



COURTS ECHO

Semi-Annual - Legal - Judicial

The Role of the Foster Care Committee Its Nature and Its Importance

Judicial Khul' Divorce (Divorce by Relinquishment of Marital Rights)

The Competent Court to Hear Inheritance Claims

Methods and Techniques of Recruitment in Terrorist Organizations

General Secretariat of the Judicial Council of the Emirate of Dubai

Regulation of Judicial Custody (Sequestration) In the UAE Law

Wills of Non-Muslims In the UAE The Issue of the Applicable Law

What is the Law of Evidence? Custom/Usage (Habit)

The Impact of Islamic Jurisprudence In Islamic Financial Banking



Dubai Courts Extends Its Sincere Congratulations



To His Sheikh Highness
Hamdan Bin Mohammed Bin Rashid Al Maktoum
Crown Prince of Dubai

On His Appointment as Deputy Prime Minister and Minister of Defense
And Wishes Him Best of Success in His New Duties



Pro. Saif Ghanim Alsuwaidi
Director of Dubai Courts

Continuous Achievements.. For Global Leadership

Quote: [... for Dubai to become the world's fastest, the best, and the fairest in judicial services in keeping with the highest international standards], unquote. This is the vision and directives of his Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai. With this statement, we present the seventh edition of the "Sada AL-Mahakim (Courts' Echo)" Magazine, which reflects our continued commitment to raising awareness of the importance of the continuous development of the litigation system in the Emirate, in order to enhance confidence in the judiciary in Dubai and support its competitiveness at the global level.

This edition contains a variety of topics that shed light on the modern and innovative strategic plans in 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.

And this helps to achieve the directives of His Highness Sheikh Mohammed bin Rashid Al Maktoum to make Dubai the best city to live in, 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, as the Dubai Courts have obtained the Certificate of Innovative Institution accredited by the Global Innovation Institute (GINI) as the first judicial entity to obtain this certificate at the global level thanks to the concerted efforts of the Dubai Courts team.

And we will not forget the efforts of the Dubai Courts with the society by launching a package of services "FE Alshoufa" to facilitate procedures for senior citizens and people of determination, and winning the second place in the Sharjah Award for Voluntary Work (SAVW) among the best voluntary opportunities makers, and its unrelenting efforts in the field of innovation by winning the "UAE Innovates/2024" Award, for the best innovation in achieving digital leadership through the "IFSAH (Disclosure) Platform", which was developed by the bright minds of Dubai Courts staff.

Last but certainly not least, we hope that this edition of "Sada AL-Mahakim (Courts' Echo)" Magazine will win readers' satisfaction and be a source of enrichment of knowledge for them, as it is rich in its topics and achievements, reflecting the integrity of judges, the efficiency of distinguished staff, and leadership of pioneering leaders.

In conclusion, we extend our appreciation to you all our beloved readers, and we thank the members of the editorial board who are exerting every possible effort to enrich the judicial erudition.

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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:

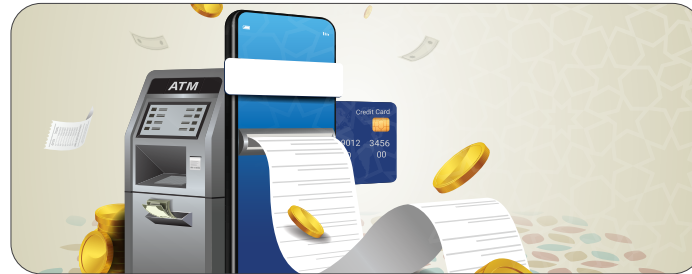


Vision:
We seek to be the first choice of the elite.

- 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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المجلس القضائي
THE JUDICIAL COUNCIL
الأمانة العامة
GENERAL SECRETARIAT

In the Presence of Mohammed bin Rashid.. Five Newly Dubai Courts Appointed Judges Take the Legal Oath

Five new judges at the Dubai Courts took the legal oath at the headquarters of His Highness's Executive Office. His Highness Sheikh Mohammed bin Rashid Al Maktoum wished the new judges success in their work and their new duties, and to contribute to enhancing the efficiency of the judicial system in Dubai, and ensuring the proper functioning and regularity of the Dubai Courts, which contributes to upholding the rule of law and respecting the rights of members of society. The swearing-in ceremony was attended by His Highness Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum, First Deputy Ruler of Dubai, Deputy Prime Minister, Minister of Finance, Chairman of the Dubai Judicial Council, and His Highness Sheikh Mansour bin Mohammed bin Rashid Al

Maktoum, Chairman of the Dubai Ports and Border Security Council. The swearing-in ceremony was also attended by His Excellency Chancellor Essam Issa Al Humaidan, Attorney General of the Emirate of Dubai, Pro. Saif Ghanim Alsuwaidi, Director of Dubai Courts, and Pro. Abdullah Saif Al Subousi, Secretary General of the Judicial Council of Dubai. For their part, the new members of the Dubai Courts expressed their appreciation for the trust placed in them by His Highness Sheikh Mohammed bin Rashid Al Maktoum, stressing their commitment to shoulder the responsibility of upholding the rule of law and consolidating the principles of justice without any delay.

Pro. Abdullah Saif Al Sabousi Secretary General of the Judicial Council of Dubai

His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE -may God protect him- in his capacity as Ruler of Dubai, issued Decree No. (42) of (2024), promoting Dr. Abdullah Saif Ali Al-Sabousi and appointing him Secretary General of the Judicial Council in Dubai; and this Decree was effective from the date of its issuance and was published in the Official Gazette.





Maktoum bin Mohammed Mohammed bin Rashid's Directives for Dubai to be the World's Fastest, the Best, and the Fairest in Judicial Services in Keeping with the Highest International Standards

His Highness Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum, First Deputy Ruler of Dubai, Deputy Prime Minister and Minister of Finance, and Chairman of the Judicial Council in Dubai, chaired the meeting of the Council, as part of His Highness' keenness to follow up on the affairs of the judicial authority in the Emirate of Dubai and keep abreast of the progress of work in various components of its system.

During the meeting, His Highness adopted the annual re-

port of the judiciary for the year (2023), and approved a set of new appointments in the Dubai Courts and the Judicial Inspection Authority, and he also launched the new website of the Judicial Council in Dubai, in response to His Highness's review of the affairs of local government entities related to judicial work, in addition to a number of procedures related to members of the judiciary, where the necessary decisions were taken.

His Highness Sheikh Maktoum bin Mohammed bin Rashid

Al Maktoum said, quote: "[w]e continue our efforts to improve and advance the judicial system in accordance with the highest international standards, in line with the vision and directives of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President, Prime Minister and Ruler of Dubai - may God protect him- for Dubai to become the world's fastest, the best, and the fairest in judicial services", unquote.

His Highness stressed that the increase in performance indicators recorded in the Judicial Authority's annual report for (2023) reflects Dubai's approach to ensure prompt justice and the rule of law among community members, further cementing the Emirate's leading status and maintaining its accomplishments in all areas.

His Highness gave directions for proactive plans and programs to be undertaken to boost the speed, efficiency, and transparency of the judicial system, in line with the advancements taking place in various sectors, and with particular emphasis on ensuring excellent legal and judicial services.

His Highness said in his account on the X Platform, quote: "[i] chaired the meeting of the Dubai Judicial Council, during which we reviewed the results of the Dubai judicial authorities' strategic projects and approved new appointments in the Dubai Courts and the Judicial Inspection Department", unquote.

His Excellency Pro. Saif Ghanim Alsuwaidi -Director of Dubai Courts- reviewed the results of Court Projects, such as: (The Diploma in 'The Judicial Expertise,' the development of the Noqodi Electronic Wallet, the formation of the Board of Commissioners for Dubai's Supreme Court, the establishment of an Administrative Circuit in courts, and the launch of the electronic "IFSAH" (Disclosure) Platform to connect various parties with the aim of facilitating the implementation of judicial rulings issued, and also the development of the Executive Formula, and the launch of a Claims Management Project in Sharia implementation and smart calculation, where he [Pro. Alsuwaidi, that is] pointed out that it has completed (100%) of its approved projects of (2023)). His Excellency also noted that Dubai Courts is currently working on a new set of projects that aligns with the strategic plans approved in Dubai.

Consultant Mohammed Mubarak Al-Sabousi said that the Authorities' projects, which included a number of Business Digitization and Performance Development axes, came as a complement to the approved development plan, which includes the development of the Authorities' structural system and its business governance.

In the context of the continuous development of the servic-

es provided to the members of the judicial authority, His Highness Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum launched the new website of the Dubai Judicial Council, which was launched for the first time in line with his directives to convey the message of the Council to members of the community, and provide advanced technical services to members of the judicial authority.

Pro. Abdullah Saif Al Sabousi, Secretary General of the Judicial Council of Dubai, stressed that the General Secretariat of the Judicial Council, based on the directives of His Highness Sheikh Maktoum bin Mohammed bin Rashid Al Maktoum, has worked on developing the website to include in its public interface identifying data about the Council, its members, and its role, in addition to the annual reports of the judiciary, and it provides (15) various services to members of the judiciary, and a database of all judicial legislation.

The data of the Dubai Courts showed that the value of settlements in lawsuits and applications submitted to them by the end of (2023) amounted to (8.9) billion dirhams, an increase of about two billion dirhams from last year. The year (2023) also witnessed an improvement in the performance of courts at various levels, as the number of cases completed in the Court of Appeal increased from (3,590) cases in (2022) to (10,059) at the end of (2023), and the number of non-criminal cases completed before the Supreme Court increased to (4,921) with an improvement of (37%).

The length of the sentence decreased from the first hearing before the Courts of First Instance by (13%), which was accompanied by a decrease in this period before the same courts from the date of registration from (96) days in (2022) to (85) days in (2023).

As for the execution of sentences, the data of the Dubai Courts showed that the number of execution requests handled during the year (2023) amounted to (884,549), and that the amounts paid in the execution files increased by about one and a half billion, as these amounts reached about (7.8) billion dirhams at the end of the year.

It is noteworthy that the Judicial Council in Dubai aims to consolidate the principles of justice, equality, and the rule of law, and contribute to achieving sustainable development in the Emirate, through the provision of a just and fair, developed and effective judiciary, and aims to implement the Emirate's vision and strategic objectives related to the development of the justice sector, ensuring the independence of the judiciary, and its development, in addition to consolidating the values, ideals, and ethics of judicial work, and ensuring the dignity, integrity, and efficiency of all members of the Judiciary.



Prompt Justice in the Digital Age Dubai Courts Open New Horizons in the Field of Execution of Sentences

In implementation of the strategic plan for the development of the system for the execution of judgments and civil bonds adopted by 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 in the Emirate of Dubai, and within the framework of its commitment to the development and improvement of judicial services, the Dubai Courts announced today the launch of the Program "Tanfeeth+" (Execution+), which represents a qualitative leap in the field of the execution of judicial judgments through digital integration, and enhancing efficiency and transparency in the provision of services.

Through the Program of "Tanfeeth+" (Execution+), Dubai Courts assist the customer in the procedures related to the execution of sentences by providing a flexible, integrated, and clear system that benefits all parties.

His Excellency Pro. Saif Ghanim Alsuwaidi -Director of Dubai Courts- said that this program is part of a comprehensive digital initiative to enhance the efficiency of the judicial enforcement ecosystem, aligning with the vision and directives 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- for Dubai to become the world's fastest, the best, and the fairest in judicial services.

His Excellency also iterated that the Courts have conducted a detailed study to identify the challenges facing the execution processes, and then adopted "Tanfeeth+" (Execution+), as a

set of developmental initiatives to help customers in the procedures related to the execution of sentences in a smooth and transparent manner.

His Excellency Judge Khalid Al Mansouri, Head of the Execution Court at Dubai Courts, pointed out that "Tanfeeth+" (Execution+) reflects the vision of Dubai Courts to be a leading and distinguished courts globally, as it comes within a set of innovative initiatives and projects that aim to meet the needs of citizens and residents in Dubai, and their aspirations for the future, and contribute to providing an innovative environment capable of applying legislation and laws with utmost precision, in addition to providing innovative judicial services to all categories of customers, based on quality, efficiency, and effectiveness as well as improving the efficiency of the execution process.

The strategic plan for the development of the system for the execution of judgments and civil bonds includes a number of initiatives and projects aimed at achieving prompt justice to ensure that everyone entitled to his/her right gets their right as soon as exponentially possible, and enhance the confidence of litigants in the judicial system to contribute to achieving social and economic stability, and enhancing the efficiency and effectiveness of execution procedures, which saves litigants the trouble of waiting and follow-up, and promotes the provision of a digitally integrated work environment that supports the flow of processes and procedures in various organizational units, which reflects positively on the quality of services provided, as well as saving time and effort spent in the execution process.



Dubai Courts Launches a Package of Services "FE Alshoufa" To Facilitate Procedures for Senior Citizens and People of Determination

In furtherance of its commitment to the Sustainable Development Goals (SDGs) and its active contribution to achieving the goals of Dubai's Social Agenda (33), Dubai Courts announced today (Monday) during a press conference held at the headquarters of the Supreme Court in Dubai, the launch of "Fe Alshoufa", which is a comprehensive package of services, to facilitate and ease judicial procedures for senior citizens and people of determination, with the aim of promoting social integration and providing advanced services that achieve social justice and equality.

This step comes as part of the Dubai Courts' strategy to achieve the (SDGs), as the Courts seek to enhance social sustainability by improving the user experience and providing high-efficiency services. And through this package, Dubai Courts seeks to provide a leading model in providing judicial services that meet the needs and aspirations of the targeted segment (s), and contribute to building a more integrated and sustainable society.

On this occasion, His Excellency Pro. Saif Ghanim Alsuwaidi -Director of Dubai Courts- stressed that: Dubai Courts is keen on the continuous development of its services in accordance with the best international practices in order to enhance the confidence of the community, as the facilitation of judicial procedures and the lifting off of the burdens comes to the benefit of senior citizens and people of determination, all as part of this commitment, and our goal behind the launch of this package "Fe Alshoufa" is to give and ensure that those senior citizens and people of determination get the priority in the speed and ease of access to the services rendered. His Excellency added that: The allocation of the "Fe Alshoufa" package of services for senior citizens and people of determina-

tion, comes in commitment to Dubai's approach in enabling this important segment of society to obtain the best and fastest services in the most accessible and convenient of ways, and to the keenness of the Dubai Courts to always put them at the forefront of its priorities, as this step comes within the framework of the vision and strategy of the Dubai Courts, which focuses on innovation and excellence in the provision of judicial services.

For his part, His Excellency Mohammed Al Obaidli, Executive Director of the Claims Management Sector, said that the launch of this package reflects the Dubai Courts' firm commitment to providing distinguished and reliable judicial services, to contribute significantly and effectively to enhancing social sustainability and achieving solidarity and integration in our society, noting the launch of the "FE Alshoufa" package of services as an important step towards establishing the foundations of an advanced judicial environment characterized by ease and high efficiency and has a clear impact on promoting equality and social justice, through distinguished services that contribute to facilitating procedures for senior citizens and people of determination, thus saving them time, effort, and cost.

His Excellency went on to point out that: The new package of services contributes to achieving a comfortable and distinguished experience that meets the aspirations of its beneficiaries and supports the objectives of Dubai Social Agenda (33) in enhancing the social system effectively and proactively in protection, care, and empowerment and confirms the determination of Dubai Courts to continue its community role by providing distinguished services efficiently and effectively.



Dubai Courts Continues its Innovative Journey

By obtaining the Certificate of the Global Innovation Institute (GINI)
As the First Judicial Entity to Obtain this Certificate at the Global Level

Dubai Courts continued its excellence in the field of innovation and development by obtaining the Certificate of Innovative Institution accredited by the Global Innovation Institute (GINI), as it was received by His Excellency Pro. Saif Ghanim Alsuwaidi, Director of Dubai Courts.

This prestigious Certificate is an outstanding achievement that reflects the great efforts exerted by the Dubai Courts in its tireless quest to promote innovation and consolidate its culture in all aspects of judicial work.

Mr. Mohammed Abdul Rahman, Director of the Future Foresight Strategy Department at Dubai Courts, explained that this Certificate comes as the culmination of an inspiring journey of innovation and creativity, where Dubai Courts underwent a comprehensive evaluation process that included (380) criteria.

This Certificate confirms the Dubai Courts' firm commitment to excellence and quality in the provision of judicial

services, as well as its keenness to adopt new practices that promote innovation and leadership in the field of judicial work.

Dubai Courts continues to strive to promote a culture of innovation by launching creative initiatives aimed at improving the services provided to the public, developing the skills of its employees, and enhancing cooperation with various stakeholders.

The Certificate of the Global Innovation Institute (GINI) represents an important step on the path of the Dubai Courts towards a bright future pulsating with innovation and creativity.

The Dubai Courts pledges to continue its unwavering efforts to strengthen its position as a pioneering leader in the field of innovation, which contributes to achieving the vision of the sage leadership to build the Emirate of Dubai and the United Arab Emirates as a global hub for innovation and creativity.



Dubai Courts Develops the Best Innovation in Achieving Digital Leadership

Omar Sultan Al Olama, Minister of State for Artificial Intelligence, Digital Economy, and Remote Work Applications and Director General of the Prime Minister's Office, honored the winners of the "UAE Innovates, 2024" Award at the conclusion of an extraordinary session for the UAE Innovation Month "UAE Innovates, 2024", organized and supervised by the Mohammed bin Rashid Center for Government Innovation, under the slogan "Impactful Innovations", and witnessed the organization of hundreds of events in all Emirates of the country from February the 1st to the 29th.

The closing ceremony witnessed the honoring of the "UAE Innovates, 2024" Coordinators in the UAE Executive Councils, in the presence of a number of officials in federal and local government agencies.

Huda Al Hashimi, Deputy Minister of Cabinet Affairs for Strategy Affairs, confirmed that the main objective of the "UAE Innovates" Award is to celebrate government efforts in the field of innovation and the level of progress in applying innovative practices and methodologies, noting that since its launch in (2021), the Award has been a catalyst for government entities and employees in the UAE at the federal and local levels to promote innovative practices and thinking outside the box in designing unconventional solutions to government work-related challenges.

Her Excellency went on to state that: This year's session of "UAE Innovates" focused on the societal impact of innovation, as part of our efforts to translate the visions of the wise leadership on the importance of promoting innovation and its vital role in bringing change and positive impact to society, and improving the quality of life of all categories, pointing out that the Award has adopted this trend by adding a new category celebrating the best innovation in the societal impact.

The "IFSAH" (Disclosure) Platform, developed by Dubai Courts, won in the Best Innovation in Achieving Digital Leadership Category and the Platform is a system that enables the Execution Court and the Execution Claimant to view the funds and property of the Enforcee, that are registered with all government, semi-government, and private entities, such as vehicles, premium numbers, stocks, bonds, and commercial licenses, then, the seizure and sale procedures will be followed up through the system without the constant need from the customer to submit any application. The winning of the "IFSAH" (Disclosure) Platform was in the presence of His Excellency Judge Omar Atiq Al Marri, Deputy Director General of Dubai Courts, His Excellency Judge Khaled Kansham, Acting President of the Execution Court, and Her Excellency Mrs. Mona Al Mulla, Head of Planning and Development of Systems and Smart Services Division of Information Technology Department.



Dubai Courts Signs Memorandum of Understanding (MoU) With the Data Hub Integrated Solutions (Moro) to Promote Digital Transformation

Dubai Courts has signed a Memorandum of Understanding (MoU) with the Data Hub Integrated Solutions (Moro), with the aim of involving this Data Center in the process of digital transformation within the courts and developing its capabilities, in terms of digital transformation, technology solutions, and consulting.

Pro. Saif Ghanim Alsuwaidi -Director of Dubai Courts- stressed that the signing of the Memorandum was in line with the government's aspirations to reduce procedural bureaucracy, review the processes and procedures within the courts, and raise the concept of re-engineering them electronically.

The Memorandum stipulated that the needs of the courts and the department should be limited to the processes and procedures required for their design and development, taking into account the recommendations for the development of systems and networks and their security, the development of databases and their security, the development of the technical support system, and internal and external service systems.

The Memorandum aims to summarize, analyze, and understand the appropriate technical processes, procedures, services, and solutions that are appropriate to the current and future requirements of the two parties, facilitate further discussions and negotiations regarding their respective business objectives, in addition to studying and analyzing the systems and technical infrastructure of Dubai Courts, and studying the requirements of Dubai Courts from technical projects and the technical transformation plan for systems, databases, Artificial Intelligence (A.I), and future projects.

For his part, His Excellency Engineer Vice Chairman of the Board of Directors for the Digital Sector and CEO of the "Dewa Digital" Group, said, quote: "[w]e are working in accordance with the vision and directives of the wise leadership to enable the digital transformation and sustainability journey in the UAE, and we are pleased to cooperate with Dubai Courts to enhance its march in the field of digital transformation and cybersecurity, which are important elements to enhance the Smart Dubai Initiative, which aims to make Dubai the smartest and happiest city in the world", unquote.



Dubai Courts Concludes Cooperation Agreement With the Supreme Legislation Committee (SLC) to Develop the Legislative Structure

The Dubai Courts have signed a Memorandum of Understanding (MoU) with the Supreme Legislation Committee (SLC) in the Emirate of Dubai, with the aim of enhancing cooperation and integration in the field of developing the legislative structure, achieving justice and transparency in the judicial system, supporting the legal system in the Emirate of Dubai, raising the level of legal and institutional performance, enhancing efficiency, and responding quickly to legal challenges.

The Memorandum aims to support, strengthen, and consolidate the existing strategic partnership relations between the two sides effectively, in order to ensure the continuous advancement and development of these relations, lay the foundations of joint cooperation, follow all means to ensure raising the level of legal, institutional, and research performance, and achieve integration in the partnership relations between them.

Pro. Saif Ghanim Alsuwaidi -Director of Dubai Courts- iterated that the signing of the Memorandum of Understanding (MoU) with the Supreme Legislation Committee (SLC) in the Emirate of Dubai reflects our joint commitment to promote justice and transparency in our judicial system, to develop the legislative structure in the Emirate of Dubai and achieve prompt justice, which will contribute to strengthening our judicial capabilities and improving the legislative system in the UAE, pointing out that the Courts will work to achieve common goals and enhance integration with the Supreme Legislation Committee (SLC), so that this cooperation will have a positive impact on society and the judicial sector in the Emirate, and achieve tangible results through this strategic partnership.

The two parties have reached an agreement to strengthen cooperation between them through a research program proposed by the Supreme Legislation Committee (SLC), with the aim of making

maximum use of judicial efforts in the development of the legislative system in the UAE and the Emirate of Dubai.

His Excellency Ahmed Bin Meshar, Secretary General of the Supreme Legislation Committee (SLC) in the Emirate of Dubai, expressed his pleasure in concluding the Memorandum of Understanding (MoU) with the Dubai Courts and moving forward in the development of bilateral cooperation in a way that reflects positively on the legislative and judicial systems in the Emirate of Dubai in particular and the UAE in general, stressing that this step reflects the keenness of both sides to establish partnership pillars leading to improving legal performance, enriching judicial knowledge, and accelerating the progress of the legislative process.

Bin Meshar explained that the Supreme Legislation Committee (SLC) attaches great importance to developing its cooperation and expanding its strategic partnerships with the concerned authorities, believing in the importance of concerted efforts in achieving the Committee's vision of developing legislation that keeps pace with the times and simulates the future, in support of the ambitious development march of the Emirate of Dubai.

The parties' commitments include exchanging proposals, legal, and technical studies, research, legal, and legislative information, and implementing the research cooperation program in accordance with the agreed mechanisms and controls.

The MoU also includes other areas of cooperation aimed at developing judicial work in the Emirate of Dubai, including the development of the legislative process and legislative and legal education, including the exchange of observations and information on draft legislation, the provision of newly issued legislation, legal research, and participation in seminars, conferences, and workshops. The cooperation also includes developing institutional work, training, and exchanging expertise and legal knowledge.



Achieved Outstanding and Unprecedented Achievements In the Works of the Judicial Expertise in (2023)

Dubai Courts reviewed the successes and achievements of judicial expertise work during (2023) in a detailed report, which showed the completion of more than (9,500) assignments, in an average completion time not exceeding (45) days, reflecting the efficiency and effectiveness of Dubai Courts.

His Excellency Pro. Saif Ghanim Alsuwaidi -Director of Dubai Courts- emphasized the importance of the report, which reflects the excellence and distinction of the litigation system in Dubai, and strengthens its position as one of the most prominent Courts globally. He also indicated that the positive results reflect the commitment of the Courts to achieve justice efficiently and impartially.

Pro. Alsuwaidi stressed that these positive results do not come from a vacuum, but are the result of the unrelenting efforts exerted by the Dubai Courts' teams and experts in develop-

ing and improving judicial expertise processes, and praising the efficiency and dedication shown by experts in performing their tasks, which enhances the reputation of Dubai Courts as a reliable judicial reference.

Alsuwaidi expressed the commitment of the Dubai Courts to continue to improve the quality and efficiency of expertise operations, continuously strive to develop procedures and measures related to the registration and training of experts, and strengthen monitoring and follow-up to ensure adherence to the highest standards of professionalism and integrity.

In another context, the report revealed the percentage of Emiratization in the list of experts of Dubai Courts as it reached (84%), equivalent to (170) national experts out of a total of (202) experts, and the percentage of meetings and inspections that were monitored reached (62.7%) of the total num-



ber of meetings and inspections carried out by experts, and (61) observations were monitored during the field inspection and audit of the premises of experts practicing their work and the licenses of such premises, and those (61) observations in question were followed up on and processed by a percentage of (90%).

His Excellency Judge Khalid Al Mansouri, President of the Execution Court and Chairman of the Expert Affairs Committee at the Dubai Courts, stated that the report contains important data and statistics that support the concerned authorities to make the appropriate decisions necessary to develop the judicial expertise system and meet the judicial authorities' need for judicial expertise in an optimal manner.

In addition, His Excellency Mohammed Abdullah Al-Mohammed, Director of the Experts and Arbitrators Department, con-

firmed that the report included comprehensive information on the training plans that the experts underwent, where (31) training programs were implemented, (848) experts participated in these training programs, with an average of (6.4) training hours per expert, and (16) judges and experts participated in the implementation of the training plan.

The report also contained the data on the qualification of (7) Dubai Courts employees, and listed them as experts in the table, and they were assigned to carry out a total of (195) expertise missions.

The Dubai Courts have also completed the requirements of the Diploma of Work Expertise for the fifth and sixth classes of the diploma program (Judicial Work of Expertise), in cooperation with the Dubai Judicial Institute, and in which (55) participants enrolled.

AED (44) Million Worth of Amicable Dispute Settlements In the Files of the Execution of Personal Status in Dubai Courts



The Personal Status Court in Dubai Courts plays a vital role in promoting justice and family stability in society, and works to achieve reconciliation and consensus between the conflicting parties in family cases, and the Court has achieved a high percentage of settlements in (2023). Hamad Al Janahi, Director of the Personal Status Department at Dubai Courts, explained that the Family Guidance and Reform Department has worked to provide support and social advice to family members who face difficulties and challenges in family relationships, and in this framework, the Court has implemented (1,275) family agreements, (9,056) family cases have been registered, and the settlement rate of cases reached (79.6%), and the number of sessions held reached (26,412) sessions. As part of their tasks of assessing the social status of individuals and understanding the factors affecting their family and social life, four social researchers participated by providing support and guidance to families and individuals facing personal and family difficulties. The Foster Care Committee, as part of its role of managing and following up on custody cases in family disputes, submitted (109) reports related to custody cases, and the Personal Status Settlements Department recorded (1,014) cases, and the value of these settlements was estimated in the status execution files at up to AED (44) million. Apropos family arbitration in the Residential Neighborhood Councils, (37) arbitration sessions were held in the



Dubai Neighborhood Councils, while (1,392) divorce certificates were registered, and (492) agreements were concluded with Zagal regarding the receipt and delivery of documents.

Notary Public in Dubai Courts: The Digital Leap Towards Accessibility and Efficiency in Legal Services



The Notary Public Department at Dubai Courts has played a prominent role in improving its services and developing its systems for all categories of customers, and this comes in line with the government's directives and based on the vision of Dubai Courts (World-Leading Courts), and in close cooperation with internal supporting bodies and strategic partners, to transform electronic notary public services into integrated digital services in all service areas, allowing customers to get an integrated digital service wherever they are using digital identity. For his part, Ahmed Khalaf Al Hosani, Director of the Notary Public Department at Dubai Courts, explained that to ensure easy access for customers to notary public services, (105) private notaries were licensed from among lawyers and individuals available distributed among (73) offices, after passing the training and testing period, and being geographically distributed in the Emirate of Dubai, and granting all law firms service packages to provide accurate

and speedy services to customers, as the total number of notary public transactions by the end of (2023) amounted to (362,082) digital transactions, and the number of private notary public transactions reached (143,321) digital transactions, accounting for (39.58%) of the total notary public transactions. Al Hosani added that some services have been transferred to the "Al Masar Al Saree'i" (Fast Track) Electronic System without human intervention, which allows them to be certified directly and automatically by the Digital Notary Public System, based on the form prepared in advance after verifying the customer's data, and this comes to save time and effort for customers, as these services include (declaration of non-employment, declaration of suretyship, power of attorney for cases, and power of attorney for reviews), and amounted to (7,217) transactions. In terms of customer satisfaction, the satisfaction rate with the services of the Notary Public Department reached (99%) in (2023).



Winning the Second Place

For the Best Voluntary Opportunities Makers in the Sharjah Award for Voluntary Work (SAVW) in its 21st Session

Under the patronage of His Highness Sheikh Sultan bin Mohammed bin Sultan Al Qasimi, Crown Prince and Deputy Ruler of Sharjah and Chairman of the Executive Council of the "Government of Sharjah", Sheikh Mohammed bin Humaid bin Mohammed Al Qasimi, Chairman of the Department of Statistics and Community Development in the Emirate of Sharjah, honored today at the Theater of the Center for International Islamic Heritage Organizations at the Heritage Institute in Sharjah, the winners of the Sharjah Award for Voluntary Work (SAVW) at its (21st) session, numbering (45) winners from institutions and individuals. Afaf Ibrahim Al Marri, Chairman of the Department of Social Services and Chairman of the Board of Trustees, praised the integration of the community with its institutions and individuals in order to compete honorably in voluntary work, stressing that this work embodies the great legacy of the values of the UAE community in the fields of charity and humanitarian work, and the values of giving and tolerance. Dr. Jassim Al Hammadi, Secretary General of the Shar-

jah Award for Voluntary Work (SAVW), indicated that the great contributions achieved in voluntary work reflect the wonderful features of the Emirati society and the principles inspired by the wise leadership, which provided the appropriate conditions for participation in voluntary and humanitarian work, reflecting the distinguished civilized image of the UAE, the world leader in this and other humanitarian fields, led by His Highness Sheikh Mohammed bin Zayed Al Nahyan, President of the UAE - may God protect him - and his brothers their highnesses, sheikhs, rulers of the Emirates.

Dr. Al Hammadi added that the annual celebration of the Sharjah Award for Voluntary Work (SAVW) of a constellation of volunteers epitomizes the wise vision and sage guidance of His Highness Sheikh Dr. Sultan bin Mohammed Al Qasimi, Federal Supreme Council Member and Ruler of Sharjah, who laid the foundations of voluntary work as a basic pillar of human building according to a high-end community system that contributes to achieving compre-



hensive and sustainable development, and with the kind follow-up of His Highness Sheikh Sultan bin Mohammed bin Sultan Al Qasimi, Crown Prince and Deputy Ruler of Sharjah and Chairman of the Executive Council. His Excellency Dr. Abdulaziz Al-Muhairi, Chairman of the Arbitration Committee, described the selection process as being accurate due to the quality of the entries, pointing out that the Arbitration Committee followed the highest standards of transparency and integrity in its evaluation. Her Excellency Fatima Musa Al Balushi, Executive Director of the Sharjah Award for Voluntary Work (SAVW), iterated that the Sharjah Award for Voluntary Work has continued to develop itself into becoming a platform for excellence and inspiration in the field of voluntary work. Sheikh Mohammed bin Humaid bin Mohammed Al Qasimi, accompanied by Her Excellency Afaf Al Marri, Chairman of the Board of Trustees, honored the winners of the (11) different categories of the Award, in addition to those selected by the Board of Trustees of the Award.

The honoring events were initiated by the categories selected by the Board of Trustees, namely, the Veteran Personalities Category, represented in the commemoration of the memory of late Dr. Jamal Bin Obaid Ahmed Al-Baha Al-Ali, represented by his son Mr. Abdullah Jamal Al-Baha, and in the Exceptional Personality Category, represented in the commemoration of the memory of the late Hamda Taryam Matar Omran Taryam Al Shamsi, represented by her father Mr. Taryam Matar Al-Shamsi, and as for the category of those honored for special voluntary work, Mr. Qasim Ahmed Ali Abdullah Al-Marshadi, nominated by the Department of Islamic Affairs and Charitable Activities (IA-CAD), was honored for his voluntary work in the field of funeral services.

As for the winners of the Sharjah Award for Voluntary Work (SAVW), for the Category of the Best Voluntary Opportunities Makers within the Category of Government Institutions, came in the first place, the Department of Awqaf in Sharjah, and in the second place, the Dubai Courts.

The Impact of Islamic Jurisprudence In Islamic Financial Banking

The Adoption of Regulations and Legal Texts that Address Reality



Professor Dr Jassim Ali Al Shamsi
 Chairman of the Board of Trustees of the International Islamic Centre for Reconciliation and Arbitration (IICRA), Member of the Higher Shari'ah Authority at the Central Bank of the UAE, Former Dean of the College of Law (COL) at the United Arab Emirates University



The story of Islamic Banking Construction, as everyone knows, began in the real reality in the United Arab Emirates in the seventies of the last century in the year of (1974) with the establishment of Dubai Islamic Bank (DIB), which operates according to rules that differ in their objective patterns and in their consequences that follow from traditional banks, and those who made sure that this was the case, adopted of their own volition the provisions of Islamic Sharia. And we will see how the law and then the judiciary responded to what was planned by the sharia work at the beginning of this work, and when the Dubai Islamic Bank (DIB) was established, which was the first in this regard, and there was a legislative difference with respect to the work it did, especially since we know that the traditional bank aims to lend and borrow in most of its functions, and therefore it does not have the right to own, invest, and act like a normal or legal person. Consequently, it was necessary to enact a legislation that achieves the purpose of the continuity of this type of banks, so the Federal Law No. (6) of (1985) was issued on Islamic banks, financial institutions, and investment companies. And this has led the judiciary, when faced with disputes in Islamic banking, to resort to rulings that were not what Islamic banking and jurists concerned wanted all along. In consequence of all of that, the pertinent legislations were rolled out based on the need for them in the field of Islamic banking.

And so in the next two Sections the focus will be on:

*The First Section: The Legal and Judicial Situations That Led to the Introduction of Islamic Banking Legislation.

*The Second Section: The Legislations Regulating and Creating the Islamic Financial Banking Sector.

The First Section: (Conditions Creating the Islamic Financial Banking Sector)

As we mentioned earlier, the Islamic financial sector started without there being a legal regulation for it, and here we are not directing inappropriate criticism, but rather ascertaining what this work entails, with its importance and its inception in mind, especially at the local level in the UAE, where we felt the need for such work, as we saw, for example, in the reconstruction sector, where the "Istisnaa" (Custom Order) Contract applies in the relationship between the Bank, and the Purchaser (Al-Mustasni') (Fund Requester who places an order with the Seller {The Manufacturer} to

manufacture certain asset {Al-Masnoo}) and the Contractor.

The Bank here is the Seller (Al-Sani'/ The Manufacturer) regarding that which the other contracting party wishes him to manufacture/construct, and this is a relationship that may be new to the judiciary and how it is addressed in the event of a dispute or disagreement that has been submitted before it. Ergo, it would be wise to show how the judiciary deals with such disputes in a First Topic, and in a Second Topic illustrating the general legislation that paved the way for Islamic banking to operate smoothly and with confidence in what supports it in its banking business and its sharia-compliant products.

The First Topic: (Judicial Handling of Disputes Arising from Islamic Banking Contracts)

We will hereinafter list some judicial rulings issued in the country as examples of this:

1-The Judgment issued in the Appeal Cases Nos. (4 - 5) of (1999) rendered by the Abu Dhabi Court of Appeal on (18/05/1999):



The facts of this case are that a person owns a property in Abu Dhabi, which is in the form of a land, and the owner has applied to Dubai Islamic Bank (DIB) for a loan secured by a mortgage contract for that property, but the Bank has asked to be his partner in the property in return for the money that it will provide to him. Therefore, they have concluded a Diminishing Musharakah (Participation) (DM) Contract in which Articles Nos. (10 - 11) entitle the partner to purchase the entire property and own it within a period of time determined by partnership that ends with a complete ownership. However, the parties disagreed, so the owner of the property applied to the Civil Court in Abu Dhabi, filing a Civil Plenary Case No. (291/98), asking for a ruling in his favor against Dubai Islamic Bank (DIB) to nullify the Diminishing Musharakah (Participation) (DM) Contract and to consider it as if it never was, and the Court as a provisional measure considered the Contract as a loan contract on equal terms, so that the bank can obtain the full value of the loan secured by the mortgage contract registered on the property on (28/04/1994). And the Owner based his requests on the notion that the sale of the property violates the text of Article No. (10) of the amended Local Law of the Emirate

of Abu Dhabi No. (11) of (1979); and therefore the Sales Contract concluded with the Defendant (Dubai Islamic Bank) ought to be considered as null and void. Dubai Islamic Bank (DIB) has responded by stating that the Diminishing Musharakah (Participation) (DM) System is one of the financing methods in the Islamic system, and this participation ends with the customer owning the entire property after purchasing the bank's share. And the Bank has repaid the amount of the Plaintiff's outstanding indebtedness in favor of Dubai Islamic Bank (DIB), amounting to two million three hundred thousand dirhams, and the Bank has paid its share according to what is stated in the Contract, and that such Contract is a Participation one and not a Sale or Purchase. On (7/12/1998), the Court of First Instance ruled that the Contract dated (1/05/1995) and concluded between the two parties to the dispute was a loan contract with an interest of (12%) from the date of commencement of the Contract, with the Bank continuing to collect the rent of the villas discounted from its dues with the Plaintiff, who is obligated to repay the loan amount. However, both parties were not satisfied with the ruling, so they appealed it. The Appellant (The Owner of the Property) request-

ed that the legal interest rate should not exceed (9%) until payment date, and that payment should be made within eight years. In its appeal, the Bank requested the canceling of the provision paragraph describing the Diminishing Musharakah (Participation) (DM) Contract that ends with a complete ownership as a loan contract, specifying that it is indeed a Diminishing Musharakah (Participation) (DM) Contract that ends with a complete ownership, based on the fact that the ruling violated Article No. (3) of Law No. (6) of (1985) on Banks, Financial Institutions, and Islamic Companies, and on the fact that the ruling conflated the issues of sale, participation and mortgage, with capital and loan, and violated the requirements of the Islamic Sharia, in the Qura'an (Holy Book of Muslims) and the Sunnah (Practices, actions, and sayings of the Prophet Muhammad {peace be upon him}), concerning the right to fulfill covenants and contracts, and that the decision of the Head of State was to prevent the sale and purchase of real estates, and that the subject of the lawsuit is the Contract of Participation and not the Sale one. And although the Court of Appeal concluded that it is an Innominate Contract, where such contracts become a mixture of Nominate Contracts such as sale, lease, company, mortgage, as well as the promise of sale, the fact to the matter is that it is a contract that is in no violation of the rules of Islamic Sharia, because it is the result of fiqh (jurisprudential) studies and fatwas (edicts) issued on the occasion of the establishment of Islamic banks, due to the need for this type of banks for contracts that are different from the contracts that are customary in ordinary banking transactions, which are mainly based on dealing with usurious interest ⁽¹⁾.

2-Appeal No. (669) of (2015) - Higher Federal Commercial Court, Abu Dhabi at a Wednesday May 18, 2016 session (Lack of knowledge of the accounting expert in Islamic finance, led the Court of Facts to make the same mistake):

-The facts with regard to the Losing Party, the Appellee (Respondent), and other papers, indicate that the Appellant, Abu Dhabi Islamic Bank, having filed case No. (2014/20) - Commercial Plenary Court Fujairah, in the face of the Appellee (Respondent) to claim an amount of (1,312,424.48) dirhams including the fees and expenses on a

bond, that this represents a debt that was incurred by him as a result of Murabaha Facilities (Cost-Plus Financing) (Murabaha Sale/Cost-Plus Sale), which he obtained and then stopped paying without a legitimate reason.

The First Instance Court assigned an expert who filed his report, and then ruled in a session on (14/12/2014) to oblige the Defendant to pay the Plaintiff an amount of AED (785,560.61), and then the Plaintiff Bank appealed this by Appeal Case No. (8/2015), and the Court of Appeal ruled to carry out the expertise again through a second expert who in turn submitted his report, in which the Court was presented with two options:

The First Option: By virtue of implementing the agreement signed by both parties, the outstanding debt is AED (1,537,867.70).

The Second Option: Limiting the debt in the due payment to the amount of AED (949,356.60), so that the contracting party would not bear the profit installments for the entire duration of Murabaha (Cost-Plus Sale).

The Court of Appeal took the second option, and amended the appealed judgment by obliging the Defendant (Respondent/Appellee) to take the amount of AED (949,356.90). The Bank appealed against this ruling by way of appeal in cassation, and presented the case file to the Court's overseers in an advisory room, who deemed it worthy of consideration and scheduled a pleading session for it. And since what the Appellant claims against the contested judgment is its violation of the law, and what is stated in the pertinent documents and its violation of the terms of the Murabaha Contract (Cost-Plus Sale), and that it has drifted behind the second expert who ingratiated himself in a legal issue related to the effect of the contract, and the resulting rights and obligations of both contracting parties, as he proposed to deduct part of the profit installments from the outstanding debt, in the event that the subject is related to a contract of sale by Murabaha (Cost-Plus Sale), and since the profit installments calculated in the debt due to the Seller's Bank are part of the price, and they may not be abandoned, which was what caused the Court to violate the terms of the Contract, and tainted its verdict to be in violation of the law, and that which is stated in the pertinent documents, therefore, such verdict must be overturned.

And since this illustration is on point, because the

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The Diminishing Musharakah (Participation) (DM) System is one of the financing methods in the Islamic system, and this participation ends with the customer owning the entire property after purchasing the bank's share.



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The legislator in the Emirate of Dubai has introduced regulatory rules on which Islamic banks and other public financing companies authorized to lend or finance customers and help them purchase a certain commodity are all based.

contract concluded is valid between the two parties, and its conditions and pillars of (Capacity to Contract, Offer and Acceptance) have been completed, and since its Place of Contract is lawful and executable and is therefore considered as (pacta sunt servanda) and is binding upon contracting parties, and takes the place of law between them, and this is required, then, it was decided that the Murabaha Contract (Cost-Plus Sale), which has become popular and circulating in the Islamic financial industry, is in fact sale by the Financing Bank at the price of its purchase, with the addition of a previously specified profit margin, rendering it as debtor of its price, including the profit percentage, as it is an integral part of the price owed to the Seller Bank, after it fulfilled its obligation to transfer the asset/product sold to the Buyer, and it is not permissible to reduce it from the price without the Seller's consent under any pretext whatsoever, and if the contested ruling has contradicted this opinion, and adopted the second option proposed by the expert who gave his opinion on the issue of fairness, and proposed not to calculate profit installments on the rest of the Murabaha period, thereby violating the terms of the contract, and involving himself in a legal issue that is in the pure jurisdiction of the Court,

then, such contested ruling is tainted by violation of the law and what is stated in the pertinent documents, which therefore necessitates its revocation, without the need to search for any reasons.

3-From the Rulings of the Supreme Court in Dubai: Summary of the Rule: (Islamic banks and finance companies and the nature of lease that ends with ownership).

Failure of the Buyer or the Customer to fulfill his obligation to pay the rental allowance to the contracting party, the effect of which is for that party to request the performance of the contract in kind or request its termination with compensation, if necessary.

The year of the rule is (2014), and the series of the rule is (629), and according to the legal precedents of the present Court that the legislator in the Emirate of Dubai has introduced regulatory rules on which Islamic banks and other public financing companies authorized to lend or finance customers and help them purchase a certain commodity are all based, and this is through introducing and activating new systems to avoid RIBA (Usury) that results from the loan with interest, and what was raised around it about its permission, prohibition,



liberalization, or criminalization, and one of these rules is the Sale of Murabaha (Cost-Plus Sale) or what is called the "Mawada Sale" (Selling by Promise), and it also includes the rule of Financial Leasing, or what is called "Ijarah Mawṣūfah fi-al-Dhimmah" (Forward Lease) or Lease Contract Ending in Ownership, which creates a partnership relationship in specifying the financier and the client. The financier finances the value of the commodity and specifies the installments of its price for the customer in the form of lease installments, with a promise to sell and buy from both parties after the end of payment by the Customer or the Buyer for all installments, and the contract is then registered in full with the Land Department in the name of the Customer free of the phrase that states that ownership of the property is established at the end of the lease contract that ends in ownership, which was previously contained in the Contract in the records of the department. However, if the Buyer or Customer does not fulfill his obligation to pay the rent to the party with whom he contracted for financing, then the latter will reserve the right to either request the implementation of the contract in kind, or request its abrogation and ask for compensation, if there is a reason for it.

4- Dubai Supreme Court:

Rule No. (2018), Rule Serial No. (434)

The Rule: The legislator, having authorized the sale of future things in Article No. (202) of the Civil Transactions Law, it also regulated the provisions of the "bai-salam" (Advance Payment Sales/ Forward Sale) or (Payment in Advance), which is a type of such sales in Articles No. (568 to 579), defining it as the sale of a thing that does not exist in particular at a price that is immediately received, provided that the thing exists and is delivered to the Buyer in a known date, and the contract is considered as valid if the sold item is of the type of property that is usually available in the future at the time of delivery, and if its type, kind, and description are known by quantity, weight, or number, and if its quantity and description can be determined by illustration, such that this only allows for slight variation or discrepancy, and if there is a massive discrepancy, the sale is considered as invalid and the Law allows the Buyer to suspend payment of the price on condition for a period of no more than three days. The "bai-salam" (Advance Payment Sales/Forward Sale) or (Payment in Advance) is stated in the Explanatory Memorandum, and its lawfulness is

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The financier finances the value of the commodity and specifies the installments of its price for the customer in the form of lease installments, with a promise to sell and buy from both parties after the end of payment by the Customer or the Buyer for all installments.

“The merchant may not have enough money in his trade, so he resorts to selling his goods that are not present.

stipulated in the Holy Qur'an with the Al-Mighty Allah saying, quote: "[o] believers! When you contract a loan for a fixed period of time, commit it to writing", unquote, (Al Baqarah {The Cow} Surah {Chapter}, Ayah {Verse} No. (282)), and in the Hadith (Saying) of Prophet Mohammad (may peace be upon him), who said, quote: "[w]hoever pays in advance the price of a thing to be delivered later should pay it for a specified measure at specified weight for a specified period", unquote, and with this the "bai-salam" (Advance Payment Sales/Forward Sale) or (Payment in Advance) was permitted, and also the legitimacy of this sale was proved unanimously because of the need for it. The wisdom of this type of sale, which is derived from the provisions of the Sharia, is to facilitate people in their transactions and take into account their needs and support them economically, because the merchant may not have enough money in his trade, so he resorts to selling his goods that are not present, similarly, the buyer also benefits from reducing the price, as the price he offers to the merchant seller for the deferred commodity, is usually lower than if he bought a present commodity from him.

The Second Topic:

General legislation paving the way for and supporting Islamic banking (Federal Civil Transactions Law of the United Arab Emirates)

If it were not for the existence of this law, Islamic Banking would have encountered many difficulties and hardships in proceeding with the development of banking products on which it relies in its work, and it would have faced many obstacles, and whoever looks at the legal treatment in this Law, will realize that it always relies in its texts on Islamic legal rules.

Almost all or most of the texts, as indicated in the Explanatory Memorandum of the Law, have their origin in Islamic jurisprudence, and such Law did not stop there; as it incorporated at its beginning Fiqh (Jurisprudence) rules, to refer to them in the interpretation and construction of texts and their application to the facts taking place between the contracting parties.

And in the first text, it is stated that if there is no provision in this law governing an issue, then the matter will be referred to the most appropriate

solutions under Islamic Law, and the most appropriate solutions are then taken into thorough consideration according to the doctrines that this said Law mentioned, and if we return to the Explanatory Memorandum, we will find that the second Article of it is concerned with understanding, interpreting, and explaining the text by referring to the rules and principles of the Islamic Jurisprudence (Fiqh) ⁽²⁾. It is stated in the General Theory of Obligations (Sources of Obligations) that a contract may be valid, void, or corrupt as it is stipulated in the Islamic jurisprudence, and it is also stated in this General Theory of Obligations the Provisions of the Contract, the Suspended Contract and the Non-Binding Contract, and it also mentioned the Options that are stated as they are in Islamic jurisprudence, such as the "Khiyar-ur-ru'yah" (Commodity's Sighting Choice), the "Khiyar Al Shart" (Option by Stipulation) or (Condition Option), the "Khiyar al-'Ayb" (Option Due to Defect), and the "Khiyar Al Ta'ayeen" (Option of Itemization) ... etc., and the Benefit Act and the Damage Act in the Effects of the Contract, and it also mentioned the Undue or Undeserved Item according to the provisions of the Islamic Jurisprudence, in addition to the "Fadalah" (Agency Without Authority) (Negotiorum gestio), and when it mentioned the types of the contracts, it paid attention to the Contract of Sale, and it illustrated its pillars in accordance with the provisions of Sharia apropos the (Offer and Acceptance, the Capacity of the Contracting Parties to Contract, and the Place or Object of the Contract), and that it is not permissible to enter into a contract the Place/Object of which is unlawful, and it made as a baseline rule the compulsion to perform the contract as it is illustrated in Islamic Jurisprudence, and a contracting party may be dismissed by mutual consent, and in the case of annulment of the contract, the price is returned, and not compensation in kind, as is the case in the case of "Al Istihqaq" (Entitlement) on the contract (When after the sale, it turns out that a third party has a right to the sold item, regardless of its type).

The Explanatory Memorandum also explained the rules and provisions of the "bai-salam" (Advance Payment Sales/Forward Sale) or (Payment in Advance) Contract in Articles Nos. (568-579), for example, and touched on Sales as they are in the provisions of Islamic Jurisprudence and its rules,



and the Theory of the Relative Nullity of the Contract was not applied as it is in traditional jurisprudence ⁽³⁾, and the legislator touched on the Sale of "Bay' al-juzaf" (Sales of Unascertained Goods/Sale Without Estimation) and the "Bay' al-ajal" (Deferred Sales/Term Sales) in Articles Nos. (582-583), and the "bay-al-inah" {Assisted Sales/Sale by Sample} in Article No. (584), and it is a Sale 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...etc.

The Explanatory Memorandum also explained the provisions of the loan, and it excluded the rules of RIBA (Usury) and stipulated that it was not permissible, and it also stipulated how to conduct "Al Takharuj" (Mutual Withdrawal) between the contractors, or to whom the money was transferred. The Explanatory Memorandum based its theory on the non-obsolescence of the contract in the acquisition of rights and property, so that the rights would not be lost, and in that it adopted the Theory of Not Hearing the Lawsuit, and it arranged with the Lease Contract the Contract of "Al-Musaqah" (Contract to perform work on another's agricultural land in consideration of part of the crop) (Crop Sharing), "Al-Muzara'a" (Share Cropping Contract) and Lease of Agricultural Land (Articles Nos. 797 to 837).

In the Second Chapter of the Ownership Contracts, the legislator also referred to the Company, including the "Business Company/Corporation", which it defined in Article No. (683) of the Law as per the following: (A business company is a contract whereby two or more persons agree to be bound to carry out work and to be liable therefore to third parties against payment of consideration, whether they share equally or unequally in the distribution of the work, and provided that the work must be of a single nature and inseparable).

In "Al-WajooH Company" (Speculative Venture Partnership) (Article No. 691), is a contract whereby two or more persons agree to purchase property on credit in accordance with the standing each of them has, then to sell it, and to participate in the profits. The partners shall be liable for the price of the property purchased each according to his share in it, whether they carry out the purchase jointly or singly.

And also the "Mudaraba Company" (Article No. 693), which is a contract whereby the person owning property puts in the capital, and the mudarib puts in effort or work, with a view to making a profit. It shall not be permissible to stipulate that the mudarib shall be liable for the capital if it is lost or wasted through no wrongful act on his part. (Article No. 696).

The Law elaborated on the rules, stipulations, and conditions in the illustration of their provisions in accordance with the rules of Islamic Law.

The Second Section: (The Legislations Regulating and Creating the Islamic Financial Banking Sector).

“The existence of the Dubai Islamic Bank (DIB), which was established in (1974), has moved the Islamic banking market and created a jurisprudence that specializes in researching Islamic financial products.

Islamic financial institutions must comply with the provisions of Islamic Sharia in their businesses.

The Higher Sharia'h Authority shall undertake higher supervision over Islamic banks, financial institutions, and investment companies to ensure legitimacy of their transactions according to the provisions of Islamic Sharia'h Law.

We have mentioned that the existence of the Dubai Islamic Bank (DIB), which was established in (1974), has moved the Islamic banking market and created a jurisprudence that specializes in researching Islamic financial products.

However, due to the many and conflicting jurisprudence and the need to find a basis for this work upon which these new channels and the new market are based, the UAE legislator sped up the issuance of a Law governing and regulating this banking financial market, hence the issuance of Law No. (6) of (1985).

The First Topic:

(Federal Law No. (6) of (1985) concerning Islamic banks, financial institutions, and investment companies in the UAE).

(Federal Law No. (6) of (1985) concerning banks, financial institutions, and Islamic consulting companies).

With the issuance of this Law, which was a necessity, there has become a legitimate and legal basis for the establishment of Islamic banks, the regulation of their businesses and products, and the definition of what is called an "Islamic Bank" that adheres to the provisions of Islamic Sharia, as stated in its Article No. (1), which stipulated that banks, financial institutions and investment companies, shall mean those whose articles and memorandums of association include a commitment to abide by the provisions of Islamic Sharia Law, and conduct their activities in accordance therewith. According to this provision, Islamic financial institutions must comply with the provisions of Islamic Sharia in their businesses.

The text requires a formal aspect to stipulate in its Articles and Memorandums of Association that this Bank is committed to the provisions of Islamic Sharia and its principles, and failure to stipulate this lead to the non-issuance of a decision to allow the practice of Islamic banking.

From the objective point of view, the application includes peremptory (definitive) and presumptive (indefinitive) judgments, the latter of which are the subject of jurisprudence and the following of jurists for transactions in this era ⁽⁴⁾.

Article No. (2) of the Federal Law No. (6) in its Paragraphs Nos. (3-4) describes the following: (Those banks, institutions, and companies shall

take the form of public joint stock companies, and shall be established in accordance with the provisions of Federal Law No (8) of (1984), and it is stated in Article No. (5) of the same Federal Law No. (6) of (1985), that a Higher Sharia'h Authority shall be formed by a cabinet decision, to undertake higher supervision over Islamic banks, financial institutions, and investment companies to ensure legitimacy of their transactions according to the provisions of Islamic Sharia'h Law, and also to offer opinion on matters which these agencies may come across while conducting their activities. The opinion of the said Higher Sharia'h Authority shall be binding on the said agencies.

This Authority shall be attached to the Ministry of Justice and Islamic Affairs, and the order of its creation was entrusted to the Council of Ministers, and this was done in (1437 A.H - 2016 A.D).

Article No. (6) of the Islamic Banking Law stipulates that the respective Articles and Memorandum of Association of each Islamic Bank, financial institution, and investment company should clearly stipulate that a Sharia'h Supervision Authority shall be formed of minimum three members to render their transactions and practices accordant with the principles and provisions of Islamic Sharia'h Law. The respective Articles of Association of each of these agencies shall determine the way in which this authority shall be formed, and the manner in which it will discharge its tasks and its other terms of reference.

The Second Topic: (The decision to establish the Higher Shari'ah Authority (HSA) and its consequences (Sha'aban 1437 A.H, corresponding to May 8, 2016 A.D) and the resulting effective changes in the market)

when the boom occurred in the increase in the number of established and converted Islamic banks, as well as the establishment of Islamic Windows in traditional banks, along with companies based on Islamic investment, it was then necessary to find a higher authority to supervise them, monitor the health of their work, and help them perform well.

The decision to establish the Higher Sharia'h Authority (HSA) was issued by the Council of Ministers of the United Arab Emirates, on the date that we mentioned, and then its accreditation was issued

in (2017), and its work began in (2018). One of the most important decisions the Higher Sharia'h Authority (HSA) took to regulate Islamic banking operations was to bring all Islamic banks and financial institutions that are under the central bank under one umbrella, by creating the standards of the Accounting and Auditing Organization for the Islamic Financial Institutions (AAOIFI), one of the most prominent international non-profit organizations supporting Islamic financial institutions, and was established in (1991) and headquartered in the kingdom of Bahrain.

(AAOIFI) has issued to the public a total of (125) standards and technical statements, including (61) Sharia standards, (37) accounting standards, (8) auditing standards, (2) ethics charters, and (17) governance standards for the Islamic financial industry, thus, Islamic banking transactions in the UAE have been regulated by these standards, so that the Higher Authority can then research and endeavor in an accurate form, to produce its own standards and appropriate decisions that are in tune with the reality of the UAE.

This was helped by the Laws that were issued after that to regulate the work of the Higher Authority and the Sharia Committees in banks, which are as follows:

First: Federal Law Decree No. (14) of (2018) concerning the central bank and the regulation of financial institutions and activities as amended:

The Law allocated Article No. (16) to the Higher Sharia'h Authority and transferred its subordination to the central bank after Law No. (6) of (1985) made it to be with the Islamic Affairs Sector in the competent Ministry of the Islamic Affairs and Charitable Activities Department in Dubai (IACAD) later on, and it confirmed in its text that fatwas (Edicts) and decisions of the Higher Sharia'h Authority are binding on the internal Sharia'h committees for Islamic financial constructions licensed by the central bank and for the financial institutions to manage them.

Article No. (78) of the same Law provides for Islamic Financial Activities (Scope of Activity), Article No. (79) for Internal Sharia'h Audit, Article No. (80) for the Internal Sharia'h Audit Committee's Report, and Article No. (81) for violations of the provisions of Islamic Sharia'h. So, all this was

an obligation on financial institutions and internal Sharia'h committees in their commitment and in what they do in their application of Islamic banking and their investments in this regard ⁽⁵⁾.

Second: Decree-Law No. (32) of (2021) on Commercial Companies:

The pertinent Article stipulates that Islamic financial institutions are companies subject to this law, and in accordance with it as an activity that applies the provisions of Islamic Sharia'h.

1-Article No. (132) stipulates the Powers of the Constituent General Assembly of Public Joint-Stock Companies in Item No. (6), and its Competence to appoint the members of the Internal Sharia'h Control Committee and the Sharia'h Controller in case they were not appointed by the founders or there was a change on one or all of them.
2-Powers of the General Assembly of the Institution:

* Discussion of the report of the Internal Sharia'h Control Committee.

*Appointment of members of the Internal Sharia'h Control Committee.

Articles Nos. (230-236) regulate the issuance of bonds or sukuk (a sharia-compliant bond-like instrument used in Islamic finance) certificate from Public Joint-Stock Companies ⁽⁶⁾.

Third: Federal Decree-Law No. (48) of (2023) Regulating Insurance Activities:

In this Federal Decree-Law No. (48) of (2023) Regulating Insurance Activities, the Takaful Insurance (A type of Islamic insurance that allows individuals to pool their money together to insure against losses or damages) received attention from the new Insurance Law, which indicates the increasing importance of Takaful Insurance in the UAE society, and a victory for Islamic financial transactions, Chapter No. (14) of which stated regarding the Takaful Insurance Company and what is mentioned in the Law regarding this Takaful Insurance that:

1- The definition of Takaful and the adherence to it according to the provisions of the Islamic Sharia'h, is stated in Article No. (69) which stipulates that the Takaful Insurance Company may not practice insurance business in violation of the provisions of the Islamic Sharia'h and its principles, and stipulates in Paragraph No. (1) of Article No. (71) that

The Takaful Insurance received attention from the new Insurance Law, which indicates the increasing importance of Takaful Insurance in the UAE society.



(The Supreme Sharia'h Board shall set the Sharia'h rules, standards, and principles for Takaful Insurance Companies' businesses and activities).

2. In Article No. (70), the Law recognized the independent legal personality of the Takaful Fund, and this is what the Higher Sharia'h Authority (HSA) was keen on and concerned about in its discussions, deliberations, and the decisions that it reached, and this textual response in the Law is a very advanced step, and a statement of the validity of this legislation in this system of Takaful Insurance, and an expression of who will regulate the contractual and practical relationship in the Takaful Insurance religiously and legally ⁽⁷⁾.

Fourth: Some crucial decisions taken by the Higher Sharia'h Authority (HSA) to achieve the goals of establishing Islamic banking.

1. On December the 10th, 2020, the Central Bank

issued a guidance note regarding the annual Sharia'h report of the Internal Sharia'h Audit Committee, which applies to licensed financial institutions that practice all or part of their businesses and activities in accordance with the provisions of Islamic Sharia'h, and this report, after being approved by the Higher Sharia'h Authority (HSA), so that what is stated in it does not contradict its decisions with which it addresses Islamic financial banks, must be recited at the annual meeting of the General Assembly of the financial institution, and approved by the members of the General Assembly.

2. On December the 10th, 2020, the Central Bank issued a guidance note regarding the regulation of the Internal Sharia'h Audit Committee that applies to institutions licensed by the Central Bank, as this note contains guidance aimed at facilitating the application of the requirements for the development of the regulation specified in the Sharia'h

Governance Standard (Article No 1/3), and that this regulation was made in accordance with the provisions of Islamic Sharia'h, and it includes that Islamic financial institutions have policies and a governance mechanism in order to ensure that the approved regulation of the Internal Sharia'h Audit Committee complies with the requirements set out in the memorandum, the requirements set out in the regulations and standards, and the decisions issued by the Central Bank and the Higher Sharia'h Authority (HSA), and this memorandum gave Islamic financial institutions the right to add other articles to the regulations, provided that they do not violate the requirements stipulated by the relevant regulations, standards, and decisions (Article No. 4).

Fifth: The Standard of Sharia'h Governance for Takaful Insurance Companies:

This is in an effort by the Central Bank to promote the development of Takaful Insurance, and to ensure that its work is carried out efficiently and effectively. And to achieve these goals and objectives, Takaful Insurance Companies must have a comprehensive and efficacious governance framework to strengthen compliance with the provisions of Islamic Sharia'h and ensure its sustainability, and enhance financial stability in general (Article No. 1).

The Third Topic: The Issuance of the Commercial Transactions Law by Federal Law Decree No. (50) of (2022) and its Impact on Islamic Financial Banking.

The promulgation of the Commercial Transactions Law for the year (2022) has had a very significant impact on Islamic banking in the UAE, with its provisions and conditions related to Islamic banking, and it is necessary to implement these provisions in accordance with the Sharia'h perspective and issue the pertinent judgements, and this is not only limited to Islamic financial institutions that are subject to the Central Bank, but extended to include institutions that are not subject to the Central Bank, which are governed by the implementation of Islamic Sharia'h, or just choose Islamic Sharia'h as a main theme that covers their activities (The provisions set out in this Section shall apply to the commercial transactions and contracts to which the Islamic financial institutions are a party) (Ar-

ticle No. 468- Commercial Transactions of Islamic Financial Institutions). Thus, the UAE legislator devoted Chapter Six of Section Three of the Law to the provisions and texts that deal with Islamic finance, and this is the first commercial law that deals with and stipulates the provisions of Islamic finance in the Islamic world and the Arab world, and they have become binding in contracts that are subject to the provisions of Islamic Sharia'h, which are implemented in this framework. Additionally, the judiciary must also respect these contracts and rule on them according to the provisions of Islamic Law, or by reasoning if there is no text within the scope of Islamic legislation.

The First Chapter of this Section provides for general provisions, so that all the financial institutions that we mentioned earlier on are subject to them. And it states that what is meant by Islamic Financial Institutions in the application of the provisions of this Chapter is (each institution which articles of association or articles of incorporation provides the transaction of works and activities according to the provisions of Islamic Sharia'h. The financial institution that transacts certain works according to the provisions of Islamic Sharia'h, by license of the competent bodies, in connection with these works, shall be considered an Islamic Financial Institution) (Article No. 468 of the Law).

In Article No. (470), the Law explained that (The Sharia'h criteria and controls issued or adopted by the Higher Sharia'h Authority provided in the Federal Decree-Law No. 14/2018 shall be the reference in the interpretation and construction of the provisions set out in this Section, in consistency with the provisions hereof).

This means that it is not permissible for the judiciary to interpret these articles outside the standards, decisions, and controls of the Sharia'h Authority, but it is the opinion of the judiciary that if it does not find anything clarifying the text in this regard, as issued by the Higher Sharia'h Authority (HSA), it should return to this Authority to provide it with an interpretation of it in accordance with the said text, otherwise its rendered judgement will be considered flawed in this respect.

Article No. (471) of the Law authorizes the Board of Directors of the Central Bank to issue the regulations and statutes that include the controls and rules of the commercial transactions of the Islamic financial in-

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The promulgation of the Commercial Transactions Law for the year (2022) has had a very significant impact on Islamic banking.



Article No. (471) of the Law authorizes the Board of Directors of the Central Bank to issue the regulations and statutes that include the controls and rules of the commercial transactions of the Islamic financial institutions and Takaful companies.

stitutions and Takaful companies that transact their businesses and activities or a part thereof, according to the Islamic Sharia'h provisions, and licensed thereby, having been approved by the Higher Sharia'h Authority (HSA) provided in Article No. (470) of the same Law.

We see here that although the Regulations of the Commercial Transactions Law were originally issued by the Council of Ministers, or the competent minister, who is usually the minister of economy, the legislator still was of the view that the competence should be assigned to the Central Bank, which is the mandated entity in this regard, as if it chose to give jurisdiction not to the minister of economy but to the Board of Directors of the Central Bank and by the Law, and in thinking so, the legislator is not bypassing the decision of the Council of Ministers in this respect. And it is stipulated in Article No. (472) of the same Law that the following transactions shall be deemed of the commercial financial transactions governed by the Islamic Sharia'h provisions, whenever conducted through an Islamic financial institution, and they are as per the following: (Deposit, Investment Account, Takaful Insurance,

Investment Finance Forms, and any Transaction which any enforced legislation provides that it is governed by the Islamic Sharia'h provisions), and that is why the commercial legislator restricted such transactions to what was mentioned, provided that they were carried out through an Islamic financial institution.

And the question here is: "What if new formulas appear outside the above-mentioned limited enumeration of transactions? Will this restriction prevent Islamic financial institutions from operating in them?" Especially when such transactions were mentioned in an exclusive manner and not by way of example, unless it was possible to include them under Paragraph No. (5), namely "Investments". It is explicitly stated in Article No. (473/1-2) of the Law that the Islamic financial institutions cannot borrow or lend against interest or benefit, in any way. Further, the Islamic financial institutions shall not charge or require interest or benefit on any debt amount which is overdue, including default interest, even if for compensation, and each agreement made to the contrary shall be considered as null and void.

The Editor in Chief of this Magazine is of the view that what is invalidated in these contracts is the interest agreement in such contracts and the claiming of them by way of compensation, unless the interest is the purpose of the contract, then the contract as a whole is invalidated along with every other thing that the parties to the contract agreed upon. Moreover, the legislator included a full chapter in Articles Nos. (475 to 508) of the provisions on the types of contracts and obligations to which financial institutions are party, while tandemly elaborating on and explaining these provisions, with the intended expressed purpose of preventing any clash between the traditional texts and provisions and the provisions of Islamic contracts, and to make things more clear when it comes to the application of such provisions by Islamic financial institutions, and also, in the event of a dispute or disagreement, then the judiciary issues its ruling on it, a ruling that may be different if the dispute is about traditional financial banking, as is the case with late interest or a loan with interest.

Recommendation:

The Editor in Chief of this Magazine would like to recommend that the legislator for commercial transactions should adhere to what the legislator has stipulated in civil transactions, that if there is no text governing the dispute at hand that will let it run its course, then, it, the legislator for commercial transactions, should resort to the prevailing four schools of legal thought (The major Sunni madhahib {Doctrines} of the four Imaams and founders of the schools of Islamic Fiqh) according to the order in civil transactions, starting with the doctrine of Imam Malik bin Anas and Imam Ahmad bin Hanbal, and if it does not find any relevant text, it is then the way of the doctrine of Imam Al Shafi'i and Imam Abu Hanifa, because doing so is more in keeping with unifying the provisions rather than segmenting them, and the same construct should apply to the competent authority tasked with setting standards and controls, to take and adhere itself too to such arrangement.

The legislator has stipulated in civil transactions, that if there is no text governing the dispute at hand that will let it run its course, then, it, the legislator for commercial transactions, should resort to the prevailing four schools of legal thought according to the order in civil transactions.

*** Footnotes**

- (1) See Dr. Jassim Ali Al Shamsi in the Study of the Diminishing Musharakah (Participation) (DM) System that ends with owning the property - a comment on the judgment issued in the Appeals Nos. (4) and (5) of the year (1999), issued by the Abu Dhabi Court of Appeal on (18/05/1999), Journal of Al-Hoqooq (Law), Kuwait University, the second issue, the twenty-fifth year, Rabi Al-Awwal, 1422 A.H (Islamic Calendar), corresponding to June, (2001).
- (2) See Dr. Jassim Ali Al Shamsi in a paper published by the United Arab Emirates University on the Committee of Arabization, Authorship, Translation, and Publication).
- (3) See Dr. Jassim Ali Al Shamsi, "A'aqd Al Baye' Fi Dhaw'i Qanoon Al Mua'amalat Al Madaniyyah Li Dawlat Al Imarat Al Arabiyyah Al Muttahida" (The Contract of Sale in the Light of the Civil Transactions Law of the United Arab Emirates" (A Comparative Study of Islamic Jurisprudence), Publication of the United Arab Emirates University.
- (4) See a paper by Dr. Jassim Ali Al Shamsi entitled "Dhawabit Al Masarif Al Islamiyyah Walmu'amalat Fiha Wifqun Lil Qanoon Al Ittihad Raqm (6) Lisanat 1985 Fi Sha'an Al Masarif Walmua'asasat Al Maliyyaih Walsharikat Al Istishariyyah Al Islamiyyah"

- (Controls of Islamic Banks and Transactions in Accordance with the Federal Law No. 6 of 1985 on Banks, Financial Institutions, and Islamic Consulting Companies), which was presented at the Conference of the Banking Training Institute in Sharjah in (1996) and published in more than one local entity.
- (5) See a paper by Dr. Asiad Al-Kilani presented at the Islamic Financial Transactions Conference Between Legislation and Application entitled "Al Juhud Al Istisna'iyyah Lil Musharre' Al Imarati Fi Tatbeeq Al Mua'amalat Al Maliyyah Al Islamiyyah". (The Extraordinary Efforts of the UAE Legislator in the Application of Islamic Financial Transactions) organized by the International Islamic Center for Reconciliation and Arbitration on (8-9 1445, A.H) corresponding to (21-22) of (2023).
- (6) See Dr. Asiad Al-Kilani (op.cit.).
- (7) (See a paper by Dr. Jassim Al Shamsi on "Tajrubat Dawlat Al Imarat Al Arabiyyah Al Muttahidah Fi Al Ta'amin Al Ta'awuni Al Takafuli" (The Experience of the United Arab Emirates in Cooperative Takaful Insurance) at the Cooperative Insurance Symposium and its Contribution to the Development of the Islamic Economy at Sidi Mohammad bin Abdullah University - Fez, Kingdom of Morocco), (2013).

The Competent Court to Hear Inheritance Claims

According to the Provisions of the Civil Procedure Code



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



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Estate Claims are any dispute between heirs or others related to inheritance and estate claims.

Before identifying the court competent to consider inheritance claims, it should be noted that “Inheritance” is the funds and financial rights that are left by the deceased (Inheritee/Decedent)⁽¹⁾. This means that the estate includes movable and immovable property, whether in the hands of the deceased at the time of death or in the hands of others, such as debt, deposit, or loan, as well as fixed financial rights such as the Right of Diyya (The traditional compensation due for the shedding of blood), the Right of Mortgage, the Right of Kafalah (The guarantee for a loan), the Khiyarul Aib (Right of Defect), the Right of Usufruct, the Right of Way, the Haqq Al-Shurb (The right to obtain drinking water for self and animals from the canal private-

ly owned by someone else) and other rights. As for what is meant by “Estate Claims”, they are any dispute between heirs or between heirs and others related to inheritance and estate claims, and they include civil, commercial, real estate, personal status claims, the Hiba (Gift) or Wills, arising from the right to inheritance or estate or associated with both of them⁽²⁾. As for the court competent to hear inheritance cases, the procedural legislator, in Federal Decree-Law No. (42) of (2022) on the Code of Civil Procedure, having established the general rule on the jurisdiction of the court in whose circuit the defendant's domicile is located, then, this procedural legislator stated that if he “The Defendant” does not have a

domicile in the state, the jurisdiction of the court in whose circuit his domicile or place of work is located will be established⁽³⁾ as determined by the provisions of the first paragraph of Article No. (33) thereof which stated that: (The court, within the territorial jurisdiction of which the Defendant's domicile is located, shall have the jurisdiction over the case, unless the law provides otherwise. If the Defendant has no domicile in the state, the court, within the territorial jurisdiction of which the Defendant's place of residence or workplace is located, shall have the jurisdiction)⁽⁴⁾, and the Decree-Law excluded from this rule cases related to inheritance, making the jurisdiction to consider them in accordance with the

literal meaning of the text falls with the court in whose district the permanent residence of the creditor of the estate or the heir or in which most of the moveable property of the estate is located⁽⁵⁾, where Article No. (34) of the same Decree-Law stated that: (Lawsuits related to estates that are filed before the division by the creditor of the estate or by some heirs against some other heirs are within the jurisdiction of the court in whose circuit his/their permanent residence is located or the court circuit in which most of the estate's moveable property is located in the state), We can draw from the wording of this text the following observations:
First: The new text agreed with the previous text⁽⁶⁾

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Claims related to estates are not subject to the general rule in determining the competent court, which is the court of the defendant's domicile or place of residence.

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The new text added a new criterion for determining the competent court in the consideration of estate claims, which is the court where most of the estate's assets are located in the state.

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It is better not to stick to the literal interpretation of the text and try to achieve the intent of the Law and collect inheritance cases in one court.

that claims related to estates are not subject to the general rule in determining the competent court, which is the court of the defendant's domicile or place of residence.

Second: The new text abandoned the previous criterion, which is the court in whose district the last domicile of the deceased is located,⁽⁷⁾ and introduced a new criterion by making jurisdiction in the consideration of inheritance cases to the court in whose district the permanent residence of the creditor of the estate or the heir or where most of the estate's moveable assets are located, and made these criteria equal from which the plaintiff chooses what he wants to file his lawsuit.

Third: The new text uses the term "Permanent Residence" instead of "Domicile", and although the term residence differs from the term domicile in that residence is the place where a person resides for a period of time without having the intention to stay and continue, while the domicile is characterized by permanence and stability, and since the law has stipulated that residence must be permanent, it, the new text, has then reconciled those two meanings and combined the idea of domicile and residence together. And the Law intended by doing so to take into thorough account the notion that it is common for a person to carry out his financial transactions at his actual place of residence regardless of his domicile.

Fourth: The new text also added a new criterion for determining the competent court in the consideration of estate claims, which is the court where most of the estate's moveable assets are located in the state⁽⁸⁾.

Before explaining the impact of the amendment of the text, it should be noted that the reason that the Law intended to exclude inheritance cases from the general rule and allocate them with a special rule is to collect together all cases related to the estate before dividing them before one court in order to avoid conflicting judgments. And to achieve this purpose, the previous text has taken the standard of the court of the last domicile of the deceased. And what sets this standard apart is that it has made equal all those related to the estate, and they are the creditors, heirs, and others, in addition to taking into account that the court of the last domicile of the deceased is better able to determine the value of the elements of the estate. Given the apparent nature of the phrase of the

current text, we find that the Decree-Law has replaced the term of the "Last Domicile of the Deceased" with the term of "The Court in Whose Circuit the Place of Permanent Residence of the Creditor or Heir is Located", and therefore, each creditor or heir has the right to file a lawsuit at his place of permanent residence, although the place of residence of the creditor or heir has no advantage with respect to the estate and its division, then, of course, the consideration of the place of residence of the creditor or heir may lead to the existence of more than one court competent to hear inheritance cases, given the difference in the place of permanent residence of the creditor or heir, and consequently, it is not possible to achieve the purpose of collecting cases before one court, which may lead to conflicting judgments and harm to heirs and creditors, and others, and increase expenses. Accordingly, and in accordance with the principle of (The criterion in {the construction of} contracts is intentions and meanings and not words and form), it is better not to stick to the literal interpretation of the text and try to achieve the intent of the Law and collect inheritance cases in one court by making the term of "Permanent Residence" belong to the deceased instead of the creditor or the heir.

In addition to the above, the Law has decided on another rule for the court competent to hear estate claims, which is the court where most of the estate assets in the state are located, and it is understood from the literal meaning of the text that the wisdom behind making a court competent in hearing estate cases is the number of assets in the jurisdiction of the court, although the determination of all the majority of the assets of the estate cannot be known except after the pinpointing of its elements is completed, and this matter may take a long time according to the information available to the heirs, in addition to the fact that the criterion for the number of estate assets is not regulated because those assets vary in their importance and value. Besides, logic suggests that the most important factor here is the majority of the estate assets in terms of their value, and stating otherwise makes the court that is competent to hear estate lawsuits as the court within whose jurisdiction the movables are located, because they are naturally more numerous than real estate. Moreover, the Code of Civil

Procedure tried to develop the Third Paragraph of Article No. (9) of the Personal Status Law No. (28) of (2005), which required to bring jurisdiction to any court the presence of an asset of the estate in its jurisdiction in the event that the deceased did not have a domicile, place of residence, or place of work in the state. However, this attempt by the Code of Procedure did not set for us a precise standard, as the text of the Third Paragraph of Article No. (9) of the Personal Status Law, although it did not differentiate between one asset and another in terms of importance and value, was precise in determining the competent court by relying on the definitive formulation that is based on number and quantity, i.e. by expressing the meaning in numbers.

Therefore, the essence of the legal rule included a definitively defined numerical expression, which was missed by the Code of Civil Proce-

cedure, which used a majority term without describing this majority, rendering the text as flawed. Accordingly, the procedural legislator recommended amending the text of Article No. (34) of Federal Decree-Law No. (42) of (2022) on the Code of Civil Procedure and introducing the provisions of the Third Paragraph of Article No. (9) of the Personal Status Law No. (28) of (2005) so that the text would be read after amendment as per the following: (Lawsuits related to estates filed before the division of the estate by the creditor of the estate or by some heirs against other heirs shall be within the jurisdiction of the court in whose district the deceased's last permanent domicile, place of residence, or place of work in the state is located. If the deceased did not have a domicile, place of residence, or place of work in the state, jurisdiction will be for the court in whose district one of the estate's assets is located).

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The Third Paragraph of Article No. (9) of the Personal Status Law was precise in determining the competent court by relying on the definitive formulation that is based on number and quantity.

* Footnotes

(1) Article No. (274) of the Personal Status Law No. (28) of (2005).

(2) See the definitions decided by Article No. (1) of Decree No. (25) of (2023) establishing the Dubai Real Estate Court. One downside of this definition is its long formulation and can be abbreviated as follows: (Civil, commercial, real estate, or personal status applications and disputes, or wills and gifts related to the estate).

(3) This rule seeks to achieve a balance between the positions of the opponents, and it is the Plaintiff who initiates the commencement of the dispute, chooses its time, and compels the defendant to engage.

(4) Which is what the First Paragraph of Article No. (9) of the Personal Status Law stipulated and as per the following: (The court, within the territorial jurisdiction of which the Defendant's domicile, place of residence, or workplace is located, shall have the jurisdiction over the case....).

(5) It should be noted that the application of this exception requires that the claim is actually related to the estate, because if it is not related to the estate, the exception will not apply, for example, if the claim is related to obligations of the deceased that are not transmitted by inheritance or the claim was filed by an heir against another heir and related to the performance of a certain work.

(6) Where it was previously stipulated that (Cases related to

estates filed before division by the creditor of the estate or by some heirs against some other heirs are within the jurisdiction of the court in whose district the last domicile of the deceased is located), followed by the Personal Status Law which provided for the same provision in the first half of the Third Paragraph of Article No. (9), which stated that: (The court in whose district the last domicile, place of residence, or place of work of the deceased in the state is located, through the verification of proof of inheritance, wills, liquidation of estates...).

(7) The domicile, as defined by the First Paragraph of Article No. (81) of the Civil Transactions Law, is (The place in which a person normally resides). The judicature and legal precedents of Dubai Supreme Court has established that in order to be considered a domicile, the place where a person resides must be his residence on the condition of habitation and stability, and a stable residence in a place is evidenced by the circumstances of the situation, the facts of the case, and what was submitted in relation to it. (See: Appeal No. 30 of 2014, Personal Status, Dated Session of 15-4-2014).

(8) The provision on the majority of estate assets is an attempt to develop the Personal Status Law, which, in order to bring jurisdiction to any court, required the presence of an asset of the estate in its jurisdiction in the event that the deceased did not have a domicile, place of residence, or place of work in the state.

What is the Law of Evidence? Custom/Usage (Habit)

According to the Federal Law of Evidence in Civil and Commercial Transactions No. (35) of (2022)



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

Custom: It is the habit of people to follow a certain behavior in relation to a certain issue in their relationships, with their belief that this behavior is mandatory and that material punishment must be inflicted on those who violate it, and thus this habit and this belief creates an unwritten legal rule. The Custom may be (General) (National), i.e. applied throughout the state, or (Local) (territorial), i.e. applied specifically to a particular territory or to a particular profession (Professional Custom), knowing that the (Special Custom) is limited to a certain area or individuals of a certain profession.

In this area, Article No (1) of the Law on Civil Transactions stated that, quote: "... [i]f a custom is particular to a given emirate, then the effect of it will apply to that emirate", unquote.

From the definition we have given of the Custom, it turns out that it is based on two elements: The First Element is "Material", which is achieved by the habit of people for a long time and regularly to follow a certain behavior on a certain issue in their relationships, so that this behavior becomes a normal practice for them. The components of a Customary Legal Norm are usually required to be not contrary to public order or morals. Article No. (1) of the Civil Transactions Law states that, quote: "[t]he legislative provisions shall be applicable to all matters, and in the absence of a text in this Law, the judge shall adjudicate according to the Islamic Sharia'h ... and where no such solution is found, the judge shall decide according to custom, provided it is not incompatible with public policy and morals...", unquote.

The Second Element is "Moral", which is achieved when people have a feeling that they must follow the behavior to which they are accustomed and the need to impose material punishment on everyone who violates this behavior. It should be noted that if there is a Material Element without the Moral Element, that is, the behavior that people are used

to has become a normal practice for them, but they have not developed the feeling that this behavior must be followed and the need to impose material punishment on everyone who violates it, then this normal practice remains just a normal practice and does not rise to the status of a Customary Legal Norm (The Custom), and therefore Custom is applicable because it is a law, unlike a Custom that is not considered as a law.

However, if the will of the contracting parties is directed, explicitly or implicitly, to the application of a certain Custom (Convention Custom), it is then applicable, not because it has become law, but because it has become part of the concluded agreement.

One of the important consequences of the distinction between Custom and Conventional Custom is that the judge is the one who is responsible for proving the existence of a Custom, because knowledge of the law is his duty, unlike Conventional Custom, the burden of proving its existence falls on those who adhere to it.

Custom performs three roles in the regulation of interpersonal relations in society and as per the following:

First: It regulates relationships that have no legislative regulation, and thus performs the function of completing the deficiency of legislation, and this is the "Custom that Complements Legislation", which is considered an official reserve source of Law, which is mentioned in Article No. (1) of the Code of Civil Transactions, which obliges the judge to refer to it to find the legal rule when he does not find this rule neither in legislation nor in Islamic Law.

Second: It clarifies the legislator's intention of some of the terms or provisions that it mentions without addressing their clarifications, and this is the "Auxiliary Custom of Legislation". For example, the legislator used the Custom in Article No. (517) of the Civil Transactions Law in order to determine what is meant by the "Accessories of the Thing Sold", by stating that, quote: "[d]elivery includes delivery of the accessories of the thing sold and of all fixture thereon as well as everything appropriated permanently for its use and everything else which, according to custom, as accessory to the thing sold even if not mentioned in the contract", unquote.

Third: It regulates some relations in a different way from the legislative regulation of them, and this is the "Custom Contrary to the Legislation", knowing

Custom is based on two Elements: The First of which is "Material" and the second of which is "Moral".

Custom is applicable because it is a Law, unlike the Normal Practice that is not considered as a Law.

“The payment of earnest money is evidence that the contract has become final and may not be relinquished, unless otherwise agreed or practiced by custom.”

“As for matters where no particular provision or an agreement between the parties is provided, and without prejudice to the public order, Custom or Normal Practice among the litigants may be used as evidence.”

that there is no room for the Custom to exercise its role that is contrary to the legislation unless and until the legislator allows it, and this is what happens when the legislator provides for the regulation of a certain issue legislatively, and allows the violation of this regulation if there is a custom contrary to it. An example of which is the provision of Article No. (148/1) of the Civil Transactions Law that states that, quote: *"[i]n the absence of a clause to the contrary in the contract, the payment of earnest money is evidence that the contract has become final and may not be relinquished, unless otherwise agreed or practiced by custom"*, unquote.

The provisions of Article No. (885) in the field of the Contractor/Contractual Agreement stipulate that, quote: *"[t]he master is bound to pay the remuneration for the work upon taking delivery of the work contracted, unless otherwise agreed or practiced by custom."*, unquote, in addition to other provisions. Federal Decree by Law No. (35) of (2022), Promulgating the Law of Evidence in Civil and Commercial Transactions, which entered into force on January the 2nd, (2023), has added a new fourth role for Custom as a means of proof, in the Seventh Part, which was entitled: "Custom Evidence".

Article No. (89) – which is almost identical to Article No. (88) of the Saudi Law of Evidence No. (M/43) of (1443 A.H) - stated that, quote: *"[a]s for matters where no particular provision or an agreement between the parties is provided herein, and without prejudice to the public order, custom or normal practice among the litigants may be used as evidence"*, unquote.

It is clear from this text that it is permissible to resort to Custom or Normal Practice to prove a certain fact that is in dispute between the litigants if three conditions are met, namely:

1. The absence of a legal text that specifies a certain means of proof, such as writing or testimony, for example, to prove the fact that is needed to be proved by custom or normal practice, or prevents proving it by custom or normal practice.
2. There is no agreement between the parties on the obligation to prove by a certain means of proof or on the prevention of proof by custom or normal practice. We believe that it is not a requirement for fulfilling this condition that

the agreement should be in writing due to the unconditionality of the text.

It is worth mentioning that Article No. (5) of the same Law – which is identical to Article No. (6) of the Saudi Law of Evidence No. (M/43) of (1443 A.H) - has stipulated that:

1. Where the litigants agree on specific rules of evidence, the court shall approve their agreement, unless their agreement is contrary to the public order.
2. The agreement of the litigants shall not be legally valid if it is not in writing.
3. The custom or normal practice to be proved should not be contrary to public order, and this is an obvious condition.

After we have completed the illustration of the conditions for the application of Article No. (89), we would like to ask the following question: (What is the nature of the proof by Custom or Normal Practice? Is it meant that Custom or Normal Practice plays a role similar to the role played by other means of proof, that is, they are considered as evidence that the opponent adheres to, to prove the fact that he claims against his opponent?) It appears from the text of Article No. (89) that this is indeed what is meant.

Accordingly, if the buyer claims, for example, that he has agreed with the seller that the latter should undertake periodic maintenance of the sold item, but he has not been able to prove this, in this case, if there is a Custom or Normal Practice that obliges the seller to such an obligation, the buyer can invoke them to prove his claim, and if he succeeds in doing so, the judge will rule in his favor regarding what he claimed based on Custom or Normal Practice.

In this regard, Article No. (90/1) - which is identical to Article No. (89/1) of the Saudi Law of Evidence No. (M/43) of (1443 A.H) - stipulates that, quote: *"[a] litigant who relies on custom and normal practice among litigants as evidence shall establish the existence thereof at the time of the incident"*, unquote.

The other party can always push back against this, if he proves the absence of such a Custom or Normal Practice or provides stronger opposing evidence, such as a written evidence.

The Second Paragraph of the same Article -which is identical to Article No. (89/2) of the Saudi Law of Evidence No. (M/43) of (1443 A.H) - stated that, quote:



"[a]ny litigant may challenge the establishment of custom and normal practice among litigants, and may rebut the same by stronger evidence", unquote. It should be noted that according to Article No. (92) - which is identical to Article No. (91) of the Saudi Law of Evidence No. (M/43) of (1443 A.H), quote: *"[t]he court may, where appropriate, assign an expert to verify the establishment of custom and normal practice among litigants, pursuant to the provisions set forth in the Tenth Part of the present Law"*, unquote, and it should also be noted that the existence of a Public Custom contrary to the Normal Practice between the litigants or Special Custom, does not prevent from proving with them, and Article No. (91) - which is identical to Article No. (90) of the Saudi Law of Evidence No. (M/43) of (1443 A.H) - stipulated that, quote: *"[i]n case of conflict, normal practice among litigants shall prevail and special custom shall have priority over general custom"*, unquote.

Finally, we would like to ask: (What is the difference between Custom as a Means of Proof and Custom as a Source of Law?) We believe that the difference between the two cases lies in the presence or absence of an agreement between the parties. In the previous example, if the buyer asks the seller to carry out regular maintenance of the sold item without claiming that there is an agreement between them to do so, but claims that there is a Custom that obliges the seller to such an obligation, the judge will then rule to his benefit regarding what he requested if he finds that there is such a

Custom, and there is no Source of Law ahead of it on this issue, and thus the Custom is a Source of Law and not a Means of Proof.

And this is what Article No. (246/2) of the Civil Transactions Law states that, quote: *"[t]he contract shall not be restricted to an obligation upon the contracting party to do that which is (expressly) contained in it, but shall also embrace that which is appurtenant to it by virtue of the Law, Custom, and the nature of the transaction"*, unquote. One of the consequences of this difference is that the adversary who bases his argument on the Custom as a Means of Proof is the one responsible for proving the existence of Custom, while the adversary who bases his argument on the Custom as a Source of Law is not the one responsible for proving the existence of Custom.

It goes without saying that if the buyer asked the seller to carry out regular maintenance of the sold item without claiming that there is an agreement between them on this, but he claims that there is a Normal Practice -not a Custom- that obliges the seller to such an obligation, the judge will not rule to his benefit concerning what he asked, even if he finds that there is indeed such a Custom, since a Custom is not considered as a Source of Law.

In conclusion, we propose to amend Article No. (89) of the Federal Evidence Law No. (35) of (2022) as follows: "It is permissible to prove by Custom or Normal Practice between the litigants, provided that they do not violate public order and there is no provision or agreement stipulating otherwise".

“The contract shall not be restricted to an obligation upon the contracting party to do that which is (expressly) contained in it, but shall also embrace that which is appurtenant to it by virtue of the Law, Custom, and the nature of the transaction.”

Methods and Techniques of Recruitment in Terrorist Organizations



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The phenomenon of recruiting people to join terrorist organizations has become a concern for the countries of the whole wide world, which has led to its circulation and wide discussion in the international community. This phenomenon came as a result of weakness and imbalance in people in some societies. What is more, it has reasons and motives, including economic and educational motives, and there are also intellectual, psychological, political, and social reasons and motives. So, today we face an important and serious problem of terrorist organizations that are geared towards recruiting people traditionally and electronically, through recruiting certain people, who are meticulously selected according to specific specifications, exploiting their social and family problems, as well as their standing in society, where the reasons for differences in classism, revenge, lack of passion, and contempt are taken advantage of, in addition to the marginalization of personality and self-suffered by individuals in society as loopholes to find an opening and to have control over them. Therefore, the problem of recruitment to terrorist organizations is a major reason for the spread of the phenomenon of terrorism and its penetration into various societies. And to find the optimal solution to combat terrorism and reduce its risks, it is necessary to determine the psychology of such people, and the psychological and intellectual aspects of their exposure to extraneous malevolent influences, and to study the main reasons that push them to join such groups and organizations.

The issue of terrorism is an issue as old as man himself, but with the development of societies and the different eras that came and went, and the development of the means that are used in wars, as well as the development of technology, terrorist organizations have begun to emerge with new ideas and dimensions that they can utilize to destroy the unity of countries and destabilize their security and safety. And from this stand point, we must explain to the reader what is the definition of the concept of "Recruitment in Terrorist Organizations", so that he/she will have the perception and knowledge of the issue, and will be able to ascertain when a person is being recruited or not, without them even knowing that they are being recruited. In the Al-Mu'jam Al-Wasit (The Intermediary Dictionary), (Academy of the Arabic Language: 2004), the word "Recruit" (Yujannid "Verb" in Arabic) comes from the Gerund Noun "Recruitment" (Tajneed "Noun" in Arabic), and an example of which is: "It was announced the recruitment (Tajneed) of reserve soldiers", and it means: "Gather them to face a war or disaster and to be on alert".⁽¹⁾ In Mukhtar Al Sihah (Al-Razi: 1999) (a famous dictionary in the Arabic language), the word "Recruit" comes in the word "Al Jund" (The letters J, N, D in Arabic الجُنْدُ), which means: "The Helpers and the Supporters", and as in the: "جُنْدُ الْجُنُودِ تَجْنِدُوا" (Soldiers are Recruited for Recruitment). And in the Al Hadith Al-Sharif, Prophet Mohammad (May peace be upon him) said, quote: "[a] Arwah Junud Mujannadah", unquote, (The spirits "Al Arwah" are soldiers

(Junud) that are massed armies "Mujannadah"), and the full meaning of the hadith is: (The spirits are massed armies. Those of them that knew one another are friendly. Those that did not know one another disagree)"⁽²⁾.

And in the Book of "Al Musbah Al Muneer Fi Ghareeb Al Sharh Al Kabeer" (The Luminous Lamp in The Strange Explanation of the Great) (Al-Fayyumi: 1987), the word "Al Jund" is defined as: "Jannada Al-Jund" (The helpers and supporters "Al Jund" were recruited "Jannada"). And the word "Al Jund", which is plural in the Arabic Language, has another plural meaning, which is "Ajnad". just like the word "Junud" which is the plural word in Arabic for "Soldiers", and "Jundi" the singular word in Arabic for "Soldier". And the Arabic letter "يَا" (Ya) (which is pronounced "Y" like in the English word 'yellow', and "Y" comes at the end of the word "جُنْدِي" "Jundi" (Soldier)) is what makes a word singular in the Arabic Language, such as the word "Romi" "رومِي" in Arabic (in English it is "Roman"), which ends with the Arabic letter "Ya", hence it being singular (As in one Roman). Additionally, if the word "Al Jund" (which in Arabic written as "الجُنْدُ" and has a "Damma" (◌) on the "J" letter (in Arabic it is the letter jim ج and it is pronounced J like the English J), which is a diacritic mark and resembles an apostrophe, and indicates the "u" sound), has a Fatha (◌), represented by a short horizontal line, signifies the "a" sound, on the same "J" (jim ج) letter "جُنْدُ", this will totally change the whole meaning of the word to a city in Yemen "Janad", instead of (The helpers and supporters)⁽³⁾.

“Al Mujannad” (The Recruited Person) cannot but be a tool that has been controlled by entities through exploiting vulnerabilities.



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The UAE legislator explicitly referred to the definition of the phenomenon of Recruiting People to Terrorist Organizations.

From the Linguistic Definition of the word "Al Jund", it is necessary to know the Terminological Concept of "Al Tajneed". And despite the multiplicity of definitions in this aspect, all of them actually pour into one thought or one meaning, and one of those definitions is that the "[a]l Mujannad" is "The person under examination that has become like a soldier who does everything dictated by his commander, who is the officer who listens to him, that is, the relationship governing the parties has become strong and durable enough to be likened to the relationship of a soldier with his/her officer, which is what distinguishes bilateral relations in the field of obedience and discipline in society"⁽⁴⁾. And by analyzing this definition of "Al Mujannad", we conclude that "Al Mujannad" cannot but be a tool that has been controlled by entities through exploiting vulnerabilities, and employed to serve the "Al Mujannid" (The Recruiter) (with a Kasra (ك) under the Arabic letter (ن) noon in the word "المجنّد" (Al Mujannid), and it is depicted as a small diagonal stroke, represents the "i" sound), and then direct him/her to implement the directives of terrorist organizations.
 (P.S. These Diacritic Marks "Fatha, Damma, and

Kasra" differentiate similar words, support verb conjugation, and enhance reading and writing clarity in the Arabic Language). After exploring the definition of the "Recruited Person" (Al Mujannud) and identifying his/her affiliation with terrorist organizations, and in order to complete the picture, we must explore the definition of a "Terrorist Organization". The UAE legislator, in Federal Law No. (7) of (2014) on Combating Terrorist Crimes, has addressed the definition of a "Terrorist Organization" in Article No. (1) as, quote: "[a] group of two or more persons, acquires legal personality by virtue of law, or exists as a de facto. It commits, participates directly, threatens, intends, plans, attempts, promotes or incites to commit a terrorist crime; whatever the name of this group, its status, the place where it locates, exists or practices its activity; or the nationality of its members or their places of residence", unquote. By analyzing the text of the said Article, it turns out that it is impossible for a Terrorist Organization to consist of one person, and there must be a group that forms it, and this group may consist of two or more, whose purpose is to cause panic and terror in society through the operations carried out by

terrorist organizations, and one of these actions is recruiting people to get them to serve the head of the terrorist group to achieve the goal and purpose of this illegal group. However, with the induction and extrapolation of the above-mentioned provisions of the Law, we found no indication that the UAE legislator explicitly referred to the definition of the phenomenon of Recruiting People to Terrorist Organizations. Nonetheless, the word "Tahreedh" (The Arabic word for "Incitement") mentioned in the aforesaid Article is an implicit reference to the Recruitment of Others indirectly. Be that as it may, the meeting of the Regional Council for the Middle East and North Africa during the period from (26 to 30/1/2016) on (Measures to Prevent the Recruitment of Young People by Terrorist Organizations Around the World), defined "Recruitment" as a "[d]eliberate process, through which young people are restructured in thoughtful and systematic ways and methods, characterized by the power of persuasion according to stages, procedures, and conditions, that make a person voluntarily submit to entering into these terrorist entities".

It is worth noting that the recruited person in terrorist organizations, may be a citizen of the country or foreign fighters, or as some would call them as "Foreign Terrorist Fighters", and the question that would arise in this place would be: (How a foreigner, who is residing outside the country, is recruited?) The answer to this question is as per the following: (Community networks, as well as joining hardline associations and unions, could lead to changing the perception and thought of people, even if they do not practice hostile acts, and the terrorist organizations have worked through the internet, using advanced technology, to control the minds of teenagers and lure them with what they have been deprived of, such as money, affection, education, and other things that may make a person vulnerable at some stage, and these terrorist organizations are also working to prepare fighters and facilitate their travel to countries that they were recruited against to commit their terrorist acts in them)⁽⁵⁾. Having identified the person recruited into terrorist organizations, we should now illustrate the ways and means used by those organizations to control and recruit people into committing terrorist crimes

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One of the most common methods used by terrorist organizations and considered to have real effects on the individual is the "Psychological Methods and Means".



Terrorist organizations work to weaken the individual's sense of belonging to his/her homeland. So, these organizations seek to incite individuals, especially expatriates who are away from their homelands.

of all kinds.

Recruiting people revolves around the fact that terrorist organizations have access to people through the information provided by individuals about themselves in social networks, and there is no doubt that this is considered one of the best means by which to obtain information, and the role of those organizations is not limited to obtaining that information, rather, these organizations would plant agents affiliated with them, whether civilian or military, to search for gaps that can be penetrated, and to reach those who are easily recruited and use various methods and techniques, including:

First: Psychological and Emotional Ways and Methods:

One of the most common methods used by terrorist organizations and considered to have real effects on the individual is the "Psychological Methods and Means".

In the past, when Western countries recruited and trained their spies and agents, these operations required certain psychological skills that must be revealed and refined to be more effective. And at one time, women were often recruited into terrorist

organizations, and it even went further, they were exploited and played on their passion to kill the symbols of their countries, and history testifies to such operations.

Terrorist organizations work to study the situation of society, look for weaknesses and strengths in it, and then harness its youth by using methods that undoubtedly affect the psyche of these people and exploit them to their advantage, as these organizations try to identify people who feel disrespected and unappreciated by those around them, whether at home, school, or society as a whole, and also identify the opinion of individuals who have a sense of belonging, in order to look for an important role for them to play to prove their personality and draw attention to them, and it is usually easy to recruit this category into terrorist organizations, because some people are eager to participate in them, and usually such organizations are able to carry out terrorist operations with high efficiency⁽⁶⁾. In addition, terrorist organizations work to weaken the individual's sense of belonging to his/her homeland. So, these organizations seek to incite individuals, especially expatriates who are away from their homelands, to conspire with them and



exploit the situation of their countries, and the revolutions and disagreements that might be happening in their countries, in order to recruit and harness them to serve them.

One of the methods used by terrorist organizations is the exploitation of religion and the weakness of religious deterrent among some individuals, as this method is considered one of the most dangerous methods, and it is considered as an umbrella under which terrorist organizations take shelter. So, those organizations follow the method of religious deception by exploiting religious instructions to change the thinking of individuals⁽⁷⁾.

Second: Financial Methods and Means:

This method is considered as a deathtrap that a person cannot get out of whenever he/she is showered with the money that he/she has always wished and dreamed of. This approach is considered a weak point in the people whom terrorist organizations seek to recruit, especially in developing and poor countries, as terrorist organizations exploit the financial need of these people to pressure them to work for their benefit. And those organizations often focus on people in young age

groups who have not formed a vision and full and integrated awareness, which makes those organizations able to control them faster under difficult economic conditions.

Those organizations attract those recruits by promising them funding and funds, and the terrorist organization's focus is not limited to this category, but also targets people with prestigious positions in the state, and owners of real estate and property by controlling the most vital places in the state and making procedures difficult for those people, forcing them to submit to those organizations⁽⁸⁾.

Third: Procedural Methods and Means:

The means by which people are recruited into terrorist organizations vary depending on the age group to which the person belongs, as the method used in recruiting children differs from the method used in recruiting young people, and also at the youth level, the method differs whether the recruit is male or female, as well as the methods of recruiting adults⁽⁹⁾.

It should be borne in mind that the recruitment of those people is not done in one fell swoop, but there are rather stages and procedures studied by

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If the target is a specific person, the terrorist organization sends informants, who are people recruited to serve the organization, to find out all the details of this person's life, including his/her identity, family, friends, property, activities, and hobbies.

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The media is always considered the main gateway to terrorist organizations, and contributes to influencing the target audience.

terrorist organizations to control the recruits, and those stages suit and address the minds of those people. And one of the things in which the organizations control different groups of society is the recruitment and exploitation of the elderly in society, as it is well known that those people have respect and status through which it is easy to attract other individuals to those organizations and harness them to serve them.

After recruiting people, each according to his/her age group, the purposes of recruitment vary. At the beginning, the purpose is always to obtain sufficient information about the power of a country and its activity in various fields, political, economic, social, cultural, and others, as the goal pursued by terrorist organizations is to know the information accurately, often called the "Inquiry Stage", and then study that information to enable those in charge and officials in those organizations to make crucial decisions, how to overthrow the state and its members, and harness the recruits to commit crimes and terrorist acts.

For example, if the target is a specific person, the terrorist organization sends informants, who are people recruited to serve the organization, to find out all the details of this person's life, including his/her identity, family, friends, property, activities, hobbies, and other things in which the organization may find a loophole or, as it is called, a "Weakness", to be exploited for the benefit of the organization, and then it is easier for them to target him/her⁽¹⁰⁾. And we measure this matter against the rest of the other matters that terrorist organizations are trying to target and recruit people to carry them out.

Among other procedural methods, the organizations seek to recruit people of various specialties and professions to help them carry out their terrorist acts, for example, the organization focuses on recruiting engineering people to learn how bombs and explosives are made, law people to find out and exploit legal loopholes, or media people to influence people's minds and exploit social media channels, and so on.

And after completing the methods and means practiced by terrorist organizations to recruit and exploit people, it is our duty to indicate the most important methods used by them to achieve the

purpose of their existence, and as it is known that the world and technology are in a rapid and accelerated development, however, this development was not spared from the ills of terrorism, as it was exploited and people's minds were violated through it, to be the easy means by which people are recruited in various countries of the world, transforming recruitment from the traditional to the advanced, and the most important of these methods are:

First: Exploitation of the Media and Social Media Platforms:

The media is a noble profession, and it is considered to have a direct and continuous relationship with the public, as it publishes updates of the latest issues, provides signals and newsletters, and puts the public in the thick of events, as it develops, presents, and explains them to the countries of the whole world without any limitations⁽¹¹⁾. The media is the one that narrows the distances and brings ideas closer in all languages and to all individuals at various levels, and that is why the media is one of the most important methods that are used by terrorist organizations to recruit people and incorporate them in their ranks by influencing the platforms of the target state, and planting informants and recruits in various channels, to make it easier for them to control the minds of individuals, for example: some media propaganda focuses on any terrorist act carried out by terrorist organizations, and embellishes it for the purpose of public education in relation to it.

The media is always considered the main gateway to terrorist organizations, and contributes to influencing the target audience, rather than advertising for the content of the message, and it is known that social media platforms are used by all categories and segments of society, small and big, weak and strong, and therefore it is easy for those organizations to penetrate and control the minds of individuals, exploiting their obsession and passion to pull them to their ranks.

Second: The Exploitation of Parties in the States:

It is clear to the world that in some countries the people are divided into different parties and affiliations, and the leaders of terrorist organizations

seek to exploit the parties and the points of disagreement among them, and then sow the seeds of disagreement and discord and harness them to serve the organization, and then topple the system and symbols of the states.

Third: Exploitation of Associations in the States:

One of the most difficult ways facing any country is the existence of secret societies, although their existence may be legitimate and legal, but they are considered sleeper cells that are just waiting in the wings for someone to wake them up from their slumber to disrupt the security and safety of the state and the integrity of its territory.

It is one of the most difficult and complex methods in various countries of the world, and therefore it is difficult for the security services to infiltrate them especially when they are still in their infancy, as those after all are only terrorist cells whose owners have been recruited to serve terrorist entities and

organizations to overthrow states. That is why those cells work cautiously and secretly to awaken their activity when the time comes. and that is why those terrorist organizations recruit, train, and qualify people to commit the prohibited of acts in the state. On the other hand, and with the development of the security services in many countries of the world, including the United Arab Emirates, the work of those cells has become complicated and difficult due to the state's response to such miscreant practices.

In conclusion, terrorist organizations, time and time again, always try to spread chaos and destabilize national security by recruiting people into the organization, to achieve the goals of terrorists, and recruiting others to form another organization affiliated with the parent organization, or to try to infiltrate a state with strong security, and each of the recruits will try then to recruit the citizens of this strong security state to be in the service of those organizations.

* Footnotes

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General Secretariat of the Judicial Council of the Emirate of Dubai

Providing Administrative and Technical Support to the Judicial Council to Develop the General Policy for the Development of the Affairs of the Judicial Authority in the Emirate of Dubai and Follow-up on its Implementation



Al-Sabousi:

Developing a Technical System for Organizing the Work of the Judicial Council and Converting it to Digital Formats.

Saif:

Enhancing and Increasing Confidence in the Judicial System in the Emirate of Dubai and Reviewing Draft Laws Related to the Judiciary.

Miran:

Providing Support Services to Dubai Courts that Meet the Needs of the Community and Achieve Justice.

Faris:

Developing an Integrated and Progressive Strategy for the Emiratization of the Judiciary.

The General Secretariat of the Judicial Council was established in the Emirate of Dubai under Article No. (7) of Law No. (14) of (2014), which replaced Law No. (6) of (1992) establishing the Judicial Council in the Emirate. In (2021), His Highness Sheikh Maktoum bin Mohammad bin Rashid Al Maktoum, First Deputy Ruler of Dubai, issued a decision approving the competencies of the General Secretariat and the Secretary General of the Judicial Council, provided that they include providing the necessary support to the Judicial Council, to carry out the tasks assigned to it, and these competencies are divided into several fields, some of which include technical work carried out by the Technical Office under the supervision of the Secretary-General, and also include the work and supporting func-

tions of the Council, and the affairs of members of the Judiciary carried out by the Department of the Judicial Council Affairs and the Department of the Affairs of the Members of the Judiciary. During the past period, the General Secretariat has strengthened the governance of its work, both through specialized committees and through regulatory legislation, and two internal committees of the General Secretariat have been formed, one of which is concerned with Human Resources Affairs and the other with Secretariat Budget Affairs. In addition, other organizational decisions were issued aimed at strengthening the work in the Secretariat, such as the decision to adopt the System of Work of the Technical Office, and the System of Confidentiality of Information in the Secretariat of the Judicial Council.

To learn more about the role of the General Secretariat of the Judicial Council and its competencies, and how to enhance judicial work and achieve justice in the Emirate of Dubai, Sada AL-Mahakim (Courts' Echo) Magazine conducted a Journalistic Investigation through which I spoke with:



His Excellency Prof. Dr. Abdullah Saif Al-Sabousi
Secretary-General of the Judicial Council of the Emirate of Dubai



His Excellency Judge Ahmad Ibrahim Saif
Senior Supreme Judge at the Supreme Court in Dubai



His Excellency Judge Ayser Ahmad Fouad Faris
Judge at Dubai Court of Appeal



His Excellency Judge Omar Mohammad Miran
Head of the Technical Office at the Supreme Court in Dubai

Where the work of the General Secretariat, and the work and tasks it performs in support of the Council and the Affairs of members of the Judiciary were highlighted.

The General Secretariat of the Judicial Council (Roles and Tasks)

His Excellency Prof. Dr. Abdullah Saif Al-Sabousi, Secretary-General of the Judicial Council of the Emirate of Dubai confirmed that the General Secretariat of the Judicial Council in the Emirate of Dubai provides administrative and technical support to the Judicial Council to develop the general policy for the development of the affairs of the Judicial Authority in the Emirate, and follow up on its implementation after its adoption, in addition to providing the necessary administrative support to the Committees formed by the Council or its President, following up on the implementation of their tasks, submitting the necessary reports on them, studying draft legislations referred to the Council by the Competent Authorities in the Emirate, making comments on them, and submitting them to the Council, in addition to preparing annual reports on the performance of the Council, and preparing draft resolutions of the Council that will be issued by its President in coordination with the Judicial Authority and its affiliated bodies, and submitting them to the President for approval, and following up on their implementation.

Al-Sabousi referred to the role of the General Secretariat in providing the data and information requested by the Council, in coordination with the Concerned Authorities in the Emirate, preparing the annual budget and the final account of the Council, and submitting them to it for approval, before they are approved by the Competent Authorities in the Emirate in accordance with the applicable legislation in force, preparing regulations on the rules and procedures governing the work of the Council, and submitting them to the President for approval, and preparing studies commissioned by the Council or its President.

Proposing and Preparing Draft Legislation

With regard to the affairs of the Judiciary, the General Secretariat according to Al-Sabousi proposes and prepares draft legislation related to the Judiciary, submits it to the Council and coordinates with the Judiciary and its affiliated bodies to prepare an annual report on its performance and submit it to the Council. In addition to receiving all reports, studies, plans, projects, programs, proposals, and other requests received by the Council from the Judicial Authority and its affiliat-

ed bodies, as well as from the concerned authorities in the Emirate, and presenting them to the Council for guidance as it deems appropriate, and following up on the Council's decisions in this regard, receiving reports submitted to the Council by the Courts and the Public Prosecution on the progress of their work, as well as reports related to their judicial work submitted to the Council by the Judicial Inspection Division (JID), and presenting them to the Council, and receiving requests submitted to the Council by the Judicial Authority concerning the suspension of any member of the Judicial Authority from work, and submitting them to the Council.

Appointment, Re-appointment and Promotion of Members of the Judiciary

With regard to the preparation of rules and standards related to the appointment, re-appointment and promotion of members of the Judiciary, the General Secretariat, in coordination with the Judiciary, evaluates their performance, establishes controls that determine their seniority, and other matters related to them, and submits them to the Council for approval, in addition to receiving reports prepared by the Judicial Inspection Division on members of the Judiciary, and presenting them to the Council for necessary action.

Al-Sabousi also drew attention to the role of the General Secretariat, in coordination with the Judicial Inspection Division, to prepare rules and procedures related to the inspection of members of the Judiciary and the investigation of complaints filed against them, and how to assess their efficiency, in preparation for submission to the Council for adoption.

What also explains its role is receiving requests and grievances submitted by members of the Judiciary, in accordance with the applicable legislation in force, submitting them to the Council for guidance as it deems appropriate, following up on the Council's decisions and preparing schedules for posts equivalent to the posts of members of the Judiciary, for the purposes of appointment to the Judicial Authority, and submitting them to the Council for approval.

His Excellency Judge Ayser Ahmad Fouad Faris, Judge at Dubai Court of Appeal, added a set of other tasks to the tasks of the General Secretariat, which consists of (creating a complete database containing a file for each member of the Judicial Authority, indicating the date of his/her appointment, career progression, experiences, scientific courses obtained, inspection reports on his/her work, and the observations of his/her superiors on the performance of his/her work and career path).

Faris also drew attention to the role of the General Secretariat in setting the appropriate standards, appropriate tests, and conditions to be met in those appointed in the Judiciary and the Public Prosecution, setting the appropriate standards regarding the assignment and secondment of Judges, in addition to setting the appropriate standards and terms of service for the exchange of members of the Judiciary between the Public Prosecution and the Judiciary, and developing appropriate proposals regarding the retirement age of Judges, years of service, and appropriate pensions that preserve the dignity of Judges after their retirement.

According to Faris, one of the tasks of the General Secretariat of the Judicial Council is to develop a vision of the salaries of Judges in order to preserve their independence and the status of the mission they carry out, and to develop an integrated and gradual strategy for Emiratisation in the Judiciary, in addition to developing a comprehensive vision of the training courses that a member of the Judiciary should receive, especially with regard to new matters in the Law, and with respect to organized crime, which includes money laundering, financial and administrative corruption, electronic crimes and others that bring new criminal phenomena to society.

The General Secretariat also coordinates with the Legislative Authorities in order to amend some legislations in line with reality and to complete the legislative shortcomings in some legislations in practice.

Appointment of the Secretary-General of the Judicial Council, and Their Tasks and Competencies

As for the entity responsible for appointing the Secretary-General of the Judicial Council, Al-Sabousi points out that the Secretary-General of the Judicial Council is appointed in accordance with the Provisions of Article No. (14) of Law No. (13) of (2016) on the Judicial Authority in the Emirate of Dubai ("Judicial Authority Law"), by a decree issued by His Highness the Ruler.

And such decree shows that (Resolution No. (14) of (2021) Approving the Functions of the General Secretariat and the Secretary General of the Judicial Council of the Emirate of Dubai), defined the tasks and competencies of the Secretary-General as per the following: (Performing the functions of the Judicial Council Rapporteur, proposing the annual calendar of the Judicial Council meetings, preparing the agenda of the Council's meetings and related documents and approving them by the President, recording the minutes of the Council's meetings and presenting them to the President and the Council for approval, preparing the decisions issued by the



Council, putting them in writing in the approved forms and minutes and approving them, supervising, saving, and archiving their implementation, proposing the organizational structure of the Secretariat, supervising the staff of the administrative and technical apparatus of the Secretariat and following up with them, representing the Secretariat before others, and signing agreements and contracts to enable the Secretariat to perform its functions and powers).

The Secretary-General also chairs a number of Committees formed by the Judicial Council, such as the Committee for the Appointment of Judicial Inspectors by the Contract System.

Channels of Digital Services Provided by the General Secretariat of the Judicial Council

The competencies of the General Secretariat show that there are many services provided by the General Secretariat, whether to the Judicial Council, the Judicial Authority or its members, and the General Secretariat is working to develop channels for providing these services, such as the Judicial Council Website which was launched in (2024), with the aim of introducing the public to the Judicial Council of the Emirate, and its role in following up on the affairs of the Judiciary of the Emirate. Al-Sabousi explained that the launch of the Council's Website included the launch of a number of services provided to members of the Judicial Authority, such as

the service of reviewing the legislation of the Judicial Authority, as well as the service of submitting applications that amount to about (14) types of requests. Al-Sabousi also pointed out that the General Secretariat is currently working on launching a technical project aimed at organizing and digitizing the Council's work, starting from receiving requests for presentation to the Judicial Council and preparing memos, up to the adoption of the Judicial Council's resolutions.

Providing Information, Data, and Studies

On the role of the General Secretariat of the Judicial Council in providing information, data, and studies to the Judicial Council, His Excellency Judge Ahmad Ibrahim Saif, Senior Supreme Judge at the Supreme Court in Dubai, indicated that it plays an effective and important role in providing information, data, and studies, and providing administrative services that would enable the Judicial Council to carry out the competencies assigned to it by law.

General Secretariat and Judicial Authority in Dubai

Al-Sabousi stresses that the relationship between the General Secretariat and the Judiciary is a complementary relationship, where the General Secretariat provides support to the Judicial Authority represented by the Courts, the Public Prosecution, and the Judicial Inspection Division, and this support includes several forms, including: (The preparation of joint studies, the drafting of legislation related to the work of the Judicial Authorities, the preparation of annual work reports, and other work).

There are also many Joint Committees that are formed in coordination between the General Secretariat and the Judicial Authorities, such as Committees related to the appointment of members of the Judicial Authority, the promotion of members of the Judicial Authority, or the preparation of the annual report of the Judicial Authority, and also receiving requests from members of the Judicial Authority, and reviewing the recommendations of their bodies before presenting them to the Judicial Council.

In the same context, Judge Saif spoke, indicating that it [the General Secretariat, that is] is working on coordination between the Judicial Council and the Judicial Authority in all matters related to the progress of its work, preparing studies and proposals that would develop work in the Judicial Authority, enhancing confidence in the Judicial System in the Emirate of Dubai, and review-

ing draft laws related to the Judicial Authority.

The General Secretariat is also the body responsible for receiving requests and grievances submitted by members of the Judiciary, to present them to the Council and follow up on any decision it issues regarding them, and since its inception, the General Secretariat has contributed to the preparation of many resolutions and regulations issued by the Council, including the Judicial Code of Conduct for members of the Judiciary and the standards related to the appointment, reappointment, and promotion of members of the Judiciary, stressing the importance of the General Secretariat continuing in its effective role by contributing to everything that would develop the affairs of the Judiciary in the Emirate in various respects, as well as presenting the requirements of members of the Judiciary to the Judicial Council, and informing members of all that the Council issues of resolutions on the Judicial Authority and its members.

General Secretariat of the Judicial Council of Dubai and Dubai Courts:

His Excellency Judge Omar Mohammad Miran, Head of the Technical Office at the Supreme Court in Dubai, spoke about the pivotal role played by the General Secretariat of the Judicial Council in Dubai in providing support services to the Dubai Courts, which helped to strengthen and develop the Judicial System and raise the level of efficiency and effectiveness, which led to the provision of distinguished judicial services that meet the needs of society and achieve justice.

Joint Projects:

Miran also alluded to the most important joint projects between the General Secretariat and the Dubai Courts, which are in line with the strategic plans of the Emirate of Dubai and they include:

- 1- Developing Litigation Mechanisms, through the project to develop the system for the implementation of civil judgments, as this project contributed to simplifying judicial procedures and reducing routine procedures for the implementation of judicial judgments.
- 2- Providing support in the establishment of the Court of Inheritance.
- 3- Contributing to the governance and accuracy of the execution of arrest warrants and decisions restricting judicial freedom through electronic linking with the Ministry of Interior.
- 4- Establishment of the "Panel of Commissioners" in Dubai Courts.



- 5- Establishment of the “Administrative Justice Department” in Dubai Courts.
- 6- Development of the Electronic Noqodi Wallet.
- 7- Diploma in Judicial Expertise.
- 8- Launching the "IFSAH (Disclosure) Platform" for electronic linking among various entities, in order to facilitate the implementation of sentences issued.
- 9- Claims Management Project in the Legitimate Implementation and Smart Calculation.

Coordination with the Courts Department:

Miran confirms that the strategic role played by the General Secretariat of the Judicial Council, represented in the periodic review of the analysis of litigation mechanisms, and determining the extent of improvement of the Judicial Authority's operations, and the results of the digital transformation of the Judiciary, has led to coordination with the Courts Department to work as a one team, and achieved several results, including: (Raising the degree of transparency in the litigation system, through the periodic publication of court performance reports, lawsuits, and judicial decisions on the official website of the Dubai Courts and the website of the General Secretariat), and thus helped to develop the services provided, and contributed to improving the efficiency of litigation, and ensured the provision of court services that are governance-based and able to adapt to changes in the legal and social environment in the Emirate.

Handling Complaints:

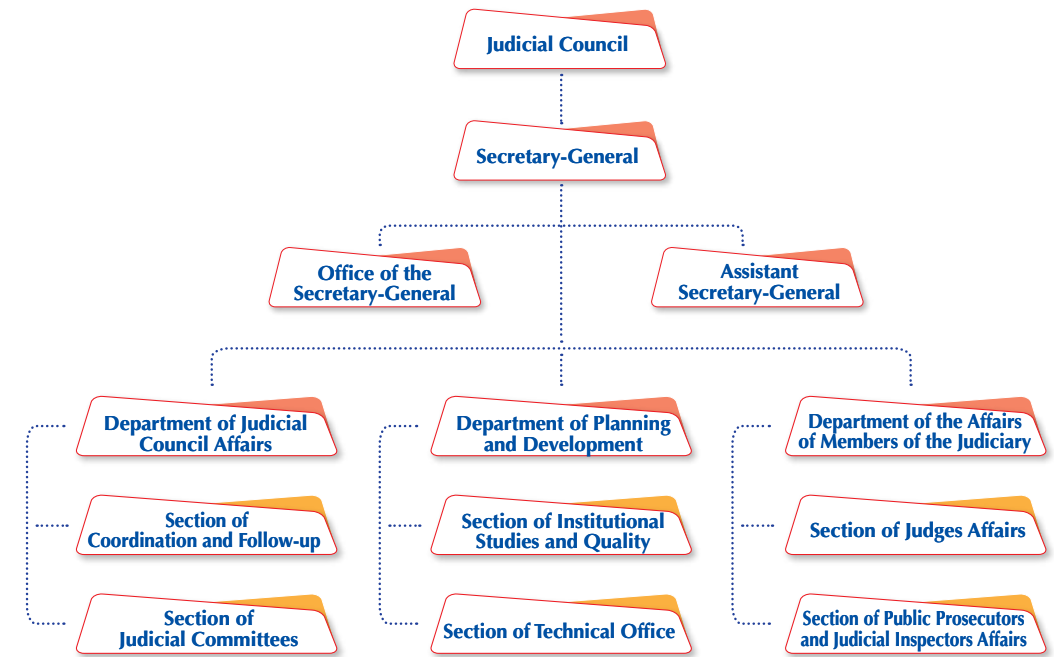
According to Miran, the General Secretariat plays an active role in consolidating the principles of justice, equality, and the rule of law, by dealing with complaints and suggestions from the public and litigants, through receiving and addressing complaints, and working to improve the services provided based on their feedback, thereby enhancing the transparency of the judicial system and ensuring continuous improvement in the quality of services provided. Miran iterates that the support of the Judicial Authority from the General Secretariat has contributed to the provision of a just, fair, developed, and effective Judiciary, which aims to implement the Emirate's vision and strategic objectives related to the development of the Justice Sector, ensuring the independence of the Judiciary and its development, in addition to consolidating the values, ideals, and ethics of judicial work, and ensuring the dignity, integrity, and efficiency of the member of the Judicial Authority.

Improving Judicial Services:

Al-Sabousi added that the General Secretariat's strategy that is based on improving judicial services, through the use of advanced analytics to study case data and identify challenges and opportunities to improve performance, has created a common environment between it and its strategic partners to work to improve judicial processes and services on an ongoing basis, in addition to regularly updating systems and procedures to adopt best practices and modern technologies, with which Judicial Authorities adhere to quality standards in providing judicial services to ensure the satisfaction of litigants.

The Organizational Structure of the General Secretariat of the Judicial Council

Al-Sabousi pointed out that the Executive Council of the Emirate of Dubai adopted the Organizational Structure of the General Secretariat of the Judicial Council of the Emirate of Dubai by Resolution No. (43) of (2021), as shown in the following chart:



The Most Prominent Indicators in the Annual Report of the General Secretariat of the Judicial Council for the Year (2023)

Al-Sabousi indicated that at the end of each year, the General Secretariat prepares a report on its performance indicators, which reflect the total of the services provided and the work completed, and the Annual Report of the Work of the General Secretariat for (2023) showed the following:

- The Identification of (4) key indicators and (35) sub-indicators through which the General Secretariat achieved (95%).
- The General Secretariat held (37) training programs for its staff, from which (13) employees benefited.
- The General Secretariat has implemented (5) internal organizational projects related to its work, and is working to complete work on (4) other projects.
- The General Secretariat has prepared (44) Develop-

mental Studies.

- The General Secretariat has completed (3) projects related to the Judiciary, and there are (7) projects under implementation, and there are (11) projects under study.
- The General Secretariat contributed to the issuance of (60) legislations related to the affairs of the Judiciary and its members.
- The General Secretariat has dealt with about (294) requests received from members of the Judicial Authority or related to their affairs, whether it is a grievance, transfer request, or otherwise.
- The General Secretariat dealt with (60) incoming requests regarding judicial affairs in the Emirate, and took the necessary action in coordination with the Judicial Authority and the Competent Authorities in the Emirate.

Judicial Khul' Divorce

(Divorce by Relinquishment of Marital Rights)



His Excellency Judge Dr. Hasan Rashid Al-Haymer
Judge at the Supreme Court in Dubai

"Judicial khul'" is, in fact, an exception from the origin of "Khul'" as being consensual, that is, it occurs between the spouses out of their own volition, and as such, it is a complex act that is concluded with an offer from one of the parties and acceptance from the other, and there is nothing wrong with her in what she has given and there is nothing wrong with him in what he would take, and each of them can go back on their affirmative offer before the acceptance of the other party is made.

Judicial Khul' Divorce means: The wife's recourse to the Judge to request the termination of the marriage contract between her and her husband without the consent of the latter, by using the word "Khul'" or a word that requires "Khul'".

The reason for the legality of Judicial Khul' is the wife's will to lift the injustice inflicted on her, to get rid of the marital relationship from which she has long been harmed, and in order to obtain her rights when the husband does not accept Consensual Khul' (Consensual Divorce).

The husband may refuse to take Khul' despite the wife's efforts to make the appropriate Compensation out of intransigence and harm to her, with the ensuing consequences that could lead to

the loss of the interests and benefits that were arranged by the legislator regarding marriage as an institution, especially with regard to tranquility and comfort between the spouses, mercy, and affection, and then, in consequence of all that, the establishment of God's limits between them will be disrupted if their relationship continues despite their unwillingness to continue and the resulting dissonance in their characters and psyche toward each other, and therefore, the Judge has the authority to separate the couple by way of Khul' in exchange for an appropriate compensation.

The Federal Personal Status Law has chosen to adopt the rules of Judicial Khul' - based on some opinions of Jurists - in Article No. (110), Paragraph No. (5), where it stated that, quote: *"[I]f the husband refuses the Khul' due to obstinacy and it is feared that they may not observe the limits ordained by Allah Almighty, the judge shall decide this Khul' for some proper compensation"*, unquote.

It is clear from the text of the Paragraph No. (5) that it required two pre-requisites for the Court's affirmative response to the wife's request for Khul', which is whether the refusal from the husband was intransigent in accepting the appropriate compensation provided by the wife in redemption for herself from this marriage, and the fear of not establishing the limits of Allah between the spouses by their disharmony and each of them neglecting their rights and duties towards the other, and therefore, establishing all of that is within the authority of the trial court, and If the wife proved her right to request a Khul' divorce legally, and the court was satisfied with her valid request, it had to then rule to annul the marriage contract by way of Khul' divorce, hence, the achievement of the benefits that the legislator desired, the nipping in the bud of the dispute, and the non-allowance of it to extend beyond the spouses.

The fact is that the above-mentioned is the regulation of the UAE legislator for the Judicial Khul' requested by the wife after marriage consummation, but her request for Khul' before marriage consummation (Al Dokhoul) and the lawful meeting in privacy (Al Khulwah Al Shar'iyyiah) (Valid Seclusion) between her and her husband, the Federal Personal Status Law has allocated a special provision in Article No. (123) of it, as it states that, quote: *"[I]f the wife asks for divorce before consummation or valid seclusion after returning the dowry she has received, the gifts she has taken and the money the husband has spent for marriage, and if the husband refuses to divorce her, the judge shall separate them on the basis of khul' if he fails to conciliate them"*, unquote. The Article is of the view that the wife's obligation to return her dowry and what she took as gifts, and what the husband spent for the marriage is sufficient to answer her request for Khul', however, if the husband refuses what the wife submitted, his refusal in this case can only be described as intransigent, and therefore, the Judge has to rule to separate them by way of Khul'



if he/she is unable to conciliate the couple, as there is no point in continuing a married life that has got off on the wrong foot. On this point, the question arises about the topic of intransigence on the part of the husband and how to prove it as per the following: (Is the wife requested -and she is the one who has the burden of proving it - to provide her personal evidence that must prove the husband's unjust refusal to accept the Khul' divorce and what the wife offered him in compensation, as a result of his harming her, keeping her in a state of suspension, and her aversion to him., and therefore, the limits of God between them will not be straightened with the continuation of married life, and the defect it will incur by not being lawfully held, or, on the other hand, if the facts of the case of Khul' and the signs and evidence contained therein throughout the duration of the dispute, from the reality of the documents submitted, whether they are apparent from the records or the memos submitted by both sides of the dispute, or even through the details of family guidance minutes, are all sufficient in their entirety to form the court's doctrine of the validity of proving intransigence and the fear of not establishing the limits of God between the spouses, as the two controls placed by the Lawmakers to answer the Khul' request?) The truth is that both scenarios are valid to rely on, because the court has the discretion to gain an understanding of the reality in the case, evaluate the evidence and documents presented in it, and derive the truth that it is convinced of, and in doing so, to state the reasons it is convinced of, including the response that headed off all the husband's obstacles, if he did not provide in his answer that which can prevent him from being described as intransigent or that which can prevent the fear of not establishing the limits of God from being established, should the marital life continued, which led the wife to resort to knocking on the door of the Judiciary seeking salvation from such life, by redeeming herself with a compensation she deemed fit.

Wills of Non-Muslims In the UAE

The Issue of the Applicable Law

Undoubtedly, the issue of the Law applicable to disputes with a foreign component related to Personal Status Issues, is of great importance from two angles:

- **The First** of Which is that the Issues of Personal Status are closely related to the sacred doctrinal beliefs of the individual, and often this Law is derived, or these beliefs constitute one of its most important sources or pillars from which its rules are derived.

- **The Second** of Which, it is this Law that determines the rights and obligations within the framework of these relations.

The Laws governing the Wills of foreigners and non-Muslims in the UAE overlap, raising many questions about the Applicable Law.



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First: The Law Applicable to the Wills of Non-Muslims Under the Federal Personal Status Law and its Amendments.

A review of the text of Article No. (1) of the Federal Personal Status Law No. (28) of (2005), as amended by Decree-Law No. (29) of (2020), finds that it has stated in its Paragraph No. (2) that, quote: "[t]he provisions of this Law shall apply to all UAE nationals unless non-Muslims among them have their own provisions applicable to their own religion and sect", unquote.

The text is straight forward that the Wills of non-Muslim citizens, as a matter of personal status, are subject to the provisions specific to their religion or sect, if such provisions exist, whether in the form of a law or a regulation, and in the absence of any of them, the Federal Personal Status Law will be applied.

The text here responds to an important rule in Islamic Jurisprudence, which is that: (The principle is that whatever the People of the Themma {the non-Muslim subjects in Islamic countries} believe and adhere to, they should be left to believe in whatever they believe and adhere to) ⁽¹⁾.

Of course, this text is addressed to non-Muslim citizens, and if the non-Muslim is a foreigner, then here we turn to Paragraph No. (3) of the same Article, which states that, quote: "[t]he provisions of this Law shall apply to non-UAE nationals unless they adhere to their native Laws", unquote, subject to the provisions of Articles Nos. (12), (13), (14), (15), (16), (17), and (27 - 28) of the Federal Law No. (5) of (1985) on Civil Code ⁽²⁾. The matter is not without two Scenarios: either the Foreigner, whether Muslim or non-Muslim, adheres to the application of his/her Law, and it becomes obligatory for the Judge ⁽³⁾ to apply the Attribution Rules (Choice of Law Provisions) contained in the Civil Transactions Law, especially Article No. (17) of it, related to inheritances and wills, which we will discuss later, or either the adversaries do not adhere to the application of their Law, or they fail to provide the content of the foreign law that will be determined by the Attribution Rule (Choice of Law Provision) to the court, and here the Judge will apply the Federal Personal Status Law.

Second: The Law Applicable to the Wills of Non-Muslims Under the Federal Civil Transactions Law



The Wills of non-Muslim Citizens, as a matter of personal status, are subject to the provisions specific to their religion or sect.



|| A Will is defined as (a disposition by a person of the estate after death, such that the Legatee gains ownership of the money bequeathed). In this sense, it falls within the scope of the work of Article No. (17) in its Paragraphs Nos. (3 - 4) of the Federal Civil Transactions Law No. (5) of (1985).

A Will is defined as (a disposition by a person of the estate after death, such that the Legatee gains ownership of the money bequeathed). In this sense, it falls within the scope of the work of Article No. (17) in its Paragraphs Nos. (3 - 4) of the Federal Civil Transactions Law No. (5) of (1985), which we will discuss later.

However, it should be noted here that this Article applies to, quote: "[a]ny legal act done by a person in a terminal illness of which the intention is to make a gift shall be regarded as a disposition to take effect after the death, and the provisions governing wills shall apply thereto, by whatever name the act may have been called", unquote, (Article No. 1260 of the Federal Civil Transactions Law). Also considered as a Will is, quote, "[i]f a person makes a disposition to one of his heirs but retains possession of the property which he has disposed of and of his right to use it throughout his life, the disposition shall be deemed to take effect after the death, and the provisions relating to wills shall apply thereto unless there is evidence to the contrary", unquote. (Article No. 1261 of the same Law). It should be noted that the UAE legislator has devoted Article No. (17), with its Paragraphs Nos. (3 - 4), to the Will, but it has differentiated between its substance and its formal aspects.

- As for the Law Applicable to the Substance of the Will and the Pertinent Rule of Attribution

(Choice of Law Provision) that Specifies this Law:

The provisions of Article No. (17/3) stipulate that, quote: *[t]he substantive provisions of will shall be governed by the law of the state whose nationality the person making the disposition holds at the time of death*", unquote.

After the amendment, the matter became different as the UAE legislator added a new selection parameter next to the Testator's (Legator) nationality, which is the Testator's will, and the Law applicable to disputes concerning the substance of the Will is determined either according to the Law of the Testator's nationality at the time of his/her death, or according to the will of the Testator and his/her express choice of this Law in the Will.

This amendment is a fundamental development in the Attribution Rule (Choice of Law Provision) governing the substance of a Will. The Will, although it is close to and linked to inheritance, since they both achieve succession due to death, still, it differs from it. However, the Emirati legislator considered it as a matter of personal status⁽⁴⁾, and subjected it to the Law of the Testator's Country, such as inheritance, and dealt with them in the text of one Article, and in this respect, it is, quote: *"[a] legal act of a single will, but it is unbinding act in the sense that it achieves its effects only after the death of the Testator"*, unquote⁽⁵⁾.

There is no doubt that the jurisdiction of the Law

of the country to which the Testator belongs at the time of his/her death on the substance of the Will, as it was the case before the amendment and still is, achieves the unity of the applicable Law for the Will in movable and immovable estate property without distinction, and regardless of the nationality of the Legatee, even if they are more than one. This trend is also prevalent in many Arab legislations⁽⁶⁾.

Nevertheless, the amendment makes it impossible to resort to applying the Law of the Testator's nationality at the time of his/her death on the substance of the Will, unless the will of the Testator to determine this Law is no longer valid and the Will is devoid of specifying the applicable Law.

This amendment makes the Judge work according to the sequence of Laws availability, where if the availability of the Law of the Will of the Testator is achieved first; then it cannot encroach on the Law of his/her nationality at the time of his/her death. This shift in the position of the UAE legislator, perhaps explained by what we have already illustrated regarding our assessment of the Attribution Rule (Choice of Law Provision) for the form of marriage⁽⁷⁾, and the legislator, in formulating the Attribution Rule (Choice of Law Provision) for the substance of the Will also resorted to the Method of Optional Attribution, but here in a different way, where *"[i]t sets selection parameters on a gradual*

basis, so that first the main selection parameter applies if it is available, and the Law that guides it will be taken up, and second if it is not available, the backup selection parameter contained in the Conflict-of-Laws Rule will apply"⁽⁸⁾, and the legislator aims to facilitate the parties in international private relations, and also to achieve a specific material goal which is to recognize the validity of these relationships and achieve that which is beneficial to their parties.

And in order to emphasize this construct, the UAE legislator, when issuing the amendment, took into thorough account the nature of the Will as a voluntary legal act, so it attached it to the Testator's Will Law while remaining within personal status issues, which reveals a tendency towards freeing the Will in its substance from the grip of personal status law, while its implementation remains in a backup manner.

We do not believe that this may open the door for the Testator to choose a Law to harm the rights of heirs, as Public Order remains a barrier to this⁽⁹⁾.

- **Apropos the Applicable Law on the Form of a Will:**

Article No. (17/4) stipulates that, quote: *"[t]he form of the Will and all dispositions made upon death shall be governed by the law of the state designated by the Will or disposition, the Law of the state whose nationality the person making the disposition holds at the time of issuance thereof or the Law of the state in which the disposition was made"*, unquote.

It is clear from the text compared to the text before the amendment⁽¹⁰⁾, that the UAE legislator added to the Attribution Parameters that are included in the Attribution Rule (Choice of Law Provision) for the Form of the Will, the Testator's Will Law Selection Parameter, in addition to the Nationality Parameter at the time of making the Will and the Parameter of the Place of Conclusion of the Will.

Thus, the Testator has a choice in formalizing his/her Will, between the Law that he/she determines by his/her own will, the Law of his/her nationality at the time of the making of the Will, or the Law of the country where the Will was made.

And before going into the evaluation of this amendment, what is meant here by the "Form" of a Will are all the actions and forms necessary to present

|| The legislator, in formulating the Attribution Rule (Choice of Law Provision) for the substance of the Will also resorted to the Method of Optional Attribution.

|| The UAE legislator added to the Attribution Parameters that are included in the Attribution Rule (Choice of Law Provision) for the Form of the Will, the Testator's Will Law Selection Parameter, in addition to the Nationality Parameter at the time of making the Will and the Parameter of the Place of Conclusion of the Will.

the Will to the outside world, such as requiring the Will to be written in customary writing, written by an official officer, registered with the court, or it is sufficient that it be oral. etc. In any case, the determination of whether the dispute is related to the Form or the Substance side of things is considered a matter of adaptation subject to the UAE Law as the Judicial Law/Bench Legislation (Lex fori) ⁽¹¹⁾.

We believe that the amendment mentioned by the UAE legislator to the Rule of Attribution (Choice of Law Provision) for the Form of the Will is commendable, as it has expanded the field of choice and provided the Rule of Attribution (Choice of Law Provision) for the Form of the Will, with a third selection parameter, which is the "Will of the Testator", and this is the course of comparative laws, which mostly, quote: "[t]end towards expanding the circle of laws governing the Form of the Will, where it is sufficient that the Will has been made in the form imposed in any of those laws for it to be valid in Form", unquote ⁽¹²⁾, which involves facilitating the work of the concerned party in making his/her Wills and expanding the judgment of its validity.

Perhaps we should state here the resort of the UAE legislator once again to formulate its rules according to the approach of the Rules of Attribution (Choice of Law Provisions) of a material nature, which we have already alluded to ⁽¹³⁾, namely, the inclusion of the Rule of Attribution (Choice of Law Provision) to more than one parameter, and therefore the possibility of applying more than one Law to the relationship in order to reach a certain material or objective result, which is here represented in the correction of the Will from the formal point of view.

This approach was also followed by The Hague Convention on the Law Applicable to Forms of Wills, in which the Will is governed, in terms of Form, by the Law of the state of the place of its conclusion, the Law of the Testator's nationality at the time of making the Will, the Law of his/her nationality at the time of death, the Law of his/her domicile or residence at the time of making the Will or at the time of death ⁽¹⁴⁾. And with this in mind, the UAE legislator may have responded to some of the Jurisprudence ⁽¹⁵⁾, which in its position before the amendment, it considered that it



involved a "[r]eal narrowing of the opportunity to judge the validity of Wills, and missing the possibility of doing good deeds in the presence of people".

Third: The Exception to the Application of UAE Law to the Wills of Foreigners

Article No. (17) included in its Paragraph No. (5) a special provision or exception related to the application of UAE Law to the Will, stating that, quote: "... [t]he laws of the United Arab Emirates shall govern the will issued by an alien regarding his property located in the State", unquote, and according to the text that the Will made by a foreigner and related to real estate located in the United Arab Emirates, the UAE Law applies to it without those laws referred to in Paragraphs Nos. (3 - 4) in the same Article. And according to some Fiqh (Islamic Jurisprudence), quote: ⁽¹⁶⁾, "[t]he general rule stipulated in the third paragraph of Article No. 17 {civil transactions}, which requires the application of the Testator's nationality Law at the time of his/her death, is disabled and the exception stated by the UAE legislator, which results in the application of UAE Law to this Will, is enforced", unquote.

We believe that Paragraph No. (4) is also disabled, as by applying the UAE Law to the Will of a foreigner related to Real Estate in the UAE, the UAE Law is also intended to govern the Will both from a substantive and form stand point. In justifying this ruling, it was said ⁽¹⁷⁾ that it came in view of the economic value of real estate in the state and because it relates to its sovereignty ⁽¹⁸⁾.

Fourth: The Law Applicable to the Wills of

Non-Muslims in Accordance with Law No. (15) of (2017) Concerning Administration of Estates and Implementation of Wills of Non-Muslims in the Emirate of Dubai

The local legislator in the Emirate of Dubai has set a special regulation for the Wills of non-Muslims in the Emirate, and it did not want it to be limited to the Federal Personal Status Law, so in (2017), it issued Law No. (15) on the Estates of Non-Muslims and the Implementation of their Wills.

The Law aimed to provide a kind of reassurance to Non-Muslims when they conclude their Wills, and to streamline and facilitate the procedures and unite them in the Emirate, including the Dubai International Financial Center (DIFC).

The truth is that although this is commendable, we feel some confusion when we read the text of Article No. (4) of this Law, which states that, quote: "A- [e]xcept as expressly provided for by this Law, the applicable law prescribed by the Choice of Law Provisions of the legislation in force will apply to Estates and Wills of Non-Muslims.

B- Notwithstanding the provisions of paragraph (a) of this Article, the legislation in force in the Emirate will apply in any of the following cases:

1. Where the Estate or Will relates to Real Property located in the Emirate;
 2. Determining whether the willed property is real or moveable;
 3. Where the provisions of the applicable foreign law contradict public order or morals; and,
 4. Where the Testator chooses the application of the UAE legislation to his Will.
- C. Where a Testator has multiple nationalities, the

applicable Law will be decided based on the nationality specified by him upon registration of his Will. Where he does not specify a nationality, the Will will be governed by the legislation of the country in which he resides or his business is based.", unquote.

This domestic Law confirms the application, with regard to the Wills of Non-Muslims, of the Law to which the Attribution Rules (Choice of Law Provisions) provided for in the legislation in force, that is, the Attribution Rules contained in the Federal Civil Transactions Law previously referred to.

Nevertheless, the local Law has established an objective rule that requires the application of the legislation in force in the Emirate in three cases, which it specified exclusively. It then added an Attribution Rule (Choice of Law Provision) concerning the determination of the Law applicable to the matter in case of multiple nationality of the Testator.

And if we deal with the objective rule established by the legislator (Al-Dabawi), we find that it does not differ much from what was decided by Article No. (17) of the Federal Civil Transactions Law after the amendment made to it, as Paragraph No. (B-4) determines the Testator's right to choose the Law applicable to the Will, which is the same as what is decided by Article No. (17), Paragraphs Nos. (3 - 4).

Paragraph No. (5) also decides to apply the UAE Law if it is a foreigner's Will and relates to Real Estate in the country, thus converging with Paragraph No. (B-1) of the local Law.

But the issue here is that the Law (Al-Dabawi) decides to let the local legislation supersede the federal legislation. And although personal status issues are not one of the issues in which the Federation is unique in legislating according to the provisions of Article No. (121) of the UAE Constitution, and we tend to support some of the Emirati Jurisprudence ⁽¹⁹⁾, which considers that it would have been preferable for the role of the Law to be limited to the administration of Estates and Wills and not to extend to other provisions, as the Personal Status Law stipulates that, quote: "[i]f the dispute concerns non-Muslim citizens, their sect law applies to them, and if the dispute concerns non-citizens, they may adhere to the application of their Law as determined by the rules of the Federal Civil Transactions Law", unquote. And if this

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The amendment mentioned by the UAE legislator to the Rule of Attribution (Choice of Law Provision) for the Form of the Will is commendable as it has expanded the field of choice and provided the Rule of Attribution (Choice of Law Provision) for the Form of the Will with a third selection parameter, which is the "Will of the Testator"

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The local legislator in the Emirate of Dubai has set a special regulation for the Wills of non-Muslims in the Emirate, and it issued Law No. (15) of (2017) on the Estates of Non-Muslims and the Implementation of their Wills.

is the case, then, what is the need to introduce really regulated provisions in the Personal Status Code?

As for the Rule of Attribution (Choice of Law Provision) created by the domestic Law in Paragraph No. (3) of Article No. (4), which decides to take into account the nationality of the Testator in the

case of his/her multiple nationality, on which he/she relied when registering his/her Will, in the case of his/her multiple nationality, and in case he/she does not specify it, the nationality of the state in which he/she resides or takes place as the seat of his/her work place.

This matter is being considered from two stand

points: The First of Which, it concerns the violation of this provision of Article No. (24) of the UAE Federal Civil Transactions Law, which determines that the UAE Law, and not the Law determined by the person, should be applied to a multi-national. The Second of Which is that Article No. (121) of the Constitution has limited the matters that are

unique to the Federation to legislate in relation to, and listed among them civil transactions (including the rules governing conflict of laws in terms of location), which raises a question about the constitutionality of this provision in domestic Law and makes us take sides with this Jurisprudence, which considers it unconstitutional ⁽²⁰⁾.

* Footnotes

(1) Dr. Al Zuhaili, Mohammad Mustafa, (Kitab Al Qawae'id Al Fiqheyyah Wa Tatbeeqatuha Fi Al Mathahib Al Arba'ah" (Book of Jurisprudence Rules and Their Applications in The Four Schools of Thought).

(<https://shamela.ws/book/21786/1065>)

(2) It is worth mentioning that this Law is currently under review and a new draft has been submitted for it, but a review of the draft does not indicate any amendments or changes to the Attribution Rules (Choice of Law Provisions) contained in the current Law.

(3) The set legal precedents of Dubai Supreme Court and the Federal Supreme Court have established that the Judge does not apply the Rules of Attribution (Choice of Law Provisions) unless the opponents adhere to them. Refer, respectively, to the Dubai Supreme Court, Appeal No. (38) of (2006), dated (18/11/2006), and the Federal Supreme Court Appeal No. (30) of Judicial Year (28), dated (30/4/2006), referred to by Dr. Abdullah Al-Sabousi, in his research entitled "Ishkaliyyat Tahdeed Al Qanoon Wajib Al Tatbeeq Ala Munaza'at Al Ahwal Al Shakhseyyah" (The Problems of Determining the Law Applicable to Personal Status Disputes). P. No. (16), Ministry of Justice, Department of Research and Studies.

(4) It should be noted that some legislations take the Will out of the realm of Personal Status, and consider it a matter of the rights in rem (Proprietary Rights), and then subject it to the Law of the Location of the Property. A Will with real estate is governed by the Law of its Location, while a Will with movable property is governed by the Law of the Testator's Domicile at the time of his/her death. And this is prevalent in French, English, Canadian, and Australian Laws. Refer to Dr. Okasha Mohammad Abdul Aal, "Al Waseet Fi Tanazu'i Al Qawaneen Fi Dawlut Al Imarat Al Arabiyyah Al Muttahidah" (Intermediary in Conflict of Laws in the UAE), Shortut Dubai (Dubai Police) Academy, (2008). P. No. (614), and also Dr. Ahmad Abdul Karim Salama, "Al Qanoon Al Dawli Al Khas Al Imarati" (The Emirati Private International Law) -a Comparative Fundamental Study- Al Imarat Al Arabiyy-

iah Al Muttahidah (United Arab Emirates) University Publications, (2002/2003), P. No. (325), as well as Pierre Mayer et Vincent Heuze, Droit international prive, Montchrestien, P. No. (734), translated by Ali Mahmoud Muqlid, Al Moa'assasah Al Jami'eiyyah (University Foundation) for Studies, Publishing, and Distribution, Sharjah, 1st Edition, (2008).

(5) Dr. Hisham Ali Sadeq, "Al Qanoon Al Dawli Al Khas, Al Jinseyiyah - Tanazu'i Al Ikhtisas Al Qada'ei, Tanazu'i Al Qawaneen" (Private International Law, Nationality - Conflict of Jurisdiction, Conflict of Laws), Al Matbooa'at Al Jami'eiyyia (University Publishing) House, Alexandria, (2004). P. No. (318).

(6) For example, the text of Article No. (17) of the Egyptian Civil Law, Article No. (18) Syrian Civil Law, Article No. (22) Iraqi Civil Law, Article No. (18) Jordanian Civil Law, Article No. (16) Algerian Civil Law, and the text of Article No. (48) of the Law regulating relations with a Kuwaiti foreign element of (1961).

(7) Refer to our research entitled "Al Qanoon Al Wajib Al Tatbeeq Ala Ba'idh Masa'il Al Ahwal Al Skakhseyyah Fi Dhaw'i Ta'adeelat Qanoon Al Moa'amalat Al Madaneyyiah Al Imarati Al Ittihad" (The Law Applicable to Some Personal Status Issues in the Light of the Amendments to the UAE Federal Civil Transactions Law) No. (5) of (1985) - a Comparative Analytical Study- Published in the Journal of Al Amn Wa Al Qanoon (Security and Law), Shortut Dubai (Dubai Police) Academy (2021).

(8) Dr. Ahmad Abdel Karim Salama, Ibid., P. No. (49).

(9) Nevertheless, this trend is not without shortcomings and drawbacks, in our opinion, as subjecting the Will in its substance to the Law of the will of the Testator opens the door to the possibility of multiple laws to be considered for the Will if the Testator chooses more than one Law, never mind choosing a Law that has nothing to do with the elements of the Will, which harms the unity of the legal system of the Will.

(10) Before the amendment, the text read as follows: [t]he form of the Will and all other dispositions to take effect after death shall be governed by the Law of the state to which the person

from whose nationality the disposition was made at the time of its issuance belongs or the Law of the state in which the disposition was made".

(11) It is worth mentioning that the UAE Law, like the Egyptian Law, does not require a specific form to make a Will, as according to the provisions of Article No. (259) of the UAE Civil Transactions Law, a Will may be concluded in writing, by oral phrase, or even by an understandable reference. However, the UAE legislator requires that to prove the Will and hear the case upon denial, it must be written in an official or customary paper written in the handwriting of the deceased and signed by him/her, or in a paper not in the handwriting of the Testator but certified with his/her signature on it. It should be noted that the introduction of a special rule to the form of a Will and other dispositions to take effect after death take them out of the realm of the implementation of Attribution Rules (Choice of Laws Provisions) for legal dispositions, both in substance and in form. See Dr. Jamal Mahmoud Al-Kurdi, "Tanazu'i Al Qawaneen" (Conflict of Laws), Al Ma'arif (Knowledge) Establishment, Alexandria, (2009), PP. Nos. (409-410).

(12) Dr. Ahmad Abdel Karim Salama, Ibid., P. No. (330). Nevertheless, some legislations still establish an Attribution Rule (Choice of Law Provision) that includes only one selection parameter which is the "Place of Conclusion of the Will", as is the case with the Omani Law, see Dr. Ashraf Wafa Mohammad, Ibid., P. No. (387).

(13) In confirmation of this idea, some scholars have added that the Attribution Rule (Choice of Law Provision) for the form of legal acts is one of the non-neutral rules that does not seek merely to realize formal justice by choosing the Law that is most relevant to the relationship, but rather aims to achieve a specific objective result by choosing the Law that leads to the validity of the contract in accordance with the wisdom of Attribution Principle, which is to facilitate the work of the contracting parties. In this respect, see Dr. Hafiza Al-Sayed Al-Haddad, "Al Mojuz Fi Al Qanoon Al Dawli Al Khas" (Summary in Private International Law), 1st Edition, Al-Halabi Al Hoqooqiyyiah (Al-Halabi Human Rights) Publications, (2013), P. No. (337).

(14) See Dr. Ahmad Al-Hawari, (Qira'ah Naqdiyyah Li Holool Mushkilat Tanazu'i Al Qawaneen Fi Taqneen Al Moa'amalat Al Madaniyyah Al Imarati" (A Critical Reading of the Solutions to the Problems of Conflict of Laws in the Codification of UAE Civil Transactions), a research published in the Journal of Al Amn Wa Al Qanoon (Security and Law), Shortut Dubai (Dubai Police) Academy, 1st Edition, the nineteenth year (2011), PP. Nos. (46-47).

(15) And this is explained by Professor, Jurist Ahmad Abdul Karim Salama, Ibid., P. No. (331), where His Excellency believes that the text before the amendment, which took into account the Law of the Place of Conclusion of the Will and the Law of the Testator's Nationality at the time of the making of the Will, is in fact only one Law regarding these two Laws, as it is more likely that the Testator will conclude his/her Will in his/her country, and therefore he wished for the UAE legislator to allow more than one Law to govern the Will in terms of form, as the comparative laws did.

(16) Dr. Awadallah Shiba Al Hamad Al Sayed, ("Ahkam Tanazu'i Al Qawaneen Wa Tanazu'i Al Ikhtisas Al Qadha'ei Fi Al Qanoon Al Imarati" (Conflict of Laws and Conflict of Judicial Jurisdiction Provisions in UAE Law), Shortut Dabai (Dubai Police) Academy, (2001), P. No. (255).

(17) Dr. Nayef Jalil, "Mabad'i Al Qanoon Al Dawli Al Khas Al Imarati, Tanazu'i Al Qawaneen, Tanazu'i Al Ikhtisas Al Dawli Lil Mahakim Al Imaratiyyiah Wa Tanfeeth Al Ahkam Al Qadha'iyyiah Al Ajnabiyyiah" (Principles of Emirati Private International Law, Conflict of Laws, Conflict of International Jurisdiction of Emirati Courts and Execution of Foreign Judicial Judgments), Al Nahdhah Al Ilmiyyiah (Scientific Renaissance) Imarat (Emirate) House, P. No. (194).

(18) The legislator, in Article No. (18/2) of the Civil Transactions Law, has excluded contracts relating to real estate from being subject to the Law of the Will, the Place of Conclusion of the Contract or the Contracting Parties' Joint Domicile and subjected them to the Law of the Country Where the Real Estate is Located.

(19) Dr. Abdullah Al-Sabousi, Ibid., P. No. (49).

(20) Ibid (Previous Reference).

Regulation of Judicial Custody (Sequestration) In the UAE Law



His Excellency Judge Ahmad Bakri Abdullah
Judge of Court of First Instance - Abu Dhabi Commercial Court - Abu Dhabi Judicial Department (ADJD)



A priori, obligations must be implemented in a manner consistent with good faith, without any interference from the Judiciary, but sometimes one of the parties may refuse to fulfill his/her obligation (s). As a result, the courts entrusted the Judicial Custodian with the preservation and management of huge wealth and capital. Thus, the Judicial Custodian performs an important economic function. And with the development and diversification of investment and production methods, we are witnessing a complex network of trade relations, which has led to the existence of urgent practical necessities to preserve the rights of stakeholders to ensure the preservation of rights and the proper fulfillment of obligations as a whole. The UAE legislator has included the provisions of Judicial Custody in the Civil Transactions Law and outlined the conditions for their application in Federal Decree-Law No. (42) of (2022), issuing the Civil Procedure Law (hereinafter referred to as the Civil Procedure Law) ⁽¹⁾.

Judicial Custody is a temporary measure resorted to by the stakeholder (s), for the purpose of preserving disputed property or right (res litigiosae), under an urgent lawsuit (act on petition) or urgent request, in a substantive lawsuit, that the disputed property or right be placed under the hands of a Judicial Custodian appointed by the court, to preserve and manage it based on the powers granted to him/her by the Judge, until the end of the dispute, or the disappearance of the danger for which the Custody was imposed. And the main principle in the Judicial Custody is the preservation of the interests of the owners in their property and rights, and the applicant for the imposition of Custody may be a partner in a company or an heir in a property or real estate, or a creditor in a disputed amount, the right to it was not established, which is different from liquidation and bankruptcy procedures, where the main principle in imposing them is the preservation of the interests of creditors. The UAE legislator stated the difference between the Custodianship provided for in Article No. (997) of the Civil Transactions Law, and the Judicial Custody provided for in Article No. (999) of the same Law. The Legislator defined the Custodianship as

|| Judicial Custody is a temporary measure resorted to by the stakeholder (s), for the purpose of preserving disputed property.



a contract between two disputing parties, while it defined the Judicial Custody as being imposed between two disputing parties who failed to agree on a way to safeguard the property during their dispute, and in that case, the party who has a reason to raise the existence of an urgent danger, or based on a just reason, can request the competent Judge to appoint a Custodian/Guardian to receive the disputed property for safeguarding and management taking into account the interests of the two parties.

The advantage of Judicial Custody lies in the fact that it is issued by a neutral Judicial Authority on behalf of the parties to the dispute, and it has the right to follow up and monitor the Judicial Custodian, summon him/her, dismiss him/her and replace him/her if necessary.

Judicial Custody is one of the quick and practical solutions that can be resorted to when a dispute between partners arises.

In fact, we believe that the imposition of Judicial Custody is a decision that could pave the way for the company's demise, because it causes the dispute to exacerbate in such a way that it is diffi-

cult for the partnership between the owners of the property or the company to continue successfully, despite the guarantees the Judicial Custodian provides for the preservation of rights and property. In consequence of the foregoing, a question may arise, as to whether the Condition of Urgency justifies the request to appoint a Judicial Custodian on the basis of an Order on Application (Injunction on a Petition).

We believe that this has not been explicitly stated in the Code of Civil Procedure, in particular as stated in Article No. (140) of the Code of Civil Procedure ⁽²⁾. And this means that it is not permissible to expand the competence of a Judge to issue an Order on a Petition for the imposition of Judicial Custody.

This is because the imposition of Custody entails depriving the person that the Judicial Custody order was issued against of managing his/her property, and therefore it is a dangerous measure that falls outside the scope of simple precautionary measures.

Judicial Custody is also a Judicial Procedure by

its very nature, and it requires discussion and struggle between the applicant for Custody and the person against whom the procedure is directed, and what supports that opinion is what Article No. (28) of the Civil Procedure Code stated, when it provided for the Jurisdiction of the Summary/Urgent Judiciary to "rule" on the imposition of Judicial Custody, to the effect that the apparent indication of the text is that the intention of the UAE legislator has turned to the Judiciary to impose Custody, by virtue of a Judgment and not an "Order" issued by the President of the Court. Therefore, we are of the opinion that Custody ought not to be imposed by Order on a Petition. And by reviewing the Jurisdiction of the Judge of Urgent Matters (Magistrate of Summary Justice), we can see that the Judicial Custody Case is not a substantive case, in the sense that the Judge of Urgent Matters refrains from examining the Origin of the Right related to it. Thus, the role of the Judge of Urgent Matters is limited to verifying his/her Jurisdiction, and the availability of conditions for imposing Judicial Custody from the appearance and literal meaning of the pertinent documents, without prejudice to the Origin of the Right. And in connection with this, the Judge has to ensure the existence of some important points when considering the application for the imposition of Judicial Custody, which may also be the subject of a defense for the party injured by the imposition of Judicial Custody, and they are as per the following:

1. The status of the Applicant for Judicial Custody, and whether he/she has an existing, current, or potential interest in the Application.
2. Whether all interested parties, such as the company to be safeguarded, all partners, and any party with an interest in the property to be safeguarded, have been litigated.
3. There should be a serious dispute over the property the subject of Judicial Custody, and it should be clear from the appearance of the relevant papers that there is an urgent risk that cannot be remedied in the event that the disputed property remains in the possession of the party who has a hold of to begin with, and in particular that there are two situations of danger and urgency.
4. The Application for the imposition of Judicial Custody and, as a result, the judgment issued

by it, should not affect the Origin of the Right to the disputed property, in the sense that the issuance of the decision to impose Judicial Custody does not implicitly lead to the entitlement of one party to the disputed property from the other, as this may be considered a violation of the Origin of the Right.

5. There should be no other way or mechanism to preserve the property, except for the imposition of Judicial Custody, since there is no other procedure for preserving the right.
6. The manageability of the property to be safeguarded to be managed by a third party, whether by virtue of the nature of that property or the circumstances surrounding it, or by virtue of the existence of a legal regulation that prevents the imposition of a Judicial Custody, such as the Opening of Bankruptcy Proceedings, or in the case of the company being subjected to the Family Companies (Businesses) Regulation Law.
7. None of the state-owned companies should be a partner in the company, the subject of a request for the imposition of Judicial Custody, because this may raise the inadmissibility of placing state funds under Judicial Custody, as they are private state funds that are not based on the right of ownership.
8. There is no other court ruling that contradicts the request for the imposition of Judicial Custody, whether it is a ruling on the substance of the dispute or related to the right in custody.

In addition, the Judge must also take into account the dimensions of the decision on the imposition of Judicial Custody, in particular whether the decision to impose Judicial Custody may entail losses of another kind for all parties, especially if the decision concerns a successful and profitable company, which has interests and businesses with many clients, as the ruling to impose a Judicial Custody may cause a collapse in the confidence of customers with the company, and the losses may exceed the property or right that the ruling was intended to protect.

Ergo, we believe that the appointment of a Judicial Custodian may in some cases have a detrimental effect on large companies that have many branches, because once the Judicial Custodian is appointed, the company's management will have to wait for his/her approval before undertaking any action,

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The ruling to impose a Judicial Custody may cause a collapse in the confidence of customers with the company, and the losses may exceed the property or right that the ruling was intended to protect.

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The decision to impose Custody entails distrust and confusion between customers and the company.

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The appointed Judicial Custodian, who is a person from outside the company, may need time to understand the nature of the company's work, and determine his/her powers in light of the judgment issued appointing him/her.

which may disrupt the company's business and harm it. In addition, placing a company with a reputation in the market under Judicial Custody also has a negative impact on its position in the market, and it may result in damage to its reputation and the projects in which it operates, and the evidence of this is the fact that contracting parties in many contracts agree on certain provisions that protect them in the event of imposing a Judicial Custody, especially in contracts related to contracting (construction) and bank loans.

This may also lead to a reduction in the company's creditworthiness with creditors, which may result in many of the company's clients taking premature judicial actions immediately after the Judicial Custody was imposed on the company, for fear of losing their rights, because the decision to impose Custody entails distrust and confusion between customers and the company.

Also, the imposition of Judicial Custody may result in the reluctance of new customers to contract with the company, due to the imposition of this Custody. Thus, the Judge must take all this into account when considering the decision to impose Judicial Custody, for example: The applicant requesting the imposition of a Judicial Custody may have a small percentage of the company's shares, which may result in the suspension of the company's business due to the imposition of Custody, especially since the appointed Judicial Custodian, who is a person from outside the company, may need time to understand the nature of the company's work, and determine his/her powers in light of the judgment issued appointing him/her, and therefore this may result in the suspension of the company's business even for a temporary period, especially in relation to the existing projects.

That being so, all interested parties -including the Judge of Urgent Matters- in any dispute related to the imposition of Judicial Custody, should take into account that the Judicial Custodian is a third-party person for the company, and is appointed from outside and has nothing to do with the disputed property, and may be inexperienced in the nature of the company's business or the nature of its customers, and may result in losses exceeding the value of the right to be protected, especially with respect to the company's customers and reputation, as the reputation of a company is considered part and parcel of its market value.

Terms of Judicial Custody:

Article No. (999) of the Civil Transactions Law stipulates that, quote: "*[e]ither of the parties to a dispute over property may, in the absence of agreement, make an application to the judge in order to avert an imminent risk or in reliance on a just cause to appoint a guardian to take delivery of such property to safeguard and manage it, and for him to be entrusted with the exercise of any right which the judge regards as being in the interests of both parties*", unquote.

Article No. (28) of the Code of Civil Procedure also states that, quote: "*[t]he courts of summary jurisdiction shall be exclusively authorized to impose receivership on any movable property, immovable property or a set of properties in respect of which there is a dispute or if the right connected therewith is not established, if the person having a beneficial interest of the property has reasonable reasons based on which there is concerns that the underlying property remains in the possession of its current possessor*", unquote.

It is understood from this text that some conditions are required for the Judicial Custody to be imposed, which are summarized in the following points:

1. The Property in Custody Must Be Subject to a Dispute or the Right Connected to it is not Established.

The Emirati legislator has not specified the nature of the dispute on which the Judicial Custody is to be imposed, and left the unconditionality of the provision untouched, so the dispute may be in relation to a real estate, a movable, or a sum of rights, or shares in a company, whether that dispute is focused on management or ownership, taking possession by hand seizure or on mere possession. And perhaps leaving the term "Dispute" absolute and unconditional, is to have flexibility that allows the courts to face any new situations or circumstances that may require the imposition of Judicial Custody, and therefore the legislator left the discretion to the Judge on the assessment of those circumstances.

2. That There is an Urgent Danger, or That a Just Cause is Invoked.

An urgent danger is an immediate danger that threatens the interest of a person concerned and it is warded off only by placing the property in Custody, and assessing whether there is an urgent danger depends on the circumstances of each



case, which vary from case to case. Accordingly, the urgent risk is a discretionary matter left to the discretion of the competent Judge⁽³⁾. On the subject of that, we have to explain an important particularity, which is the "Element of Urgency". And although it is not explicitly stated that there is a need for a State of Urgency, however, it is assumed as a necessary element for the consideration of the Judicial Custody Case before the Summary Court. On that account, the Judge of Urgent Matters must rule that he/she does not have Jurisdiction in the absence of the requirement of the Urgency Condition, as it is a requirement related to the Public Order of the Jurisdiction of the Summary Judiciary⁽⁴⁾. One side of the Jurisprudence believes that the requirement of Urgent Danger and Urgency are not two different things, but rather they are one thing, as where there is an urgent danger, the matter is urgent, and it falls within the Jurisdiction of the Summary Judiciary, as well as the Jurisdiction of the Trial Court.

3. To Have an Interest:

Article No. (2) of the Code of Civil Procedure states that, quote: "*[n]o request or plea shall be admitted from anyone who does not have a manifest*

and legally recognized interest therein. Presumed interest shall however be sufficient if the object of the request is to take precautions against imminent injury or to seek confirmation of a right for which evidence might no longer exist when it comes into dispute", unquote. Jurists have defined Interest as the protection by Law of the right that is being infringed or threatened to be infringed, and the benefit that the plaintiff receives from achieving this protection⁽⁵⁾.

The Nature of the Relationship Between the Judicial Custodian and the Parties Involved in the Custody:

A distinction should be made between the relationship of the Judicial Custodian with the Judge who appointed him/her, and his/her relationship with the Parties whose hands were tied from the property. The Custodian's relationship with the Judge is an administrative one, since he/she is appointed by the Judge, works under his/her supervision, and has the right to follow up on and dismiss him/her. As for the Custodian's relationship with the Owners of the disputed property, it is a

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Jurists have defined Interest as the protection by Law of the right that is being infringed or threatened to be infringed, and the benefit that the plaintiff receives from achieving this protection.

guarantee relationship, as stipulated by Article No. (1002) of the Civil Transactions Law, in case the Custodian exceeds the limits of the assigned task. The imposition of Judicial Custody entails that the hands of the Owner (s) of the disputed property are tied from the management of the property during the period of Custody, so he/she does not have the right to carry out any work on the property after the imposition of Judicial Custody. However, the Custodian must inform the parties (in their capacity as the owners of the right) about the accounts and about his/her actions.

Personal Responsibility of the Judicial Custodian:

Articles Nos. (1002 to 1010) of the Civil Transactions Law regulated the rights and obligations of the Judicial Custodian., and as we have already explained, the Judicial Custodian who is appointed by the court performs the role assigned to him/her in light of the task assigned to him/her by the court's ruling and under its supervision, and at the same tandem time, he/she is responsible to the owners of the property in informing them of the latest developments of his/her management of the company and its accounts.

Thus, the Judicial Custodian is responsible for his/her actions and a guarantor in case he/she exceeds the limits established for him/her. However, this raises an important question, namely, to: (What extent can the Custodian be held personally responsible for his/her actions during the Custody Duty? And what is the standard to be measured against when determining the responsibility of the Custodian?)

The issue of holding the Judicial Custodian responsible for his/her decisions is a complex issue that needs to be carefully researched and examined, as the Judicial Custodian is appointed by the court, and his/her violation of the task is a violation of the court's ruling, and the trust that was granted to him/her in carrying out the task. On the other hand, the courts' consideration of the Judicial Custodian as personally responsible may have the effect of refusing the Custody in order to avoid judicial rulings issued against them, or the party refusing to impose the Custody takes advantage of this and harms them, and for this reason a reasonable normal person will not take over a task that may expose him/her to legal accountability

in the future. However, making a mistake in the work of Judicial Custody is not something that is far-fetched, and this mistake can be so serious (Culpa lata) that losses are incurred by all parties to the conflict, including the Applicant for Judicial Custody him/herself.

So, what is the criterion for holding the Judicial Custodian responsible for this guarantee? And what are the texts that apply to this?

There are several cases in which the Judicial Custodian can be considered personally liable, that is if those cases are proved against the Custodian, and they may be as follows:

- Gross Negligence (Culpa lata): The Judicial Custodian may be held liable in the event that his/her gross negligence is proven in the performance of his/her duties, such as not collecting the money owed to the company from its debtors, or making decisions, whether negative or positive, that cause serious financial losses to the company.

- Fraud and Mismanagement of the Company Intentionally: As the Judicial Custodian is considered responsible in case it is proved that he/she cheated, that he/she acted to his/her benefit or used the funds under his/her management to his/her benefit and for purposes other than the purposes and works of the company.

- Non-Compliance with the Limits of the Powers Granted to him/her by the Court or Violation of its Decisions: As the Custodian in those cases is considered to have exceeded the limits of the tasks assigned to him/her and acted outside their scope, and hence, he/she is considered responsible for any damages that may result from this non-compliance or violation.

As for the provisions applicable to the responsibility of the Judicial Custodian, according to Article No. (1003) of the Civil Transactions Law, the provisions of the Agency and the Bailment (Deposit) contracts apply to the Custody in the event that the judgment issued imposing the Judicial Custody did not specify these provisions, and in a manner that does not contradict the nature of the Custody, and the result of this is the application of the text of Article No. (937) of the Civil Transactions Law, which states that, quote: "*[p]roperty collected by an agent on account of the principal shall be deemed to be a deposit, and if it is lost while in his possession without any infringement or default on his part, then he shall*

not be liable for it", unquote, which means in the argument from the contrary, that in the case of property perishing in the hands of the Agent (Judicial Custodian), due to his/her default or infringement, he/she shall be liable for it.

In addition, the text of the Paragraph No. (2) of Article No. (932) of the previous Law, is applicable to the determination of the standard of care to be exercised by the Agent (Judicial Custodian), where that Article stipulates the following, quote: "*[i]f the agency is for remuneration, the agent must exercise in carrying it out the care of the reasonable man"*, unquote.

So, what is the determinant of the standard of the reasonable man? And on what basis can it be determined? The Civil Transactions Law does not provide an explanation of the "Standard of the Reasonable Man", but some examples can be taken on which the Standard of the Reasonable Man Care can be measured.

The Abu Dhabi Supreme Court held in one of its rulings that the Agent's delay in taking legal action against a defaulting debtor for six months, resulting in the debtor's flight, is a violation and failure to take into consideration the Reasonable Man's Care Standard⁽⁶⁾. And in another ruling, the Abu Dhabi Supreme Court concluded that the failure of the Agent to collect the rent on behalf of the client for the properties managed by him is a violation and non-compliance with the Reasonable Man's Care Standard⁽⁷⁾.

In addition, the provisions of the (Bailment) Deposit may apply to Custody in some cases, an example of which is provided for by Article No. (979) of the Code of Civil Transactions, which states that, quote: "*[i]f the bailee denies (knowledge of) the property bailed when it is demanded from him, and the bailee alleges that he has returned it to the bailor or that it was damaged, he shall be liable for it"*, unquote.

This applies to the Judicial Custodian who claims non-receipt or damage of the equipment or machines delivered to him/her, once the receipt of them by him/her is proved by evidence.

In addition to the foregoing, the referral to the provisions of the Bailment (Deposit) and the Agency may not be resorted to, except in cases where the sentence that issued the imposition of Custody omits the illustration of the Custodian's obligations, and his/her powers and rights. Therefore, these

provisions may be quoted only to the extent that these provisions do not contradict the provisions established for the Judicial Custody. It is also worth differentiating between the Judicial Custody and the Contracts of the Bailment (Deposit) and the Agency, because the Judicial Custody originates from the Law, whereas the Agency and the Bailment (Deposit) originate from an agreement concluded, and in Judicial Custody, the scope of the Judicial Custodian's authority is determined by Law, whereas for the Agency and the Bailment (Deposit), it is the concluded agreement that determines the mandate of the Agent and the Bailee (Depositary).

Responsibility of the Legal Person Upon Appointment as a Judicial Custodian:

In some cases, the Judge of Urgent Matters or the competent authority (charged with executing the ruling to impose Custody) may be forced to appoint a legal person as a Judicial Custodian over the company that has been imposed with Custody, for several reasons related to the nature of the company's work and the size of its business, as the appointment of an individual Judicial Custodian may not be in line with the size of the company. And here, a question may arise as to the extent to which the Articles of the Family Companies (Businesses) Regulation Law relating to the President of the company apply to the responsibility of the Judicial Custodian. First of all, it should be clarified that the Companies Law does not contain any provisions related to Judicial Custody, but it can be applied to the Judicial Custodian in the case of granting him/her the same powers as the President of the company, under the judgment issued imposing the Custody, as in that case he/she becomes the President of the company, especially when the co-president has been removed from the management of the company, to the effect that the company is devoid of its president, and therefore the Judicial Custodian becomes the President of the company. That being said, if applicable, the courts must take into account when appointing a Judicial Custodian the fact that they should not be appointing a Custodian who works in the same activity as the company the subject of Custody, pursuant to the provisions of Article No. (86) of the Companies Law, which prohibits the work of a President in a limited Liability Company in a competing company or with similar purposes,

|| In some cases, the Judge of Urgent Matters or the Competent Authority may be forced to appoint a legal person as a Judicial Custodian in the implementation of the ruling to impose Custody.

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The Custodian is also criminally liable in case of concealing the truth of the company's financial position.



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It is necessary to distinguish between the dismissal case of the Custodian, which is made against him/her in his/her capacity as the Judicial Custodian, and the lawsuit that is made against the Custodian in person on the basis of exceeding the limits of his/her task (s).

and this is due to the fact that there could be a possibility that the Judicial Custodian may be a commercial competitor to the company the subject of Custody, and any action taken or error made may be interpreted as intended to harm it.

In addition to our opinion that the provisions of the Companies Law related to the President's liability apply to the Judicial Custodian if the latter is a legal person, we then believe that the text of Article No. (84) of the Companies Law applies, and the Judicial Custodian is considered responsible to partners and others in the event that it is discovered that it (as a Legal Person) has committed fraud, abused the powers granted to it, committed a serious mistake, or violated the provisions of any applicable Law. Furthermore, The Custodian is also criminally liable in case of concealing the truth of the company's financial position, if this is proved pursuant to the provision of Article No. (349) of the Companies Law. The Judicial Custodian shall also be liable in the event that his/her disclosure of the company's secrets is discovered pursuant to Article No. (354) of the Companies Law.

With that in mind, Which Court then is Competent to Determine the Responsibility of the Judicial Custodian?

Before we deal with that particularity, it is necessary to distinguish in this regard, between the nature of the measures taken by the Judicial Custodian and those measures against each other as a whole, as it is necessary to distinguish between the dismissal

case of the Custodian, which is made against him/her in his/her capacity as the Judicial Custodian, and the lawsuit that is made against the Custodian in person on the basis of exceeding the limits of his/her task (s).

The disputing parties have the right to request from the competent court - in this case, the court that issued the decision to impose the Custody, or the court considering the substance of the case - that the Custodian be dismissed and his/her task (s) terminated, if there are reasons in support of this, such as his/her abstention from work or inability to perform his/her duties, or because of his/her state of health, or there is a conflict between his/her duties and any other tasks he/she performs, or for any other reasons that the interested party may consider justifying the dismissal.

In the event that any of the parties has evidence that the Judicial Custodian has harmed them, the aggrieved/injured party has the right to file a lawsuit in which the Custodian will be litigated against before the competent trial court in that case, and to request the court to examine that dispute on the basis of the responsibility of the Judicial Custodian provided for by the Civil Transactions Law, and on the other hand on the basis of the Companies Law as we have already indicated. The aggrieved/injured party also has the right to request that any precautionary procedure be taken against the Custodian in case of proof that he/she is hiding any funds or seeking to smuggle them.

Is it Permissible to Impose Judicial Custody on Family Companies Subject to the Family Companies (Businesses) Regulation Law?

First of all, we should clarify that it is permissible to impose Custody on family companies in theory, however, given the provisions of Article No. (19) of Federal Law No. (37) of (2022), on the Regulation of Family Companies (Businesses), concerning the Competence of Family Business Dispute Settlement Committees - provided for in Article No. (20) of the same Law - to adjudicate all disputes between partners, and Paragraph No. (3) of that Article has stipulated that, quote: "[t]he committee has the right to take the necessary preventive and urgent measures it deems appropriate to maintain the continuity of the Family Business, and to prevent the interruption of its

business or affecting its reputation or its financial position throughout the period of consideration of the dispute", unquote.

This means that the Competent Committee has the right to take a decision to impose Judicial Custody if it deems that this is appropriate for the company's operation and continuity.

Paragraph No. (5) of the same Article also states that, quote: "[t]he parties to the dispute may refer to Arbitration or to the existing courts in the financial free zones in the State", unquote.

Therefore, it is not possible to file an application for the imposition of Judicial Custody on a family company through the Urgent Matters Judge, because there is an exception for such companies, since there is a committee specialized in such disputes and it is necessary to resort to it in such cases.

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It is not possible to file an application for the imposition of Judicial Custody on a family company through the Urgent Matters Judge.

*** Footnotes**

(1) Articles Nos. (997 to 1011) of the Code of Civil Transactions and Article No. (28) of the Code of Civil Procedure.

(2/1) In cases where the opponent has a point in issuing an order, he/she shall submit an Order/Petition on Application to the competent Judge or to the Head of the Department that considers the case after its registration, and this petition shall be in two copies unless it is electronically registered, so that it includes the facts of the application, its grounds, the applicant's domicile, place of work, and the designation of a chosen domicile in the state if he/she does not have a domicile or place of work in it and the supporting documents shall be attached to the petition.

(2/2) The Judge or the Head of the Department, as the case may be, shall issue his/her order in writing on one of the two copies of the petition or electronically on the day following its submission at the latest, and it is not necessary to state the reasons on which the order was based, unless it is contrary to a previously issued order, then the reasons that necessitated the issuance of the new order must be stated, otherwise it is invalid and this order is recorded in a special record or in the minutes of the hearing.

(2/3) The order shall be sent for execution in a letter issued by the Judge or the Head of the Department -as the case may be- to the concerned authority and the petition shall be kept in the file without the need for an announcement or an executive formula, and if execution is impossible for a reason attributable to a private natural or legal person, the Judge or the Head of the Department -as the case may be- shall sentence him/her with a fine of no less than (1,000) thousand dirhams and no more than (10,000) ten thousand dir-

hams for each day of delay in execution, and this shall be by a reasoned decision that cannot be challenged by any means of Appeal, and the Judge or the Head of the Department -as the case may be- may relieve the defendant of all or some of the fine if he/she shows an acceptable excuse after the completion of the execution.

(2/4) The fine sentence referred to in Paragraph No. (3) of this Article may be enforced by its issuer after notifying the defendant.

(2/5) The Order issued on a Petition shall be terminated if it is not submitted for execution within (15) days from the date of its issuance and such termination shall not prevent the issuance of a new Order.

(3) "Al Maso'ooliyyiah Al Qanooniyyiah Lil Haris An Al Amwal Al-lati Fi Hirasatihi Wa Nuthum Al Hirasah Al Khassah Fi Masr" (The Legal Responsibility of the Judicial Custodian for the Property and Rights That are in his/her Custody and the Private Custody Systems in Egypt), Dr. Hussein Mohammad Hussein Mohammad Khalil, (2001) - PhD Thesis - Faculty of Law - Cairo University.

(4) "Al Oqood Al Waridah Ala Amul Al Wadeeah Wa Al Hirasah" (The Contracts Received on the Work of the Bailment (Deposit) and Custody), Dr. Abdul Raziq Al-Sanhoury, Judges Club.

(5) "Nathariyyiat Al Maslaha Fi Al Da'awah" (The Theory of Interest in the Lawsuit), Dr. Abdel Mone'im Al-Sharqawi, (1947), Wahba Library.

(6) Appeals Nos. (835 - 765) of (2015), Supreme Court (Commercial) - Session Dated (03/03/2016) - Abu Dhabi Supreme Court.

(7) Appeal No. (407) of (2013), Supreme Court (Civil) - Session Dated (26/12/2013) - Abu Dhabi Supreme Court.

Bullying

Destructive Behavior of Values and Ethics in Society

Bullying is one of the destructive behaviors in society, which is contrary to the high human principles, values, ethics, fraternity, and equality among human beings, and it is an ugly act and a bad conduct that causes harm to many people who are subjected to the act of bullying, and puts their lives at risk of destruction along with their families, in addition to the immense psychological harm that befalls them, and many other harmful effects that are visited upon those who are subjected to the act of bullying.



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Bullying is also one of the acts that goes against the ethics of the Islamic Religion, which stands for equality, respect for everyone, and not to offend anyone.

Bullying is defined as a form of psychological and physical abuse. Sometimes one individual is exposed to it by another individual who is more powerful and bossy in behavior, either because he/she is older in age, higher in status, or larger in number, which makes surrendering to him/her and not confronting him/her inevitable. Bullying is considered one of the forms of verbal and physical abuse, directed by one person against another person, or the bully may be a group of people acting against a particular person, and it is also possible that bullying is directed at a group of people, and it encompasses mocking and ridiculing the person being bullied.

Children and adults alike are exposed to many forms and types of bullying, including: (Physical, Verbal, Social, Cyber, and School Bullying and many other types of bullying), all as per the following:

Physical Bullying: Physical Bullying includes hitting, pushing, kicking, pinching, tripping, or any physical harm to which a person is exposed, and it may also be by damaging private property. Physical Bullying causes many damages, both short-term and long-term, which is represented in the human being being beaten and slapped on the face with the intention of insulting them, also kicking or tying and restricting them to exacerbate their feeling of helplessness and weakness, as well as physical harassment and rape, which represent the ugliest forms of bullying, as they cause the person the subject of bullying to be terrorized, intimidated, and humiliated, in addition to making him/her a disturbed and weak personality.

Verbal Bullying: It is a bullying that is based on the use of names, words, insults, intimidation, harassment, and verbal abuse, which is a type of emotional abuse suffered by many people with whom we have different relationships, such as work managers, colleagues, and loved ones from friends or family members, or even from perfect strangers with whom we have some transient encounters, and it may



Bullying is defined as a form of psychological and physical abuse. Sometimes one individual is exposed to it by another individual who is more powerful and bossy in behavior, either because he/she is older in age, higher in status, or larger in number, which makes surrendering to him/her and not confronting him/her inevitable



“ Social Bullying refers to the damage that is caused to someone's social reputation, which resulted in humiliation and abasement.

also come in the form of remarks or racist terms, and it may initially seem harmless or inoffensive, but it takes a turn and escalates to greater levels and ways where it begins to affect people, such as associating a person with one of the negative qualities, or one of the unpopular cartoon characters as a way of ridicule, or cracking jokes that are directed at someone and always mocking him/her and their actions using inappropriate comments, as well as practicing racial discrimination against him/her by mocking the color of his/her skin, ethnicity, and other things such as refusing to interact with a person (s).

Social or Emotional Bullying: Social Bullying refers to the damage that is caused to someone's social reputation, which resulted in humiliation and abasement, and Social Bullying is often difficult to detect, as it is called "Cov-

ert Bullying", which is carried out from behind the person who is being bullied, that is, it is not directed directly at him/her, and it includes Social Bullying: Such as spreading rumors and lies, threats and contempt, as well as facial and body gestures, making obscene jokes to embarrass and humiliate someone, imitating people in an abusive way, excluding someone from a social circle, damaging someone's reputation, and it is embodied in causing deliberate permanent embarrassment to a person and causing them to be socially isolated, by spreading rumors about him/her and distorting his/her moral image, as well as the marginalization, criticism, and discrimination practiced by parents against one of their children, and them preferring their other children over him/her under the pretext of his/her hyperactivity or bad behavior.

Cyberbullying: It is the intentional damage, which comes frequently through electronic devices, mobile phones, and computers, and Cyberbullying can be done in an overt or covert way, through text messages or through social media platforms and websites.

Cyberbullying includes: (Abusive e-mails, videos, photos, or publications, deliberate agreement to exclude a person online, spreading offensive rumors, exploiting personal information or stealing login information for a person's account). This type of bullying has spread with the spread of teenagers and young people's addiction to social media and making it the focus of their lives, and it may reach the sending of threats to harm a person and his/her loved ones when the difference of opinion intensifies.

School Bullying: The school is considered

one of the institutions in which the phenomenon of bullying is widespread the most, and it must be addressed by all parties who deal with children, especially the school.

Bullying is a phenomenon that must be dealt with, as bullying is one of the phenomena that society must seek to tackle by various possible means, starting from building generations on noble morals and ethical values and equality among people of different colors, races, affiliations, and beliefs, and spreading those values and morals among different members of society, in addition to directing awareness campaigns on an ongoing basis to identify the dangers of bullying, and warn people of various methods of physical or verbal violence. The act of bullying must be criminalized through deterrent laws and raising self-confidence in children.

“ The act of bullying must be criminalized through deterrent laws and raising self-confidence in children.

Justice in Islam



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Islam has been distinguished from other systems of belief by a set of civilized human values, which all modern systems have been unable to achieve, and one of these values is "Justice". And Justice is a great value. How beautiful, how great, and how wonderful it is, and if it is applied in people's reality, they will feel security, tranquility, comfort, and happiness. Islam has prescribed Justice and Fairness for everyone, even if he/she disagrees with us in religion or belief, as well as Justice in everything from words and deeds, and warned against the consequences of violating it.

One of the pillars of happiness that human beings seek is that all people should be assured of their rights and feel that Justice is present among them and applied to them, and that is why Islam ordered that Justice is applied to all human beings without distinction.

On the other hand, we find that Injustice itself is forbidden by the Sharia'h Law, whatever its source, and whatever its location, and this is the clearest evidence of the "Objectivity of Values" in Islam, and making them unconditional without their relativity, and therefore they are immortal. Also, Justice in the eyes of Islam is the ultimate goal for which the Devine Monotheistic Religions were revealed, and Messengers were sent to all, in accordance with what Al-Mighty Allah said in His Holy Book, quote: "*[I]n indeed, We sent Our messengers with clear proofs, and with them We sent down the Scripture and the balance of Justice` so that people may administer Justice. And We sent down iron with its great might, benefits for humanity`*", unquote, [Surat (Chapter) Al-Hadid (The Iron): Ayah (Verse) 25]. And it can be said that the system of international relations between Muslims and others is based on Justice, and this Justice has been decided by "Quranic" constitutional texts, and by Basic Laws, "Prophetic Hadiths", and there are many Quranic Verses that command Justice; as the Allah Al-Mighty says, quote: "*[I]n indeed, Allah commands justice, grace, as well as generosity to close relatives. He forbids indecency, wickedness, and aggression. He instructs you so perhaps you will be mindful`*", unquote, [Surat (Chapter) Al-Nahel (The Bees): Ayah (Verse) 90].

The Al-Mighty Allah also says, quote: "*[o] believers! Stand firm for justice as witnesses for Allah even if it is against yourselves, your parents, or close relatives. Be they rich or poor, Allah is best to ensure their interests. So do not let your desires cause you to deviate `from justice`. If you distort the testimony or refuse to give it, then `know that` Allah is certainly All-Aware of what you do`*", unquote, [Surat (Chapter) An-Nisa (The Women): Ayah (Verse) 135].

Al-Mighty Allah says, quote: "*[o] believers! Stand firm for Allah and bear true testimony. Do not let the hatred of a people lead you to injustice. Be just! That is closer to righteousness. And be mindful of Allah. Surely Allah is All-Aware of what you do`*", unquote, [Surat (Chapter), Al-Ma'idah (The Table Spread): Ayah (Verse) 8].

Therefore, Allah Al-Mighty has commanded His believing worshippers to be just, that is, Justice with the near and the far, enemy and friend, so that no relative or friend is favored by Justice for his/her loving personality, nor is it withheld from afar or by an enemy who hates it. Ibn Kathir said in an interpretation of the Al-Mighty Allah saying, quote: "*[a]nd do not let the hatred of a people for having obstructed you from al-Masjid al-Haram lead you to transgress`*", unquote, [Surah (Chapter) Al-Ma'idah (The Table Spread): Ayah (Verse) 2]. Quote: "*[t]hat is, do not be driven by your hatred for some people into abandoning Justice, for Justice is ordained for everyone, every day, and in all situations`*", unquote. And some of the predecessors (Early Muslims) said, quote: "*[w]hen someone disobeys Allah in matter that impacts on you, you can give him no punishment worse than obeying Allah in matters that impact on him`*", unquote.

Allah Al-Mighty says, quote: "*[g]ive full measure and weigh with justice. We never require of any soul more than what it can afford`*", unquote, [Surah (Chapter) Al-An'am (Cattle, Livestock): Ayah (Verse) 152]. Ibn Kathir said in his interpretation of this Verse, quote: "*[t]he Al-Mighty Commands Justice in deeds and in words and for the near and the far, and Allah Al-Mighty Commands Justice to everyone at all times and in every situation`*", unquote.

The Messenger of Allah, Prophet Mohammad (May peace and blessings of Allah be upon him) stressed the need to adhere to Justice by warning against committing Injustice the opposite of Justice, and to this effect, Muslim narrated in his Al-Sahih (The second hadith collection of the Six Books of Sunni Islam) that the Prophet (may peace be upon him), said, quote: "*[b]eware of Injustice. Injustice will appear as darkness on the Day of Rising`*", unquote.

From the above, it can be said that Islam has not only reached its goal to stand at the point of rooting the Principle of Absolute Justice, in political management inside and outside, but this has extended to Justice and Ihsan (Excellence and Grace), as the Al-Mighty Allah says, quote: "*[I]n indeed, Allah commands justice, grace, as well as generosity to close relatives. He forbids indecency, wickedness, and aggression. He instructs you so perhaps you will be mindful`*", unquote. [Surat (Chapter) Al-Nahel (The Bees): Ayah (Verse) 90], and this is out of Islam's keenness to establish Justice and Grace, as it attached establishing them to the principle of "Al-Itiqad" (The firm creed in Islam that one's heart is fixed upon without any wavering or doubt) so that both of them will become a Creedal Principle and an Inner Self Fact lived by the righteous Muslim before they become a political legislation and this is evidenced by what the Al-Mighty Allah said in His Holy Qura'an, when He said, quote: "*[b]e just! That is closer to righteousness`*", unquote, [Surah (Chapter), Al-Ma'idah (The Table Spread): Ayah (Verse) 8], and "Righteousness" originates from the Creed, and it is a well-established psychological and mental fact.

The Role of the Foster Care Committee Its Nature and Its Importance



**His Excellency Judge
Mohammad Abdelbaqi**
Judge of the Courts of First Instance in Dubai

The Foster Care Committee is a government committee comprised of several experts affiliated with specialized government agencies in the Emirate of Dubai, whose mission is to assist the Judiciary in researching and examining the child condition, and to indicate where the interest is required when a child custody dispute arises.

Custody issues are one of the most sensitive and complex issues in matters of Personal Status, as they require a careful balance between the rights of parents and the best interests of the child. And although the Judge is the supreme expert in making peremptory judgments, reliance on the Foster Care Committee has become essential to ensure that custody decisions are based on scientific, psychological, and social grounds that ensure the best interests of the child.

The experts on the Committee play a vital role in assessing the psychological and social conditions of both the child and the parents, through comprehensive interviews and psychological tests, as they can provide detailed reports on the psycho-emotional state of the child, his/her relationship with each of his/her parents, and the extent of the impact of any change in custody on his/her mental health.

These reports provide the Judge with an in-depth insight that helps him/her make decisions based on a scientific understanding of the possible effects of any decision he/she makes.

The reports of the Foster Care Committee include multidimensional assessments that include the emotional stability of parents, their ability to provide a safe and loving environment for the child, and also the cohesion of family relationships, in addition, experts take into account the ability of parents to meet the psychological, social, and educational needs of the child. All these criteria help determine who is the most suitable for custody in line with the best interests of the child.

The cooperation between the Judge and the Foster Care Committee aims at protecting the rights of the child and securing a sound environment that ensures his/her healthy and proper development.

The Committee's recommendations are based on all-encompassing and thorough studies to provide the child in custody with the best possible environment, as a child who grows up in a tense and unstable environment is more prone to psychological and behavioral problems that may affect his/her future.

The contribution of experts in their recommendations based on scientific and objective data makes it easier for the Judge to make decisive and categorical decisions, which are directed towards ensuring the well-being of the child and securing the best conditions for his/her development. In terms of legislation, Article No. (59) of the Federal Law No. (3) of (2016) on Child Rights (Wadeema's Law) stipulates, quote: "[s]ubject to the provisions of the personal status law, the competent court shall, before issuing a judgment on the child custody, request the submission of a detailed report about the social, psychological and health status and the criminal status of the person applying for custody or the



The reports of the Foster Care Committee include multidimensional assessments that include the emotional stability of parents, their ability to provide a safe and loving environment for the child, and also the cohesion of family relationships.

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The Foster Care Committee has been formed at the level of the Emirate of Dubai, in order to support the Personal Status Departments in Dubai Courts at their all levels, to search and verify where the best interest of the child is, which has precedence over the interest and rights of parents and everyone who wishes to take custody of the child



person for whom custody will be ordered by the court or the submission of a statement that he did not commit any crime outside the State. The Executive Regulations shall determine the procedures for preparing these report and statement", unquote. Accordingly, the Foster Care Committee has been formed at the level of the Emirate of Dubai, in order to support the Personal Status Departments in Dubai Courts at their all levels, to search and verify where the best interest of the child is, which has precedence over the interest and rights of parents and everyone who wishes to take custody of the child.

Considering the rulings of the courts, we find that there are many cases that have been referred to the Foster Care Committee, and that the Committee's Reports contributed significantly to the formation of the court's doctrine when deciding which parents are the fittest for custody, because the nature of the Committee is to conduct field work through which it reveals the status of the parties to the lawsuit and the child the subject of custody and this is done by conducting personal interviews with parents, children, and others from the family environment, visiting schools to

verify the educational level, reviewing medical records when needed, and conducting field visits to the homes of those requesting custody to pinpoint the environment suitable for the child's residence in terms of space, facilities, and those who are living in the home, and the Committee also works on the psychological analyses of the child by considering the drawings, writings, and behaviors made by him/her for the purpose of preparing a technical assessment in a scientific manner about the condition of the child in custody and what are the expectations perceived if he/she were added to any of the parties, and it may propose another foster parent (Custodian) in accordance with the order provided for in Article No. (146) of the Personal Status Law, or an alternative family to take custody of the child if necessary, in accordance with the text of Article No. (4) of the Wadeema Law, if the parents are not at all suitable for custody of their children, as a child shall not be left without custody and care until he/she reaches the age of (18).

The Judicial System in the UAE has been working to protect children and safeguard their basic

rights since the establishment of the Federation, as stated in Article No. (16) of the Constitution of the UAE, which stipulated, quote: "[t]he community shall care for children and mothers, and protect minors and others who are unable to look after themselves for any reason, such as illness, incapacity, old age or forced unemployment, assist and rehabilitate them for their own interest and for the interest of the community. Welfare and social security Laws regulate these matters", unquote, and since its promulgation, the Penal Code has criminalized any violations that affect the safety of the child at the material or moral level, and the State has ratified the United Nations Convention on the Rights of the Child (1990), and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (2000), and then it codified those agreements by legislating local laws, and they are (The Federal Personal Status Act of (2005)), The Child Rights Law "Wadeema" (2016) and the Civil Personal Status Law of (2022), and other Laws such as the Protection of Children of Determination), so that all state institutions

work in caring for all children of all categories. Also, the request to delegate the Foster Care Committee to examine which parties are suitable for custody is not a right for the opponent, and in this regard, the court must answer it in any case, and it may reject it when it finds that it is useless or unproductive in the dispute, as the court examines when considering an application the facts the plaintiff wishes to prove through the Committee, in order for it to be able to decide whether to accept the referral request or not, or to look at other ways to verify the authenticity of the claim through questioning, testimony of witnesses, or other means of proof.

Ultimately, the cooperation between the Judge and the Foster Care Committee in Custody Cases reflects the commitment of the Judicial System to provide the best possible solutions to protect the interests of children. And relying on psychological expertise contributes to the provision of a stable family and healthy environment, which positively reflects on the emotional and psychological development of the child, in order to ensure the best interests of the child in each individual case.

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The Legal Basis.. For Happiness



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Since the birth of the humanities, we have seen sociologists talking about rights, and legislators making laws, and this is the natural division for the taking advantage of all expertise in a society that respects human rights, and it is also the embodiment of the dream of a completely clear and transparent society, that is subject to clear and specific rules.

ogy, and applied sociology - applied to legislation- can also take the title of legislative sociology.

Happiness and the Law:

And if the interest in Happiness initially took its luck through sociology, and legislation -as we mentioned- was the main outlet for sociology, then the legislator had to intervene in many countries to open a door for Happiness through which it can reach the Legal Studies, until the cry of (Louis Antoine de Saint-Just) in (1793) with his famous expression that, quote, "*happiness is a New Idea in Europe*"⁽¹⁾, unquote, became a thing of the distant past, because Happiness -two centuries after this saying- is no longer an idea and is no longer novel.

But the question remains: (Has Happiness Really Become Novel?)

In fact, the cry of Louis Antoine de Saint-Just was accompanied, preceded, and followed by declarations and constitutions, among whose texts for the first time the provision on Happiness was dealt with, and even in the earliest of these texts that appeared, the American Declaration of Independence was the most straight forward in its stipulation of Happiness within the range of rights it stated, and not only that, but it also listed it among the (Inalienable Personal Rights)⁽²⁾, and then the constitutions followed later in introducing this new term, although their texts and philosophies have differed in their stating of it in terms of its individuality or collectivity, and in terms of being a right or an end and a goal, and even the texts that made it a right have varied between those who linked the right only to the idea of providing opportunity and favorable conditions for those seeking to reach it, and those who made it a right in and of itself that requires the state to fulfill and commit to it, and all this is undoubtedly due to the ideologies and circumstances that surrounded the time period in which these texts were developed.

It should be noted here that the translation of the relationship between Law and Happiness through the Rights' Door has been mentioned in French Jurisprudence and others who followed its path from other countries, and it is also mentioned in some American courts

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The Relationship Between Law and Society:

With a more in-depth look, it is confirmed to us the clear and interactive relationship between Law and Society. As it is the Law that regulates the rules of behavior and morality in society, while society add to the Law the layer that makes it respected among people, so that its rules are characterized by legality, rationality, the trait of adherence, and obligation, so that the Law is able to manage the affairs of the state and society, and manage the affairs of individuals of different social strata from which they come.

Thus, it seems that the nature of things makes legislation the main executor of legal sociol-



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The International Declarations and Charters represented the basis that made the study of Happiness by the two Laws a legitimate thing.

through the using of the formula "The Right to Happiness". However, this does not mean that this is our conviction that this is the most correct expression of this right, and we believe that the most correct and closest to application -both in concept and law- is the expression of the American Declaration of Independence "The Right to Pursue Happiness", and this formula has been used by many local constitutions of the United States of America, and those who followed its approach from other countries as we will explain later.

In any case, we will deliberately use the two expressions in this topic to recall the disparity among the legal texts when talking about Happiness.

And whatever the case may be, the International Declarations and Charters represented the seed and the basis that made the study of Happiness by the two Laws -specifically from the point of view of being one of the human

rights- a legitimate thing, and an open door through which the legal researcher comes in, in an attempt to analyze its legal sources, in which it is contained in the texts of those declarations and charters, even if the matter has gradually moved to the internal texts of states, especially to their constitutions.

Therefore, in this Article, we will try to analyze the sources of Happiness contained in the texts of international declarations and charters as international historical sources, provided that the talk about the legal basis for happiness is completed within the texts of the internal constitutions of many countries, where both represent the legal basis for this Concept of Happiness.

Happiness in Declarations of Rights and International Charters

International Declarations and Charters are a fundamental historical source of rights and

freedoms in general. However, a preliminary review in the search for a right called the "Right to Happiness" in these International Declarations and Charters may overwhelm us with some sort of frustration⁽³⁾, and perhaps this is due to the fact that Public International Law was previously concerned with individuals only indirectly. However, the significant development of this branch of Law, specifically in the field of norms enshrining human rights, has made "Individuals" a fundamental subject of International Law⁽⁴⁾.

As a result of this development in Public International Law, Happiness is no longer a distant or strange thing for the texts of International Declarations and Charters, as it has become an area and subject for many works within the United Nations Organization since its adoption by the General Assembly in (2011), "Happiness: Towards a Holistic Approach to Development"⁽⁵⁾, a resolution that called on states to adopt new development indicators that take into account the achievement of Happiness and well-being of peoples, considering that the Pursuit of Happiness is a basic human Goal⁽⁶⁾.

It is well known that the human rights provided for in International Declarations and Charters are classified into three categories⁽⁷⁾, each of which represents a certain generation⁽⁸⁾.

The First Generation, which can be called the "Generation of Blue Rights", represents those civil and political rights, the legal basis of which dates back to Origins, most importantly, the American Declaration of Independence and the Declaration of the Rights of Man and of the Citizen after the French Revolution.

The Second Generation, which included "Economic and Social Human Rights", such as the right to work, health care and housing, social security, and benefits for the unemployed.

These rights are enshrined in the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

This generation of Rights is characterized by the fact that it imposes on governments the duty to respect and realize it, by working to

create opportunities and resources, so that the citizen obtains his/her rights⁽⁹⁾.

These rights have their legal basis in the legislation of states after the Second World War.

The Third Generation, which is called the "Green Rights Generation", and it is the one that includes the human rights of "environmental, cultural, and developmental" rights, and is the most developed and advanced form of rights in adopting a new philosophy in defining the relationship between Right and Law. This generation has included rights, the most important of which are: (The right to social and economic development, the right to a healthy environment and natural resources, participation in cultural heritage, esoteric wealth, the right to the wealth found on the seabed, the right to relief in major disasters, the right to solidarity, in addition to the right to sustainability, and intergenerational equity)⁽¹⁰⁾. The legal basis for the Third Generation of Rights is traced to the "Stockholm Declaration of the United Nations Conference on the Human Environment" issued by the United Nations Conference on the Human Environment in (1972), and the "Rio de Janeiro Declaration on Environment and Development" in (1992), even some countries such as Finland, New Zealand, and Sweden have included in their constitutions provisions that protect and promote these rights.

We believe that the right to the Pursuit of Happiness has been ever present since the First Generation of Human Rights, and the American Declaration of Independence, promulgated on (July the 4th, 1776), represented the first historical source of this right⁽¹¹⁾, when it decided that, quote: "[w]e hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness", unquote⁽¹²⁾. In this Declaration, it was clear the extent of the influence that (John Locke) had on the founding fathers in enumerating the inalienable rights mentioned in this Declaration (Life, Freedom, and the Pursuit of Happiness), which are derived from the John Locke Trilogy (Life, Liberty, and Property), but they replaced

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Happiness is no longer a distant or strange thing for the texts of International Declarations and Charters

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The Green Rights Generation is the most developed and advanced form of rights in adopting a new philosophy in defining the relationship between Right and Law.

the Right to "Pursue Happiness" with the Right to "Own Property".

In fact, there was a declaration less well-known than the American Declaration of Independence that slightly preceded the talk about the Right to the Pursuit of Happiness, and it is the "Virginia Declaration of Rights" of (1776), which also inspired the founding fathers to talk about Happiness, although it preceded the Declaration of Independence by one month! In its famous preface, this Declaration emphasized the original rights of man, namely, (The Right to Enjoy Life and Freedom, the Right to Possess and Own Things, and to Seek and Have Happiness and Safety)⁽¹³⁾.

A little later on, the French Constituent Assemblies, in turn, took up the question of Happiness, albeit not within the crucible of Rights, referring to its concept in the Preamble of the Declaration of the Rights of Man and of the Citizen (1789), so that the Claims of Citizens will turn into, (...), preserving the Constitution and making everyone happy⁽¹⁴⁾, and then confirming this shortly before the issuance of the Constitution of (1793) in the First Article of the Second Declaration of the Rights of Man and of the Citizen (1793), which stated that, quote: "[t]he Goal of Society is Common Happiness", unquote⁽¹⁵⁾, and here it should be noted that this Declaration replaced this Article with the text of the First Article contained in the Declaration of (1789), which stipulated that, quote: "[i]ndividuals are Born Free and Equal in Rights (...)", unquote.

With regard to the Second-Generation Human Rights legislation, a term close to the term "Happiness" has been introduced in two legislations of this generation, namely the (Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social, and Cultural Rights (1976))⁽¹⁶⁾, which used the term "Well-Being"⁽¹⁷⁾ as an alternative to the term "Happiness". Article No. (25) of the Universal Declaration of Human Rights stipulated that, quote: "[e]very one has the right to a standard of living adequate for the health and well-being of himself and of his family", unquote.⁽¹⁸⁾ Article No. (4) of the Internation-

al Covenant on Economic, social, and Cultural Rights also uses the same term in its determination that member states commit themselves to the application of the rights contained in the Covenant provided that "[t]heir sole aim is to promote the general welfare"⁽¹⁹⁾.

With regard to the Third Generation of Rights, which, in its paramount goal, seeks to ensure the human right to development in order to bridge the gap between the rich and the poor, as well as between industrialized countries and those seeking to develop, and we consider that all the Rights of this Generation are directly related to Happiness. Here we can say with confidence that the real reference to them, and the purpose behind the provision of them, is the desire for people to live in a State of Happiness.

These texts have come as a result of the development of human society in conjunction with the development of its rights and demands, and the legal jurisprudence in order to develop these new rights -such as the human right to health and a clean environment - is based on the development of the Human Right to Happiness, or in the pursuit of achieving it, because this right is strongly linked with other rights, such as the right to a pollution-free environment. And the laws of the environment, as well as the environmental rights of Man, have raised the idea of the Right to Happiness in the field of talking about the quality of life and the living environment, which although indirectly meant the "Right to Happiness", but being indirect does not mean that it is hidden, as there is a clear and apparent link between these concepts and the Right to Happiness. And while we are aware that International Human Rights Law has not yet reached the point of protecting the Right to Happiness, it has allowed people to protect (Their Projects in Life) by deciding their right to protect their identity, their future directions, or even their way of developing their personality⁽²⁰⁾.

In fact, we, along with others,⁽²¹⁾ believe that even when there is no text that establishes and enshrines the Right to Happiness, the totality



of the stipulated human rights contributes to the realization of that right, and therefore the respect for these rights and respect for all their indivisible characteristics is a prerequisite for achieving this right and reaching that state. Here we can raise the following question: (Can we not now expect the issuance of another generation of human rights legislation, and that its main title is that right, which summarizes all the human rights stipulated in the declarations and charters preceding it, and by that right we definitely mean the "Right to Happiness?")

Whatever the answer to this question that the coming years will bring us, and whatever the difference between the texts of the legislation of the current three generations in their wording and content, what can be emphasized right now is that the Right to Happiness or to the Pursuit of Happiness not only appeared in

the same period as the solid essence of human rights, but also has many connections with those rights, and perhaps it can be considered the goal and ultimate objective of them.

If the beginning of the emergence of Happiness in the texts was represented by International Declarations of Independence or Rights, the matter did not depend on this kind of texts of a universal legal nature, as those texts represented just the beginning and the prelude to the emergence of this new right in the internal texts and thought of states, especially in the most valuable texts, namely the constitutional texts.

Internal Legal Sources of the Right to Happiness

If the promotion of the Right to Happiness began in texts that concern either the legitimacy of the state⁽²²⁾, or the definition of the goals of

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The distance between Law and Happiness disappears and dissipates quickly if we look at the internal legal texts that provided for Happiness.

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The legislation of the United Arab Emirates has been a pioneer in introducing the term Happiness into the texts of its Local Laws.

society⁽²³⁾ - and they are texts that bear questioning the extent to which they are considered legal principles in the strict sense of the word- the obvious distance between Law and Happiness disappears and dissipates quickly if we look at the internal legal texts that provided for Happiness, starting from the eighteenth century and ending with some modern constitutions. Although it is recognized that the American Declaration of Independence of (1776) does not formally have constitutional value, but its influence on the constitutional texts that were developed after it was obvious. To date, the constitutions of thirty of the fifty constituent states of the American Federation have provided for Happiness in their constitutions, twenty-one of which have provided for it with the term of "Right"⁽²⁴⁾. The influence of this text in the American Declaration was not limited only to the interior, but also extended outside the United States of America, where we find -through a search in most of the constitutions of the world- that at least twenty three constitutions⁽²⁵⁾ of the current constitutions have explicitly provided for the word (Happiness) within their texts, and if we include in that enumeration the constitutions that provide words or phrases close to Happiness, we find one hundred and ninety constitutions using the word (Welfare)⁽²⁶⁾, and one hundred and twenty three constitutions using the term (Goodness)⁽²⁷⁾. However, of all the constitutions that have explicitly used the term Happiness outside the United States of America, there are only five that specifically take the American Trilogy⁽²⁸⁾ (The Right to Life, Liberty, and the Pursuit of Happiness) in affirming the individual's Right to Happiness, and they are (The Japanese Constitution of (1946)⁽²⁹⁾, Haiti (1987)⁽³⁰⁾, Namibian (1990)⁽³¹⁾, Seychelles (1993)⁽³²⁾, and the fifth is the South Korean constitution⁽³³⁾, which was amended in (1980), and it was in this amendment that the extent of influence by the Japanese constitution began, and in which the Right to the Pursuit of Happiness was added in its tenth Article. While other constitutions have explicitly provided for the term Happiness in their texts that do not include rights, they have differed in the wording of their texts and in their areas⁽³⁴⁾. And while the expression (Happiness), for example,

appears in the constitutional oath taken by the high authorities of Niger⁽³⁵⁾ as stipulated in the (2010) constitution, the (2008) constitution of Bhutan specifically refers to Happiness in its Article on the political principles of the state⁽³⁶⁾. At the Arab level, the first provision on Happiness within the Arab constitutions was contained in the preamble of the first Egyptian constitution of (1923), which was proclaimed by King Fu'ad, then the successive Egyptian constitutions stopped providing for it, until the current constitution which came into force in (2014) and re-stipulated Happiness again within its preamble, as the term Happiness with its derivatives was mentioned twice in the preamble of the constitution of (1923), where the first paragraph of that preamble was issued as follows, quote: "*[h]aving, since mounting the throne of our ancestors and vowing to keep safe the trust which God Almighty has entrusted to us, always done our utmost to pursue the good of our nation, and pursue the path which we know will lead to its welfare and advancement and to deriving the enjoyments of free and civilized nations*", unquote, and the second paragraph of that same preamble was issued as follows, quote: "*[a]nd since such end cannot be properly attained unless in a constitutional system similar to the most advanced constitutional systems in the world, under which our nation can happily and satisfactorily live and pursue the path of an absolutely free life*", unquote. As for the (2014) constitution, it mentions Happiness in its preamble as well, but by stating the saying of Al-Azhar's Pride Rifa'a Al-Tahtawi that the homeland should be, quote: "*[a] domain of shared happiness among its people*", unquote. In any case, what these texts have in common is that they represent a new thought that establishes the question of Happiness on a legal basis, and makes these legal texts of various kinds and degrees a source of this Happiness, and also makes for the state a role in achieving this Happiness or in pursuing it. At the level of ordinary legislation, the legislation of the United Arab Emirates has been a pioneer in introducing the term Happiness into the texts of its Local Laws. This includes

what is stated in the Local Law of the Emirate of Dubai No. (1) of (2020) on the Smart Dubai Department, which set among the goals for which the Department was established to, quote: "*[e]nsure the happiness and well-being of community members*", unquote. This was also preceded by the use of the term Happiness within the provisions of Law No. (8) of (2018) on the Human Resources Management of the Government of Dubai, as stipulated in Article No. (5/4), that it falls within the competencies of Human Resources, quote "*[t]o promote organizational culture among the Department's Employees; raise their happiness levels; inspire positivity; motivate innovation; and foster teamwork*"., unquote. In the Emirate of Ras Al Khaimah, Law No. (4) of (2016), which was issued on the Restruc-

turing and Organization of the Department of Economic Development, included also a provision that stipulates, quote: "*[t]o take all measures for employees in the department to ensure the improvement of their working environment, and motivate them to work, innovate, and achieve happiness for them*", unquote. Thus, Happiness has charted a path for itself within the internal legal texts of states, whether constitutional or ordinary legislative texts, so that it can have another legal legitimacy for itself, consolidate a legal basis that complements what is stated in International Declarations and Charters, and for Happiness to stand tall within legal studies, and pave the way for it to be the goal and objective of all future constitutional and legislative texts.

To Be Continued

* Footnotes

- (1) This famous phrase appeared in his speech on behalf of the Committee of Public Safety on (March, the 3rd, 1793). In this respect, see: Œuvres complètes, Gallimard, coll. Folio histoire, 2004, p. 673.
- (2) Voir, Jean-Pierre MARGUENAUD, De la nébulosité du concept de bonheur, Le droit au bonheur, RERDH, Collection Colloques & Essais, Institut Universitaire Varenne, 2016, p. 13.
- (3) Carole NIVARD, « Les fondement internationaux du droit au bonheur et leur justiciabilité », Le droit au bonheur, Collection Colloques & Essais, Institut Universitaire Varenne, LGDJ, 2016, p. 325.
- (4) *ibid.*, PP. Nos. (325-326).
- (5) United Nations General Assembly Resolution No. (309/65) of (July the 19th, 2011).
- (6) For example: on (June the 28th, 2012), the sixty-sixth session of the United Nations General Assembly entitled "Happiness, the Well-Being of Society and the Modern Economic Paradigm" was held, at which UN Secretary-General Ban Ki-Moon declared that the world needs a new Economic Paradigm, achieving parity between the three pillars of the economy: (Sustainable Development, Material and Social Well-Being, Individual Safety and the Environment), and this goes straight to what the definition of Global Happiness is.
- (7) It should be noted that this division in its origin is not agreed upon among international jurists, and even recognizing its existence, there is a fourth generation of rights being enshrined

today, related to biological rights based on the Universal Declaration on the Human Genome and Human Rights, and the issue of Digital Rights is also raised in this regard as a right among the rights of the fourth generation, but there is no room to go into details on this specificity.

(8) The first to propose the division of human rights into three generations was the Czech-French Jurist Karl Vasak at the International Institute of Human Rights in Strasbourg, where Vasak used the term in question since November (1977). In this respect, see: Karel VASAK, "Human Rights: A Thirty-Year Struggle: The Sustained Efforts to give Force of law to the Universal Declaration of Human Rights", UNESCO Courier 30:11, Paris: United Nations Educational, Scientific, and Cultural Organization, November 1977.

(9) Fakia Saqni, "Al Tamkeen Min Hoqooq Al Insan - Mutatallibatuhu Wa Mawani'uohu Fi Al Watan Al Arabi" (Empowerment of Human Rights: Its Requirements and Contraindications in the Arab World), Dar Al-Fikr Wa Al-Qanoon (House of Thought and Law), Al-Mansoura, (2020), P. No. (62).

(10) *ibid.*, PP. Nos. (65-67).

(11) Refer to the reasons and events that accompanied the provision on Happiness in this Declaration: Ryan RYNBRANDT, The Pursuit of Happiness, Collin College, Paper Prepared for the Western Political Science Association 2016 Annual Conference in San Diego, CA, p. 1. <https://www>

academia.edu/40386871/The_Pursuit_of_Happiness.

(12) The text in English is:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

It has been said about this sentence that it is "[o]ne of the most famous sentences in the English language" and "[t]he most powerful and ordered phrase in American history". For this refer to:

Joseph Ellis, *American Creation*, Alfred A. Knopf, 2007, p. 55-56.

(13) Art 1 "That all men are created equally free & independent, & have certain inherent natural Rights, of which they cannot, by any Compact, deprive or divest their posterity; among which are the Enjoyment of Life & Liberty, with the Means of acquiring & possessing property, & pursuing & obtaining Happiness & Safety".

(14) The full text of the preamble in French reads as follows:

«Les représentants du peuple français, constitués en Assemblée nationale, considérant que l'ignorance, l'oubli ou le mépris des droits de l'homme sont les seules causes des malheurs publics et de la corruption des gouvernements, ont résolu d'exposer, dans une déclaration solennelle, les droits naturels, inaliénables et sacrés de l'homme, afin que cette déclaration, constamment présente à tous les membres du corps social, leur rappelle sans cesse leurs droits et leurs devoirs ; afin que les actes du pouvoir législatif, et ceux du pouvoir exécutif, pouvant être à chaque instant comparés avec le but de toute institution politique, en soient plus respectés ; afin que les réclamations des citoyens, fondées désormais sur des principes simples et incontestables, tournent toujours au maintien de la Constitution et au bonheur de tous».

(15) This declaration was issued on (August the 10th, 1793), and the text in its First Article on Happiness reads as follows: «Le but de la société est le bonheur commun. Le gouvernement est institué pour garantir à l'homme la jouissance de ses droits naturels et imprescriptibles».

(16) The International Covenant on Economic, Social, and Cultural Rights entered into force in (1976), with (164) States becoming parties to it at the end of October (2016).

(17) See regarding the relationship between Well-being and Happiness:

Nicolas BERGEMAN, *quelle place pour le bien-être entre droit et bonheur ? étude d'un rapport juridique médiatisé*, RRJ-Droit prospectif, 2012-1, p. 56.

(18) The full text of the Article reads as follows, quote: "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control", unquote.

(19) The full text of the Article reads as follows, quote: "[t]he States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society", unquote.

(20) Consider the Judgment of the European Court of Human Rights:

CIADH, 27 Novembre 1997, *Loayza Tamayo vs : Perù*, Reparaciones Y costas, SS 147-148.

(21) C. NIVARD, *Les fondements internationaux du droit au*

bonheur et leur justiciabilité, *Le droit au bonheur*, RERDH, Collection Colloques & Essais, Institut Universitaire Varenne, LGDJ, 2016, p. 331.

(22) For example: The American Declaration of Independence (1776), the Declaration of the Rights of Man and of The Citizen (1789).

(23) See Article No. (29) Paragraph No. (2) of the Universal Declaration of Human Rights that reads as follows, quote: "[i]n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society", unquote.

(24) Here it concerns the States of: (Alabama, Alaska, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Kentucky, Massachusetts, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Dakota, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming).

(25) This number includes the French Constitution as a reference to the Declaration of the Rights of the Man and of the Citizen of (1789) in its preamble, and the United Kingdom is also included in this number as a reference to the decree of settlement of (1701).

(26) One of the most important is the Constitution of the United States of America, which states in its preamble the following, quote: "[w]e the People of the United States, in order to form a more perfect Union, establish Justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America", unquote. The (General Welfare) contained in the preamble to this Constitution has been translated

practically in Article No. (1), Paragraph No. (8), by limiting the imposition and collection of taxes and fees only to Congress, and in order to pay debts and spend on common defense and general welfare.

(27) This statistic dates back to (April the 20th, 2015).

(28) It should be noted here that a proposal to amend the Brazilian Constitution called the "Right to Happiness" was approved by the Committee on the Constitution and Justice and Citizenship of the Senate on (November the 10th, 2010), and the bill was supposed to have been passed in a plenary session by the Senate, and then by the House of Representatives to complete the constitutional amendment, but this has not been done yet.

(29) The Japanese Constitution of (1946), Third Chapter, Article No. (13).

(30) Preamble to the Haitian Constitution of (1987).

(31) Preamble to the Namibian Constitution of (1990).

(32) Preamble to the Seychelles Constitution of (1993).

(33) The term Happiness is also provided for in the preamble of the South Korean Constitution.

(34) Here we are talking about the Constitutions of: (Antigua and Barbuda (1981), Belize (1981), Bhutan (2008), Egypt (2014), Ghana (1992), Liberia (1986), Mongolia (1992), Nicaragua (1987), Niger (2010), Nigeria (1999), Pakistan (1973), Swaziland (2005), Turkey (1982), Tuvalu (1986), Vietnam (1992).

(35) The President of the Republic, the Prime Minister, the President of the National Assembly, Articles Nos. (50), (74), (89) of the Constitution of Niger (2010).

(36) Article No. (9), Paragraph No. (2) of the Constitution of Bhutan reads as follows, quote: "[t]he State shall strive to promote those conditions that will enable the pursuit of Gross National Happiness", unquote.

«The State shall strive to promote those conditions that will enable the pursuit of Gross National Happiness».



Emirate of Dubai A Global Beacon of Law and Justice

Mrs. Sharifa Khaled
Head of Senior Division, Strategy
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The Emirate of Dubai has gained international fame thanks to the vision of His Highness Sheikh Mohammad bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai -may God bless him and protect him- as it embraces more than two hundred nationalities living and working in the spirit of tolerance.

And thanks to the elaborate planning and integrated infrastructure, Dubai has become a business center superior to other cities in this area.

His Highness Sheikh Maktoum bin Mohammad bin Rashid Al Maktoum, Deputy Ruler of Dubai, Deputy Prime Minister, Minister of Finance and Chairman of the Judicial Council of Dubai, stressed the importance of a fair Judiciary to ensure a stable and secure society. And since the issuance of the Law on the Formation of Dubai Courts in (1970), the Judicial System has witnessed significant developments, where integrated judicial structures have been established, such as the General Secretariat of the Dubai Judicial Council, whose membership consists of representation of the Dubai

Courts, the Public Prosecution, the Judicial Inspection Authority, the Dubai Judicial Institute and various courts including the Supreme Court, Courts of Appeal, Courts of First Instance, in addition to Specialized Courts such as the Personal Status Court and the Labor Court led by highly qualified and impartial Judges, which ensures the fairness of sentences and smooth implementation.

The development of the legal structure has made Dubai an attractive hub for legal activities, as many international law firms have moved to work from Dubai. Law schools from different countries have also opened branches in the Emirate, which has provided wide opportunities for specialists in legal fields.

Thanks to this progress, the need has emerged to establish the Dubai City of Law and Justice, to include specialized colleges, law firms, and legal consultants, which strengthens Dubai's position as a global legal capital, and in the spirit of optimism instilled by His Highness Sheikh Mohammad bin Rashid Al Maktoum, the establishment of this city represents a natural step towards strengthening Dubai's position in the world.