors in the eyes of the law, and also considered as a minor, the fetus, the insane, the lunatic, the foolish, the missing, and the absent”.

In these cases, the minor is taken care of (affairs wise) and is represented by a (Trustee, Guardian or Caretaker)⁽⁹⁾.

Who is the person who is legally authorized and responsible for the management of the affairs of the minor?

The law entrusts the care of the minor, the management of his/her affairs to the nearest and fittest person, and it grants this right to the Trustee, Guardian or Caretaker.

First - The Trustee:

Linguistic meaning: He/she is the holder of authority and a close supporter, and this general and comprehensive meaning can contain other tasks such as guardianship and curatorship (custodianship). Terminological meaning: It is taking care of everything related to a minor's person and supervising him/her⁽¹⁰⁾.

The Trusteeship shall be accorded to:

- The Father, then to the True (Inheritor) Grandfather, which is a right acquired for them by the letter of the law, and then Trusteeship is mandated to the Guardian.
- Any of them may waive this duty only with the permission of the court.

- If there is no one available of the afore-mentioned, the Trusteeship is for the judge, as the judge is the Trustee of the one who does not have a Trustee.

The Trusteeship is divided into two parts⁽¹¹⁾:

1-Trusteeship over a Person: It means caring for and maintaining the child, disciplining and educating him/her, including agreeing to marrying off him/her.

As mentioned above, Trusteeship is accorded for the father to begin with, as the law made the Father a Compulsory Trustee over his minor children until they reach the age of majority, as long as he is eligible for it and fully retains his: (Cognitive judgement, honesty, matchability of religion with the minor), and he can exercise such mandate as long as there are no obstacles such as imprisonment or getting lost.

2- Trusteeship over Property (Wealth): It means the preservation and development of the minor's wealth, and he (The Trustee) may spend from it, under the following conditions:

- A Trustee may not dispose of a minor's real estate in a way that transfers his/her ownership or creates a proprietary right (right in rem) related to it, except with the permission of the court, and this is permitted for a necessity or apparent interest appreciated by the court.
- The Trustee may, with the permission of the court, spend some of the minor's money on himself, if his [The Trustee, that is] maintenance or allowance is mandated on the minor, and may spend it on those whose maintenance or allowance is mandated on the minor.
- No Trustee's disposition of the minor's property shall be valid unless the disposition is purely beneficial to the minor, such as accepting gifts and donations that are not burdened by a legal condition or obligation.

Second - The Guardian:

In language: It is the person to whom a guardianship is mandated, or is legally assigned to manage the affairs of the minor after the death of the breadwinner provider.

As a vocabulary: It is the person appointed by the court to take over the management of the minor's wealth and his/her affairs. Accordingly, the Guardian will either be:

- Selected Guardian: Chosen by the father and appointed by

him before his death.

- A Judge Guardian: A person who is appointed by a judge, and appointed by the court on its own initiative. It is clear from the aforesaid definition:
- That the Guardian acts as the Compulsory Trustee or Court-Appointed Trustee upon the death of the father.
- That the Guardian can be installed by the father over his minor children, or over the-unborn-embryo pregnancy that is settled in the womb of the wife before his death, and shall be called the Selected Guardian, and is officially endorsed by the court.
- If the father has not installed a guardian for his minor children, or there was no a true-inheritor grandfather, the court then appoints a guardian for them.
- The Trustee's conditions apply to the Guardian in terms of (fairness, efficiency, honesty, matchability of religion with the minor, and legal dispositions in the orphan's wealth)⁽¹²⁾.

Third - The Caretaker (Custodian):

In language it means: The Master, and he/she is the one who undertakes people's business and takes care of it.

In vocabulary it is: The person appointed by the court to manage the wealth and affairs of the person placed under interdiction or guardianship, due to loss of legal competence or lack thereof, and is legally responsible for a minor who is unable to express and disclose his/her will properly due to a sudden impediment that has befallen him/her such as suffering from insanity or becoming unaccounted-for, and such person is appointed by the judge. The father may be the Caretaker of his lost or insane son, as well as the mother or wife, and it is up to the judge to decide, and therefore the Custodianship is considered as a legal representation on behalf of the minor, as it is the case in Trusteeship and Guardianship.

However, it differs from them in the following:

- It is not an acquired right, as in the case of the Trustee, but a Caretaker is installed by the judge based on the interest to be attained and at his/her discretion.
- It does not apply to a minor who has not reached the age of majority, but to an adult who has been affected by one of the Impediments of Competence that do not enable him/her to carry out legal actions, and thus differs from Guardianship.

*** Footnotes**

- (1) Competence in Islamic Jurisprudence - Prof. Dr. Wahba Al-Zahili.
- (2) Dr. Abdul Majid Al-Hakim - 'Masadir Al-Itizam (Sources of Commitment), Page No. (100).
- (3) Articles Nos. (85-87) of the Federal Civil Transactions Law No. (5) of (1985) as amended.
- (4) Article No. (159) of the Federal Personal Status Law No. (28) of (2005) as amended.
- (5) The Foolish and the Careless are placed under interdiction and guardianship by the judge, and such interdiction and guardianship shall be lifted off of them in accordance with the rules and procedures prescribed in Article No. (168) of the Law of Civil Transactions.
- (6) Article No. (159) of the Civil Transactions Law.
- (7) Article No. (170) of the Civil Transactions Law.
- (8) Article No. (168) of the Civil Transactions Law.
- (9) Articles Nos. (160 – 163) of the Personal Status Law.
- (10) The terminological meaning was adopted from the definitions of the Ministry of Justice.
- (11) Article No. (178) of the Personal Status Law.
- (12) Articles Nos. (213-217) of the Personal Status Law.

*** Topic-Related Terms**

- 1-Orphan: It means in the language (linguistic meaning): isolation and need, and in its vocabulary meaning (terminological meaning): The one who lost his/her father. Orphanhood is only considered to befall a human being until he/she reaches the age of majority, as the Prophet (peace be upon him) said in his noble Hadith, quote: “[n]o one is considered an orphan after he has attained the age of maturity”, unquote. And in Orphanhood there is the need for protection and spending. And if everything is isolated or became alone by itself, it is said then to be an orphan.
- 2-Al-Ajji: Is the one who (lost their mother), and the one who has lost his/her mother will be raised with the milk of another mother, and here is the need for the mother in breastfeeding.
- 3-Al-lateem (Parentless): Is the one who (lost their parents). La-tim (Slapping): It is slapping and hitting the cheek or body skin. So, Al-lateem: is the little one who lost his/her parents.

Is the Sunnah {Way or Biography of the Prophet} All legislation?' (1)

Fatwa (non-binding legal opinion in Islam), Judiciary, and State Policy, for example



Dr. Mahmoud Majeed Al-Kubaisi
Researcher

The Al-Mighty Allah says in His Holy Book, quote: “[a]nd We have sent down to you “O Prophet” the Reminder, so that you may explain to people what has been revealed for them, and perhaps they will reflect”, unquote, (Al-Nahl {Bees} Surah {Chapter}, Verse {An āyah} No. {44}). The main task of the Messenger of Allah (peace and blessings of Allah be upon him) was to convey the Holy Qur’an and illustrate what needs to be illustrated, such as indicating the number of Rak’ahs (series of genuflection movements performed during Islamic salat prayer), so on and so forth.

But his life (may Allah’s peace and blessings be upon him) was not limited to promulgating the message of Islam on behalf of the Al-Mighty Allah, as in some instances, he (may Allah’s peace and blessings be upon him) was a mufti (an Islamic legal authority who gives a formal legal opinion (fatwa) in answer to an inquiry by a private individual or judge), and gave or delivered Islam’s legal opinion in relation to what his companions are inquiring about, and this is part and parcel of the message promulgation, and he (may Allah’s peace and blessings be upon him) also decided on the disputes that were brought before him, and headed a state that he (may Allah’s peace and blessings be upon him) ran its affairs, in order to facilitate living in it, and protect it from being attacked by its enemies. Al-Qarafi says in Al-Farooq (1/206), quote: “[i] know that the messenger of Allah (peace and blessings of Allah be upon him) is the

greatest Imam, the wisest judge, and the most knowledgeable Mufti, and when his actions (peace and blessings of Allah be upon him) do occur, some of which are unanimously considered to have occurred as promulgation and fatwa, some of which are unanimously considered to have taken place by way of prophet-related judiciary, some of which are unanimously considered to have transpired by way of leadership by the Prophet, and some of which are contested over by scholars due to their straddling of two ranks and onwards, and some of which are dominated by one rank, and some of other which are dominated by another. And what is issued by the Prophet - may Allah’s peace and blessings be upon him - by way of one of these three descriptions, has a judgement that differs from what he issues in the other two descriptions.

As his actions - may Allah’s blessings and peace be upon him - as a Mufti and as a Promulgator of Allah’s message, have a standing that differs from that of other actions made by him as a judge, or as a head of State. **First: His conduct - may Allah’s peace and blessings be upon him - as a mufti and as a Promulgator of Allah’s message:**

His action - may Allah’s peace and blessings be upon him - by way of fatwa and promulgation occurs with his sayings and his physical actions in relation to Al-Ibadat (The plural form of ibadah, which refers to Islamic jurisprudence (fiqh) of Muslim religious rituals), or through answering a question about a religious issue, or a matter related to Iddah for women (A period a woman must observe after the death of her husband or after a divorce, during which she may not marry another man), and such matters are obligatory and must be followed by all Muslims in all places and at all times and ages and an example of which is “(Subay’ah Al-Aslamiyyah) who gave birth to her child a month or forty days after the death of her husband and the Prophet gave her a Fatwa that remarrying had become lawful to her when she delivered her child, and he ordered her to marry if she so wished”. [Narrated by Al-Bukhari (H:3991, H:5319) and Muslim (H:1484)]. (And there are other examples).

Second: His conduct - may Allah’s peace and blessings be upon him - as a head of State:

His conduct - may Allah’s peace and blessings be upon him - as a head of state, such as declaring war, sending armies, appointing judges, dividing the spoils, appointing wulah (The Waali {governor} is the person whom the Khaleefah appoints as ruler and Ameer over a Wilayah (province) of the Khilafah State), concluding peaceful treaties, or others, these are all not permissible for anyone else to do but the head of state, and it is not permissible for any individual or group to do any of these things, as they are entrusted only to the ruler, and that is why we know through this about the deviation committed by some groups that affiliate themselves to Islam.

On the other hand, the Prophet’s organization - may Allah’s peace and blessings be upon him - of the army, the distribution of its sections on the battlefield, and deciding on where to deploy the army relative to the position (s) of the enemy’s army, are all acts taken by him -may Allah’s peace and blessings be upon him - as a head of state, or army commander, and they are not considered as a general judgment nor as an argument against anyone, because such actions vary from one time era to another, and one example of which is: The story of taking up a position by the Muslim Army in the Battle of Badr in a place near the present-day city of Badr (Al Madinah Province in Saudi Arabia), and Al-Habbab Ibn Al-Mundhir Ibn Al-Jumuh Al-Ansari advising the Messenger of Allah (peace and blessings of Allah be upon him) to camp near the wells of Badr, lest the mushrikeen (polytheists idolaters) benefit from them (water wise), and the Prophet (peace and blessings of Allah be upon him) taking up the advice of Al-Habbab Ibn al-Mundhir. {Corrected by the message of Dr. Akram Al-Omari in the Prophetic Biography (Page No. 360)}.

The Prophet (peace and blessings of Allah be upon him) may issue decisions that organize the affairs of society in a manner appropriate to the time and circumstance in which they were issued, such as when he forbade on a given year Muslims from preserving the meat of sacrifice, and the companions of the Prophet took this as a general prohibition rule, and they refrained from preserving the meat of sacrifice every year, and when the messenger of Allah (peace and blessings of Allah be upon him) knew about this, he explained to them that it was only for a special circumstance, which was the abundance of newcomers to Mecca, so he said to them, quote: “[i] prohibited you due to a body of people who came to you. Now eat, give it as sadaqah (alms), and store up”, unquote, Sahih (Al-Albani).

And also like the Hadith of the Prophet (peace and blessings of Allah be upon him) when he forbade the rounding up of stray camels, when he said, quote: “[y]ou have no concern with it as it has its water container, and its feet and it will reach water, and eat (the leaves) of trees till its owner finds it.”, unquote. {Reported by Al-Bukhari (H:91) and Muslim (H:1722)}. And the matter of not gathering together lost camels continued to the reign of Uthman Ibn Affan (may Allah be pleased with him) when he ordered that they would be picked up only to be followed by Ali Ibn Abi Tālib with the same approach of permitting the herding together of lost camels.

These two companions of the Prophet understood that the Prophet (peace and blessings of Allah be upon him) as the ruler and head of state forbade corralling stray camels to preserve them, because camels are in no danger when they are in their natural desert elements, and their owner (s) will find them one day, and rounding them up may prevent their owner (s)

// The Messenger of Allah (peace and blessings of Allah be upon him) is the Greatest Imam, the Wisest Judge, and the Most Knowledgeable Mufti

// The conduct of the Prophet – may peace and blessings of Allah be upon him – as a head of state, is only permissible for the ruler to undertake

from reaching them, or them (the camels) from reaching or being found by their owner (s).

However, when the reigns of Uthman and Ali (may Allah be pleased with them) were ushered in, the number of thieves increased and thievery picked up, and not corralling camels that went astray would have exposed them to theft, and the only way to save them was by rounding them up.

In other words, the prohibition by the Prophet (peace and blessings of Allah be upon him) to group together stray camels was a matter of Islamic Legal (Sharia) Politics, and if it had been a general ruling, these two companions would not have gone against this prohibition.

A (Sharia) Policy or Politics is a legislation enacted by the head of state (ruler) for a special circumstance, and for an interest that requires this legislation, up until such time that there is a change in the circumstance, which will only be followed with a change in the legislation.

Third: The Prophet's conduct - may Allah's peace and blessings be upon him - as a Judge:

And his conduct - may Allah's peace and blessings be upon him - by adjudicating the dispute between two in cases of property, sanctity of life, or faith, is considered as the act of a Judge, and the ruling on acting in the capacity of the judiciary differs from the ruling on acting in the capacity of the Imamate (Leadership) and the Promulgation of Islam's message. So acting in the capacity of a judge by the Prophet - may Allah's peace and blessings be upon him - is not a legitimate legal argument to be adopted, unlike the fatwa.

Scholars distinguish between fatwa and the judiciary, both in subject and in description, with many differences between them, the most important of which - as far as our topic is concerned - is that the fatwa is a general ruling that is suitable for everyone who is characterized by that trait, whereas the judiciary is: An adjudication on a particular special incident, and its ruling is limited to that incident.

In other words, the fatwa is legislation for all people, but the judiciary is not legislation, but it is an application of legislation, and an application is always prone to errors. And it is not for a judge to rule on a matter with the same ruling that the messenger of Allah (peace and blessings of Allah be upon him) ruled on with, on the pretext that the Messenger of Allah (may Allah's peace and blessings be upon him) ruled as such [and then he should be followed since he is the Prophet], because the judiciary, as we said, is an application of the legal rulings, and the Messenger of Allah - may Allah's peace and blessings be upon him - in the application of legal rulings is doing a human work, in which he hears the lawsuit and its counter argument, and the evidence, and compares the evidence of each of the two parties, and here perhaps mistakes could occur, and to this

effect the Prophet said, quote, "*[I] am only a human being, and you people have disputes. May be someone amongst you can present his case in a more eloquent and convincing manner than the other, and I give my judgment in his favor according to what I hear. Beware! If ever I give (by error) somebody something of his brother's right then he should not take it as I have only given him a piece of Fire*", unquote. (Reported by Al-Bukhari (H: 6967) and Muslim (H:1713).

An example of the adjudication of litigation is what was narrated by Zubayr Ibn Al-Awwam, (who had quarreled with a man from Al-Ansar - who participated in the Badr battle - about a stream which both of them used for irrigation, and which used to go through Al-Zubayr's land before Al-Ansari's land, and Zubayr took his matter to the Prophet who said to Zubayr, quote:

"[o] Zubayr! Irrigate (your garden) first, and then let the water flow to your neighbor", unquote. This is a ruling and not a fatwa, so it is not a general ruling, because the ruling of the Prophet (peace and blessings of Allah be upon him) is an application of the law, and it is not a legitimate ruling, and as we said that applying the rulings by the Messenger of Allah (peace and blessings of Allah be upon him) is always prone to error.

Fourth: Actions straddling between the above:

There are some actions from the Prophet - may Allah's peace and blessings be upon him - that border on fatwa and (the judiciary), the presidency of the state, or mere habits; so the jurists differed in the judgment derived from them based on their differences in adapting them, and an example of which is the following:

1- The Prophet (peace and blessings of Allah be upon him) may do an act in front of the companions, and some of whom would understand it as a continuous general rule, and some other would understand it as it happened for a reason that has just ended, and consequently such an act would not be required to be abided by his nation, just like Raml in Tawaf in Hajj (Raml in Arabic refers to the practice of walking quickly, lifting the legs forcefully and sticking out the chest while moving the shoulders during Tawaf {Tawaf is to walk around or to encircle something such as the noble Ka'abah in Mecca}), and in this regard, Umar Ibn Al-Khattab (may Allah be pleased with him) said about Raml in Tawaf in Hajj and Umrah, quote: "*[t]here is no reason for us to do Ramal (in Tawaf) except that we wanted to show off before the pagans, and now Allah has destroyed them' and 'Umar added, '(Nevertheless), the Prophet did that and we do not want to leave it (i.e. Ramal).*", unquote. (Reported by Al-Bukhari (H:1605). Similarly, Ibn Abbas was of the same view just like Umar (may Allah be pleased with them), who also argued that the Raml in Tawaf is not

a Sunna (A teaching of the Prophet). (See: Ibn Hajar, Fath Al-Bari (3/471).

2-The Prophet (peace and blessings of Allah be upon him) may actually do something that scholars may differ in adapting it, and some may adapt it as a means of nearness and worship, while others may adapt it as a habit and not a means of nearness, just At-Tahsib in Hajj (Camping at Al-Abtah after departing Mina in Hajj). Ibn Al-Qayyim said, quote: "*[a]nd the salaf [early Muslims] differed on the At-Tahsib whether is it Sunnah or a point of agreement?*", unquote, and therefore they were of two different points of view, one school of thought was of the view that it was part of the Hajj rituals, evidenced of what the Prophet said, quote: "*[w]e will encamp at Khaif Bani Kinana where the pagans (of Quraish) took the oath of Kufr (against the Prophet)*", unquote, [Abu Hurayrah, the Sahihayn (The Two Sahih, Sahih Muslim and Sahih al-Bukhari)]. Others, including Aisha and Ibn Abbas (may Allah be pleased with them), said that it is not a Sunnah, but it is an agreement, and it is a place that the Prophet camped at, quote: "*because it was easier for him when he wanted to leave*", unquote (Zal Al-Mo'ad (1/499-500). See: Sahih Al-Bukhari (H:1589) and Muslim (H:1310-1314).

And also like the prayer's break (sitting of rest) by setting up properly (settling in the sitting position) while praying, which is a light sitting position that the worshipper assumes after the second Sajdah (prostration) of the first Rak'ah (prescribed movements while offering prayers to God (Allah), and after the second prostration of the third Rak'ah, before getting up, and Malik Bin Al-Huwairith saw the Prophet praying and, quote: "*[w]hen he had prayed an odd number of Rak'a, he did not stand up till he had sat up properly*", unquote.. [Reported by Al-Bukhari]. So, is this 'setting position' a part of the prayer session or is it a mechanism related to the body's need?

Some early Muslims adapted it as a part of the ritual prayer, and they saw it as an argument, and they said, quote: "*[i]t is permissible to undertake it*", unquote, and some other said, quote: "*[t]he messenger of Allah undertook it because of his physical body need for it, but it is not a legitimate argument*", unquote.

3-A companion may ask the messenger of Allah (peace and blessings of Allah be upon him) a question, and the Prophet would simply answer with an answer that straddles the fatwa and the judiciary, hence scholars differing in adapting it, such as the Hadith of A'isha who told that Hind daughter of Utba said, quote: "*[m]essenger of God, Abu Sufyan is a niggardly man who does not give me and my son enough; except what I take from him without his knowledge. He replied: Take what is enough for you and*

your son to the extent recognized by the law", unquote. So is this saying from the Prophet - may peace and blessings of Allah be upon him - a fatwa or a judgment?

Some scholars have described it as a fatwa and not a judgment, because the defendant does not exist, and if it is a fatwa, it is then a general ruling, so anyone who wins his/her right or something of the same type can take it back without the knowledge of his/her opponent. Some of them said that it is a judgment, because it is an adjudication of a dispute between two parties, and therefore it is not an argument on which we base legitimate judgments, as it is not permissible for anyone to take his/her right, or something similar to it, if it cannot be taken from the other person without an issued judgment.

4-The Prophet (peace and blessings of Allah be upon him) may say something, and scholars may differ in adapting it, as to whether this saying made by him is said as a head of state, (legitimate sharia policy) or is it a general ruling? Just like when the Prophet said, quote: "*[w]hoever kills someone in battle, having a proof for that, then his goods are his*", unquote. [Agreed upon: Reported by Al-Bukhari (H:3142) and Muslim (H:1751)].

The Hanafis and Malikis believe that it is a matter of legitimate policy, and it is not for anyone who killed another in a war to take his/her spoils based on this saying of the Prophet, unless the head of state declares it, and Al-Shafei and Ahmed believe that it is a general rule, and whoever killed another in a war has the right to take his/her spoils, even if the head of state does not declare it. [See: Ibn Rusud Al-Hafid, 'Bedayut Al-Mojtahid' (The Beginning of the Diligent) - (1/289-290).

And the same goes for the hadith, quote: "*[i]f anyone revives dead land, it belongs to him*", unquote, [Reported by Abu Dawud (H:3074) and it is a Hadith Sahih {Authentic Hadith}]. Abu Hanifa believes that this is a legitimate policy and not a general rule, as it is not permissible to revive without the permission of the Imam, and Al-Shafi'i, Ahmad, Abu Yusuf, and Mohammad ibn Al-Hassan believe that it is a general rule, and revival does not need the permission of the Imam. Conclusion: The Sunnah of the Prophet is a general legal argument for every time and place, if it is for the purpose of promulgating the message of Allah, but what was issued by the Prophet - may peace and blessings of Allah be upon him - as a judge is not an argument for the judge, nor is it against the judge, and what was issued by the Prophet - may peace and blessings of Allah be upon him - as a head of state is not the duty to follow from the head of state, and there is hardly anyone who disagrees with this, but the problem and disagreement here is in adapting what was issued by the Prophet, may peace and blessings of Allah be upon him.

// Acting in the capacity of the judiciary is different from acting in the capacity of the Imamate (Leadership) and promulgating the message of the Al-Mighty Allah

// The Sunnah of the Prophet is a general legal argument for every time and place if it is for the purpose of promulgating the message of the Al-Mighty Allah

The Right to Privacy



Mr. Ahmad Al Hosani
Director of the Notary Department -
Dubai Courts

Privacy has been inherent to mankind, and our sincere true religion dealt with it with the utmost of concerns, as the Al-Mighty Allah says in His Holy Book, quote: “[a]nd do not spy, nor backbite one another”, unquote. [Surah {Chapter 49} Al-Hujurat {The Private Chambers} - Aya {Verse} 12].

And Sahl Bin Sa’d As-Sa’id said, quote: “[a] man peeped through a hole in the door of Allah’s Messenger’s house, and at that time, Allah’s Messenger had a Midri (an iron comb or bar) with which he was rubbing his head. So when Allah’s Messenger saw him, he said (to him), “If I had been sure that you were looking at me (through the door), I would have poked your eye with this (sharp iron bar).” Allah’s Messenger added, “The asking for permission to enter has been enjoined so that one may not look unlawfully (at what there is in the house without the permission of its people)”, unquote

The methods of spying on the private life of others differed at different times, and it started with man resorting to natural obstacles to block the encroachment into the private life of his family, by raising the height of his wall or just closing the windows to prevent his neighbor (s) from seeing the inside of his house, up until the advent of the tremendous scientific progress and modern technology, where it has become easy to invade, penetrate, and break into private lives, even from thousands of miles and kilometers away, and measures such as the wall or closing windows have just become obsolete and were no longer considered as a weapon to preserve and protect privacy.

And under the shadow of scientific progress, it has become possible to track a person regarding all of the activities that he/she performs, and in all the places in which he/she is, and even after he/she leaves such a place, it has become very easy to take pictures of him/her through the heat emitted by his/her body.

And the more technology develops, the greater the extent of the danger it poses to private life, and the media plays a prominent role in this regard, and social media communication has the lion share of it, where information is exchanged from the farthest point on earth to the lowest point of it in split seconds, and the threat to private life has become a weapon in the hands of one category that threatens another, and a tool in the personal sphere of defaming people, or in the field of economics or politics to bring in money, and if a person is at the heart of these circumstances and risks, then the law must intervene to protect his/her private life and his/her right to privacy.

At first, the task of the law was to protect the soul and property of a person, and recognize the right to life, and the integrity of the human body, all while forgetting the moral and spiritual side of persons, and then these stages evolved until the law started protecting people’s feelings, and this extended to include his/her moral being, since privacy is known to the general public through the concept of staying away from the public eye and preserving that which is private, however, such legal protection took it one step further to include, in addition to what is private and secret, that which is going on in public as

long as privacy has been provided, such as if a person whispers in the ear of his/her friend in a public place, then such an act must be covered by legal protection.

It may sometimes be difficult to distinguish between a public place and a private place in order for us to be able to evaluate whether an event falls within the scope of privacy or not, and some legal opinions are of the view that workplaces are considered as private places, where people cannot enter them without the permission of the employer, with the exception of places where the public is allowed to gain access to them, such as: shops, in which a distinction must be made between the place reserved for sale, which the public frequents, and places where the public is not allowed to go to, and that is why the surveillance cameras used by the employer for secret photography are not counted as evidence of a worker’s breach of his/her duties, because the employer has violated the worker’s privacy by installing cameras without his/her knowledge.

And the violation of privacy is materialized in the case of spying on private life, such as the private solitude inside a person’s home, photographing him/her and eavesdropping on his/her personal affairs, as it is considered a violation of his/her privacy as long as the place where he/she is gives him/her the right to be physically alone by him/her self, and violations often occur to people by the media for the purpose of providing excitement to the public, or obtaining material profit, and this happens with artists and celebrities by tracking their news and places in which they spend their vacations, and that is why some opinions were of the view that the right to information does not justify violating a person’s right to tranquility and serenity, such as revealing the place where a person spends his/her vacation, or revealing his/her real name apropos celebrities. Every human being has the right to life and happiness, and to enjoy a safe and tranquil life, and this is only possible by not interfering with other people’s affairs and by not making public the ins of their private lives, as sometimes a person just needs to stay away from people, and live in his/her private solitude away from prying eyes, and will simply not accept that his/her private solitude is invaded or violated.

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The Emirate Woman

Is ambition, grit, and a real engine for development



**Her Excellency Judge
Dr. Hamdah Al Suwaidi**
Judge at First Instance Court,
Dubai

Women are the winning formula of every generation, the true nucleus of the family, and the first school through which the human personality is prepared and developed, and if women are raised well, the whole society will turn out well, and the pious woman is the strong foundation on which a conscious, cohesive society with high values and morals is built. This blessed day, dedicated by Her Highness Sheikha Fatima Bint Mubarak – may God protect her – in appreciation, reverence and love for Emirati women, is ushered in to be celebrated every year under a different slogan that carries sublime meanings within its layers. The slogan of the Emirati Women for this year is “We Collaborate for Tomorrow”, so that our celebration will be based on participation and cooperation to build a prosperous future, through which the people of the United Arab Emirates will enjoy high qualifications and unparalleled abilities.

The determination of Emirati women to stand side by side to men in harmony and in support of them has brought positive changes to the Emirati Society, as the Emirate woman has defied and is still defying the pressures of life, marching steadfastly through them, and even creating happiness in the process, as she endeavored diligently to transition from life’s difficult stages to a life full of success, becoming the real locomotive of change, development and facing the difficulties of the world.

The daughter of the UAE exerted her unrelenting efforts and energy to take care of her children and safeguard her household, and also became an equal partner in managing societies, because of her intrinsic ability to relentlessly assume responsibility and look after society affairs, and she was and still is a first-class decision maker, and no wonder that the reason behind this is the authentic leadership personality that she so innately enjoys, a personality that was planted and cultivated by the concerted efforts of the founder of our beloved country, the late Sheikh Zayed Bin Sultan Al Nahyan, may God have mercy on him.

In fact, the role of Emirati women has been talked about in several forums, as she has been, during times of change, empowered and become consequently perfectly capable at all levels, and by empowerment we do not mean absolute equality between women and men, but what is meant by it is empowerment that honors women and does not insult them, and builds a strong society that is based on morality, science and principles of virtue. At the level of Dubai Courts, Emirati women have had great footprints, roles and achievements, whether at the administrative or judicial levels. and the on-watcher person who watches on and observes the governmental departments and sections in the courts finds that the Human Resources Department, the Strategy and Community Affairs Department, the Communication and Corporate Marketing Department, the Office of the Director General, the Court Affairs Office, the Case Management Department, the Case Preparation Department, the Family Guidance Division, and other ancillary departments that assist the work of the judges,

have a high percentage of distinguished Emirati female employees, and not only that, but also many of the above-mentioned departments are headed by an Emirati female employee, who led and is still leading from the front when it comes to issuing administrative decisions with a high level of professionalism and competence, and we would not have achieved our strategic and societal goals had it not been for those departments, and their unwavering efforts in raising awareness in the society and managing the administrative affairs of the courts.

As for the judicial dimension, nine female Emirati judges have been appointed in several courts, including, but not limited to, the Civil, Commercial, Real Estate, Criminal, and Labor Courts, and the Emirati female judge across the board was distinguished by professionally managing the sessions, achieving the desired goals, which are accuracy and speed at the same tandem time, all while writing judgments with the required high quality, and faithfully adhering to the values and principles of the judiciary, devoid of any absolute personal passion, and steadfastly applying the legal legislation and legal principles in force in the country. On the other hand, the role of the Emirati female employee is not limited to Dubai Courts and judicial work only, but we also have many women who are entrepreneurs, members of public and community-based associations, public councils and as holders of skills that are proudly presented to the Emirati Society.

Last but certainly not least, we emphasize that women are natural partners of men, and Emirati women in Dubai Courts would not have been able to achieve these heights without the support and confidence of the wise leadership and senior management in the courts, and therefore the personal motto of Emirati Women in Dubai Courts is always “By Their Work You Shall Know Them”, and we and everyone who reads this article pledge to continue being wholeheartedly faithful and devoted to the great United Arab Emirates and our noble leaders, so that our Women’s Day Theme “We Collaborate for Tomorrow” will, well and truly, become our North Star for a future that is bright and brilliant, God willing...



Mr. Khaled Al Zarouni
Settlements Officer- Dubai Courts

At-Takharuj in Inheritance

At-Takharuj (Transmission by Dissociation) is considered as one of the consensual contracts regulated by the UAE Personal Status Law in the Text of Article No. (356), of which the first paragraph defines it as “At-Takharuj is an agreement of the heirs that some of them abandon their share in the estate, of which they have knowledge, to the other heirs against a specific consideration”. And the practical reality requires the existence of this contract to prevent signs of disagreement, dispute, and the seeds of discord among the heirs, by reaching a consensual agreement to remove one or the other from the items (assets) of the inheritance of their inheritee/deceased against a specific consideration (compensation) that the heirs agree on, whether it [the compensation, that is] is derived from the assets of the inheritance or from a different source, and At-Takharuj contract can be concluded in relation to all of the items of the inheritance, that the value of which can be determined, whether they are movables or immovables. The heir, as well as the legatee (the beneficiary named in the Will)

can own some items of the inheritance provided that the Will in question include the right of At-Takharuj in its provisions for the benefit of the rest of the heirs or one of them in case of agreement, and it is possible for At-Takharuj to be done regarding one item of the deceased’s inheritance such as a real estate, or the entire share of one of the heirs of the inheritance for the benefit of the rest of the heirs or one of them, even if the deceased’s inheritance is not known [to the heirs, that is], or the inventory procedures have not been completed, however, the law requires that the value of At-Takharuj, i.e., the compensation paid, is known, or the party concerned has knowledge of it and

this knowledge of it caveat is only required when At-Takharuj is done in relation to something that is known from the deceased’s inheritance, whether it is a real estate, a vehicle, or commercial licenses, whereas in the second scenario, namely At-Takharuj concerning the full share of one of the heirs for the benefit of the rest of the heirs or one of them, the Emirati Law did not require to conduct an inventory of the whole items or assets of the inheritance of the deceased as it did not require the knowledge of the assets of the inheritance when At-Takharuj is done in relation to the whole share of the heir. Article No. (594) of the UAE Civil Transactions Law No. (5) of (1985) states that (Transmission by dissociation is the sale made by an heir, after death of the decedent, of his share in the inheritance, to one or more other heirs, in consideration of a determined compensation, even if the assets of the inheritance were not yet specified). At-Takharuj contract is considered as a contract of compromise or reconciliation and one of the exchange trade-offs that is required for the validity of such a contract, in addition to the agreement of the heirs, is the existence of legal competence in the person of the party who is initiating the contract, as only the sane (prudent) person who can make such a legal act and this excludes the lunatic or the person placed under interdiction or guardianship, which makes At-Takharuj contract a contract that transmits property by transmitting the legitimate share of one of the heirs in the inheritance of the deceased to the benefit of another heir in the same inheritance. So, At-Takharuj contract exists in inheritance with the objective of preserving its items (assets), and to preserve family ties and kinship within the one family by reaching a consensual agreement that is accepted by all parties to the contract.