United Arab Emirates
Court of Cassation Judgments
1989 - 1997

Arab and Islamic Laws Series

Series General Editor
Dr. Mark S.W. Hoyle

This book will be published
as the seventeenth volume in the Series.

The titles published in this series are listed at the end of this volume.

United Arab Emirates Court of Cassation Judgments 1989 - 1997

by

Richard Price and Essam Al Tamimi

Kluwer Law International
The Hague • London • Boston

Published by Kluwer Law International
P.O. Box 85889
2508 CN The Hague, The Netherlands

Sold and distributed in the USA and Canada by
Kluwer Law International
675 Massachusetts Avenue
Cambridge, MA 02139, USA

Sold and distributed in all other countries by
Kluwer Law International
Distribution Centre
P.O. Box 322
3300 AH Dordrecht, The Netherlands

Library of Congress Cataloging-in-Publication Data

Price, Richard, 1952-
United Arab Emirates Court of Cassation judgments / by Richard Price, Essam Al Tamimi.
p. cm. -- (Arab and Islamic laws series; 17)
ISBN 9041110054 (hardbound: alk. paper)
1. Law reports, digests, etc. --United Arab Emirates.
2. Commercial law--United Arab Emirates--Cases. I. Al Tamimi, Essam. II. Title. III Series.
KMV18.A4 1998
347.535707'0264--dc21 98-17229

Printed on acid-free paper

Cover design: Robert Vulkers bNO

ISBN 90 411 1005 4

Kluwer Law International incorporates the publishing programmes of Graham & Trotman Ltd, Kluwer Law and Taxation Publishers and Martinus Nijhoff Publishers

Table of Contents

Introduction

In this volume we have endeavoured to collect, and summarize, a selection of some of the more important decisions made by the Courts of Cassation (the highest or Supreme Courts) of the United Arab Emirates (the "UAE") over the past few years. Our priority has been to choose judgments of relevance to business in, or with, the UAE – rather than, for example, matters of UAE personal or criminal law – so as, we hope, to render the volume of some practical assistance to businessmen, and their lawyers.

Reporting of judgments in the UAE is still in a very preliminary stage. Although selected Court of Cassation judgments are published some years after their issuance, there is no full, regular and recent reporting of judgments and it is therefore hoped that this small volume will go some way to filling that gap.

Very little preliminary explanation of the judgments summarized in this volume is necessary. By and large the judgments (together with the footnotes quoting the provisions of UAE law referred in the judgments) will speak for themselves. However, a few words about the structure of the UAE judicial system and judicial procedure might assist readers in understanding and assimilating the judgments contained herein.

1. The UAE is a federation of seven Emirates. Subject to two exceptions, each Emirate has its own Court of First Instance, but all appeals lie to the Federal Court of Appeal and the Federal Court of Cassation (or Supreme Court) in Abu Dhabi. The two exceptions are Dubai and Ras Al-Khaimah, who have their own, totally independent, Court structure of Court of First Instance, Court of Appeal and Court of Cassation. Hence, the Court of Cassation judgments in this volume are either from the Abu Dhabi Federal Court of Cassation or the Dubai Court of Cassation. Cases which end with Dubai Court of Cassation judgments will always have originated before the Dubai Court of First Instance, but cases which end with the Federal Court of Cassation in Abu Dhabi could have originated before the Courts of First Instance in any of the other Emirates, save for Dubai and Ras Al-Khaimah. There are, for example, in this volume examples of several cases originating in the Court of First Instance of the Emirate of Sharjah, but culminating with a decision of the Federal Court of Cassation in Abu Dhabi.
2. There are also separate Shariah (Islamic law) Courts in each Emirate. However, as is illustrated by one or two of the cases originating in the Shariah Courts reported in this volume, the jurisdiction of such Courts is limited largely to family law matters.

3. There is no system of binding precedent in the UAE. In view of this, it might be asked what, if any, is the value of a volume such as the present. However, Court of Cassation decisions (whether of the Federal Court of Cassation or the Dubai Court of Cassation) are very persuasive before the lower Courts and, in practice, are very likely to be followed when on all fours with the case before the Court. This also applies, to a lesser degree, to Court of Appeal judgments, but not, to any significant extent, to Court of First Instance judgments. However, this absence of a strict system of a binding precedent does allow quite contradictory decisions of the UAE Courts (particularly as between the Federal and Dubai systems) to arise. One or two examples of this are given in this volume to illustrate some of the challenges of advising on the likely attitudes of the UAE Courts on any particular issue!
4. It will immediately be noted in our case summaries that very little detail is given of the Court of First Instance and Court of Appeal decisions, and most space is given to the Court of Cassation decisions. This is largely to reflect the fact, mentioned above, that it is really in practice only the Court of Cassation decision which has any precedent or persuasive value in the UAE. Also the fact that, unlike, for example, English or United States Court judgments, the Court of Cassation judgments themselves give relatively little space to reciting in detail the decisions of the lower Courts in the cases under appeal to them.
5. It will also be clear from several of the Court of Cassation judgments reported in this volume that only issues of law, and not fact, are appealable to such Courts. In several reported cases it will be found that the Court of Cassation has refused to disturb the findings of a lower Court (or of an Expert appointed by that Court) since these relate to matters of fact which are solely within the discretion of such lower Courts.
6. The frequency with which a lower Court (normally the Court of First Instance) has appointed an Expert or Assessor to assist it to evaluate technical or factual issues will also be noted. The report of such Expert is not binding on the Court – although it is to be expected that the Court will in most cases follow the same. However, an Expert's report can be set aside and the matter referred back to him or to another Expert by the Court of Appeal.

It is not to be hoped that the above few explanatory comments will answer all the questions raised in the mind of an intelligent reader (particularly a lawyer) when reading the case summaries contained in this volume. Nor is it expected that all such questions could be answered by the authors of this volume! However, we hope that the selection of cases we have made will give guidance on some of the key and often-recurring issues of UAE law – the legality of interest, the enforceability of a foreign arbitration clause, a foreign arbitration award or judgment, the liability of a maritime carrier for damage to goods, the protection of trademark rights, the liability under cheques, the liability of sponsors for sponsored entities, the validity of limitation of liability clauses and

time bars, the liability for latent defects in goods, the circumstances when assets can be attached as security and liability for wrongful attachment, a bank's liability under its guarantee, the enforceability of foreign currency transactions – which are of real significance to parties doing business in or with the UAE's ever-expanding and increasingly significant economy.

The authors wish to thank Johanne Gregory for her invaluable work in the collating and editing of the judgments appearing in this volume.

Essam Al Tamimi
Richard Price
Dubai, November 1997

Commercial Transactions Cases

Table of Contents
Commercial Transactions Cases

ABU DHABI COURT OF CASSATION

DUBAI COURT OF CASSATION

Whether or Not a Cheque is a Commercial Instrument which Needs No Consideration is a Factual Matter for Determination by the Lower Courts who may Rely on Witness Statements in their Assessment

ABU DHABI COURT OF CASSATION JUDGMENT NO. 242/14
DATED 11 MAY 1993

SUMMARY

In an action filed before the Courts in Abu Dhabi, the Court of Cassation held that it is the role of the lower Courts to assess and evaluate factual evidence submitted by both parties to an action without the direct supervision of the Court of Cassation. Furthermore, the Court held that in a case involving a disputed cheque it is open to one of the parties to the action to prove that there was no consideration given or that the value of the cheque was not due by relying on witnesses or other forms of evidence.

CLAIM

An action was brought by a father (the "Plaintiff") against his son (the "Defendant") claiming an amount of Dhs. 450,000. The Plaintiff claimed that he had paid this amount by cheque to the Defendant who had undertaken to build him a house yet had never in fact done so.

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment for the Plaintiff and ordered the Defendant to pay the full amount claimed, plus court fees and expenses. The Defendant appealed.

COURT OF APPEAL

The Court of Appeal dismissed the Defendant's appeal and upheld the judgment delivered by the Court of First Instance. The Defendant appealed further to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Defendant argued that the lower Courts had not taken into consideration statements made by witnesses brought forward by the Defendant and the fact that there had been no signed contract between the parties. He argued also that two cheques were drawn in his favour and therefore became his property and removed the need for there to be any reciprocal consideration in return.

The Court of Cassation held that the lower Courts were free to analyse the facts of the case and the conditions surrounding the disputed transaction in order to reach their decision. In this case there were several witnesses who confirmed that the Plaintiff and the Defendant had met on many occasions to negotiate and agree on the repayment of the Dhs. 450,000. It was further evidenced from witness statements considered by the lower Courts that the Defendant had agreed to deal with a contractor, on behalf of the Plaintiff, for the building of the house. The lower Courts, therefore, had definitely taken into account witness statements in reaching their decision. The Court of Cassation saw no reason to disturb these findings.

As regards the Defendant's second line of argument, the Court of Cassation held that even if a cheque as a commercial instrument needs no consideration to be deemed encashable for money, it can be proved otherwise by evidentiary means including witness statements. The witness statements clearly show that the Plaintiff did not write the cheques to the Defendant to settle any outstanding indebtedness or as a gift but because the Defendant had made an undertaking to build his father, the Plaintiff, a house for the value received. This he did not do.

Accordingly, the Defendant's appeal was dismissed and the judgment delivered by the Court of First Instance was upheld.

In the Absence of a Formal Power of Attorney, a Company may still be Liable for the Acts of Persons Ostensibly Conducting Business on its Behalf

ABU DHABI COURT OF CASSATION JUDGMENT NO. 281/15
DATED 30 JANUARY 1994

SUMMARY

In a case filed before the Courts in Abu Dhabi, the Court of Cassation held that a company may be found liable for contractual obligations entered into with innocent third parties who had relied on the apparent power of a company employee.

CLAIM

An action was filed by a UAE publishing company (the "Plaintiff") against a local establishment and its owner (the "Defendants"), claiming an amount of Dhs. 83,096. The Plaintiffs claimed that a contract for the publishing of business advertisements in a local newspaper had been entered into with the Defendants. After the publishing was done, the Defendants refused to settle the outstanding account for the same.

The Defendants claimed that they never had any dealing with the newspaper or the Plaintiff nor had they conducted any business relating to the published advertisements. Furthermore, they claimed that they were unlikely to have contracted for any such advertisements as they did not have a trade licence and did not carry on business in the UAE.

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment against the Defendants and ordered them to pay the Plaintiff the full amount outstanding of Dhs. 83,096. The Defendants appealed.

COURT OF APPEAL

At the Court of Appeal the judgment delivered by the Court of First Instance was upheld and the Defendants were also ordered to pay costs. The Defendants appealed further to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Defendants argued that the establishment which was the first Defendant in these proceedings had never been issued with a trade licence from the local authority and the second Defendant had only obtained trade name approval and had not yet proceeded with licensing. Even the Plaintiffs had failed to produce any documents showing that the Defendant establishment was actually licensed.

Furthermore, the Defendants argued that the individual who had contracted with the Plaintiff had no authority to represent the establishment or sign on its behalf, assuming that it legally existed. The cheques which were signed in favour of the Plaintiff were not drawn on the Defendants' account. It is not sufficient, the Defendants argued, for the Plaintiffs to argue that they had acted innocently and in good faith when they had negligently dealt with a person who had no authority to act on the Defendants' behalf.

The Court of Cassation held that it is an established legal principle that a principal will be bound by the powers, and the limitation of power, granted to his agent or attorney, and therefore, if such agent acts on behalf of his principal beyond that power, or without power, that agent will be responsible personally and not the principal. This applies even if the third parties were innocent and dealt with the agent/attorney in good faith.

However, the Court also held that if there was every indication from the facts and surrounding circumstances that a person who was acting on behalf of a principal was fully authorized by the principal to so act, the act will be binding on the principal if the persons who had dealt with the agent were innocent third parties.

In this particular case, there was considerable evidence to suggest that the individual who contracted with the Plaintiff on behalf of the Defendant company had ostensible authority to do so. He signed invoices and purchase orders issued by the Defendants, signed cheques which bore their stamp and had frequent dealings in the business community by which he was seen to be acting and dealing on the Defendants' behalf.

Accordingly, the Abu Dhabi Court of Cassation dismissed the Defendants' appeal and upheld the judgment delivered by the Court of Appeal.

Article 3 of the UAE Commercial Agency Law will not Apply to a Legitimate Request for an Order to Produce the Notarized Agreement Required Prior to Registration

ABU DHABI COURT OF CASSATION JUDGMENT NO. 248/15
DATED 15 FEBRUARY 1994

SUMMARY
In an action filed before the Abu Dhabi Courts, the Court of Cassation held that a request may be made to the Court to order the production of a properly notarized commercial agency agreement for the purpose of registration of the agency with the Ministry of Economy & Commerce, as required by Article 4 of the UAE Commercial Agency Law No. 18 of 1981.

CLAIM
An action was brought before the Abu Dhabi Courts by a doctor (the "Plaintiff") against two Defendants. The Plaintiff requested the court to uphold and ratify a commercial agency agreement signed between himself and the first Defendant. The Plaintiff claimed that he had requested from the first Defendant the commercial agency agreement, duly notarized, in order to file the same with the Ministry of Economy & Commerce, (the "Ministry"), to register the agency in his name in accordance with the Commercial Agency Law No. 18 of 1981, (the "CAL"). The first Defendant refused. During the course of this action, the Plaintiff requested the Courts permission to enjoin another local Abu Dhabi company as a second Defendant in these proceedings.

COURT OF FIRST INSTANCE
The Abu Dhabi Court of First Instance dismissed the action.

COURT OF APPEAL
The Plaintiff appealed to the Abu Dhabi Court of Appeal. The Court upheld the judgment of the lower court and dismissed the Plaintiffs' appeal basing their decision on the absence of a notarized and legalized agreement which serves to effectively remove the Courts jurisdiction on the matter, according to the meaning of Article 3 of the CAL.[1]

[1] Article 3 of the CAL provides (where relevant) as follows:
"Only a registree with the Commercial Agents Register maintained for this purpose by and with the Ministry of Economy & Commerce shall be authorized to practise commercial agencies activities. Any other commercial agency not registered with the said register shall be deemed void and shall not construe legal entity for claims."

COURT OF CASSATION

The Plaintiff appealed further to the Abu Dhabi Court of Cassation wherein he argued that the lower courts had misunderstood the relevant facts and wrongfully applied the Law.

The Court of Cassation held that this action was a request for an order from the Court which would ensure the production by the Defendants of a notarized agency agreement which the Plaintiff could take to the Ministry of Economy & Commerce for registration. The Plaintiff therefore would like to comply with the law by requesting that the agreement be notarized prior to being submitted to the Ministry for legalization.

The facts in this case do not contradict the meaning of Article 3 of the CAL which does not recognize any agency agreement that has not been registered with the Ministry. What the Plaintiff is requesting is distinct in that it falls prior to the actual registration process. The Court held that Article 3 of the CAL only applies to those situations where the agent is meant to apply the law with regard to commercial agency practise.

Accordingly, the Court of Cassation dismissed the case and referred the matter back to the Court of Appeal to deliver another judgment consistent with the guidelines set out herein.

To Cancel a Sale on Grounds that the Goods Purchased had a Latent Defect, the Buyer must Show that the Defects Existed Prior to Delivery

ABU DHABI COURT OF CASSATION JUDGMENT NO. 77/15
DATED 1 MARCH 1994

SUMMARY

In an action filed before the Sharjah Court and appealed further to the Abu Dhabi Court of Cassation, the latter held that for a buyer to withhold payment for goods delivered on the grounds that the goods had a latent defect, the burden of proof is on the buyer to prove that the defect was latent and existed prior to delivery.

CLAIM

A local trading company (the "Plaintiff") filed an action before the Sharjah Civil Court against a supermarket and its owner (the "Defendants") claiming Dhs. 36,000 plus interest. The Plaintiff alleged that the Defendants had purchased 150 cartons of nuts for the amount claimed, which they had failed to pay for. The Defendants claimed that the nuts were rotten and therefore refused to make payment.

COURT OF FIRST INSTANCE

The Court of First Instance ordered the Defendants, jointly, to pay the Plaintiff the full amount claimed, plus interest at the rate of 12%. The Defendants appealed to the Sharjah Court of Appeal.

COURT OF APPEAL

The Sharjah Court of Appeal dismissed the Defendants' appeal and ordered them to bear costs and expenses. The Defendants appealed further to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Defendants argued that they had purchased the nuts from the Plaintiff and had, in turn, sold them to another trading company in the United Arab Emirates. However, the nuts were returned to them as unfit for human consumption. They had been examined by the Sharjah Department of Health who had ordered the Defendants not to sell them. This evidence was confirmed by the Sharjah Central Laboratory.

The Defendants argued that the lower Courts were wrong to order the Defendants to pay for the spoiled produce when the Defendants had discovered the latent defect within the six month period specified in Article 555 of the UAE Civil Code (the "Code").[1] Furthermore, there was no evidence before the Courts to indicate that the Defendants had committed any fault or were negligent in safeguarding or transporting the nuts.

The Court of Cassation held that for a buyer to return goods due to a latent defect, the burden of proof is on the buyer to provide the Court with proof that the defects were latent and existed prior to delivery.

In this case, there was no evidence before the Court to show that the samples which had been delivered to the Department of Health or the Central Laboratory were of the same kind and from the same consignment as that delivered by the Plaintiff to the Defendant. It was also evident that the nuts were stored at the Defendants' warehouse for some time before the alleged defects were noticed. There was no evidence contained in the reports filed by the Defendants to show that the defects had existed prior to the delivery of the nuts to the Defendant.

Accordingly, the Court of Cassation dismissed the Defendant's appeal and upheld the judgment delivered by the Court of Appeal.

[1] Article 555 of the Code provides (where relevant) as follows;

"(1) A claim of liability for a defect shall be prescribed six months as from the date of delivery of the thing sold unless the seller undertakes liability for a longer period.

(2) The seller shall not benefit from prescription if evidence is produced that he has fraudulently concealed the defect."

A Company and its Shareholders will be Jointly Liable for the Company's Debts if it is Not Registered in the Commercial Register as a Limited Liability Company

ABU DHABI COURT OF CASSATION JUDGMENT NO. 361/15
DATED 10 APRIL 1994

SUMMARY
In a case filed before the Courts in Abu Dhabi, the Court of Cassation held that a company and its shareholders will be jointly liable, even if the company was a limited liability company, if the shareholders failed to register it as such with the Commercial Register and to publish its memorandum and Articles of Association as required by the Commercial Companies Law of 1984.

CLAIM
A company established in Abu Dhabi with limited liability (the "Plaintiff") brought an action against a local individual (the "First Defendant") who owned a contracting company (the "Second Defendant"). The Plaintiff requested that the Court order the Defendants, jointly, to pay an amount of Dhs. 920,700 for ready-mixed cement which was delivered by it to the second Defendant and paid for by a series of four cheques, all of which were subsequently dishonoured by the bank for insufficient funds.

COURT OF FIRST INSTANCE
The Abu Dhabi Court of First Instance ordered the Defendants to pay the Plaintiffs the full amount claimed. The first Defendant, being a national from Al Ain, appealed to the Al Ain Court of Appeal.

COURT OF APPEAL
The Al Ain Appeal Court dismissed the Defendant's appeal and upheld the judgment of the Court of First Instance. Both Defendants appealed further to the Abu Dhabi Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation, the Defendants argued that the lower Court had made a mistake in its implementation of the law relating to limited liability companies. The Defendants argued that a shareholder in a limited liability company will not be liable for the company's debts and his liability will be lim-

ited to the extent of his shares in the company. The judgments delivered by the lower Courts held that the Defendants were joint partners in a partnership, whereas it should have been clear from the documents filed, including certificates issued from the Abu Dhabi Chamber of Commerce, that the company was a limited liability company and that the Plaintiffs had contracted with the Defendant's general manager in full knowledge of this fact.

The Defendants argued that their general manager had a power of attorney from the shareholders to manage and run the affairs of the company as a limited liability company. If the Defendants had failed to indicate in the company's name that it was a limited liability company, this alone should not be enough to convert it into a partnership. If the general manager had neglected to add the words "limited liability company" beside the company's name, then the general manager should be held personally liable as opposed to the second Defendant company's shareholders.

In its deliberations, the Court of Cassation referred to Articles 225[1] and 237[2] of UAE Law No. 8 of 1984 relating to Commercial Companies (the "CCL"). The Court held that it is not permissible for a company to carry on business unless it is properly registered with the Commercial Register and the Memorandum and Articles of Association of the company are published, as required by the CCL.

It was evidenced in these proceedings that the second Defendant was not registered as a limited liability company with the Chamber of Commerce and the Municipality until 28 October 1991. The Plaintiff's dealings with the Defendants had predated the October registration. The effect of changing the legal structure of a company to a limited liability company *vis-à-vis* third parties will only be effective from the date on which the name of the company, on its letterheads and other signs is changed according to the CCL. This conveys to the public that a company has changed its legal status. Prior to this, any person dealing with the company would be unaware of the fact that a company was a limited liability company and that the shareholders were not personally liable.

In this particular case, the first Defendant, who was a shareholder in the second Defendant company, did not provide the Court with any evidence to show that the company was a limited liability company or to indicate that the general manager had, in his dealings with customers including the Plaintiff, acted as if it was a limited liability company.

---

1 Article 225 of the CCL provides (where relevant) as follows;
"The company manager should present an application to register it in the Commercial Register. The Company Memorandum and the documents indicating the distribution of shares amongst the shareholders, the full payment of their value and their deposit at a bank operating in the State, should be attached with the application."

2 Article 237 of the CCL provides (where relevant) as follows;
"Unless the authority of the manager is specified in the Company Memorandum, the company manager shall have full authority to manage. His actions shall be binding on the company, provided that they are corroborated by stating the capacity for his actions. The manager's responsibilities shall be the same as that of the members of the board of directors of a joint stock company. Any provision in the Company Memorandum providing the contrary shall be void."

The lower Courts had properly based their judgments against the Defendants in these proceedings on the grounds that the required registration of the company in the Commercial Register occurred after the second Defendant had dealt with the Plaintiff in this matter and the Defendants had not provided the Court with any evidence to show otherwise.

Accordingly, the Defendant's appeal was dismissed and the judgment delivered by the lower Court upheld.

A Commercial Agency Agreement Entered into Prior to the 1981 Commercial Agencies Law will be Null and Void if the Agent Failed to Register the Commercial Agency within One Year of the Law Coming into Force

ABU DHABI COURT OF CASSATION JUDGMENT NO. 357/15
DATED 16 JUNE 1996

SUMMARY
In an action filed before the Abu Dhabi Courts, the Court of Cassation held that a commercial agency agreement entered into before 1981 will be considered null and void if the parties failed to register the agency within one year of the coming into force of Federal Law No. 18 of 1981 on the Organization of Commercial Agencies, ("the CAL").

CLAIM
An action was filed in Abu Dhabi Court by a local company (the "Plaintiffs") against an international company (the "Defendants") urgently requesting a Court Order stopping the registration of the agency of the Defendants' products in the name of any other company until such time as the Court should determine whether or not the Plaintiffs are, in fact, the agents for the Defendants and if so, issue an Order for the registration of the agency granted by the Defendants to the Plaintiffs at the Agency Register of the Ministry of Economy & Commerce (the "Ministry").

The Plaintiffs argued that the Defendants had appointed them as exclusive agents in the UAE, and on 1 July 1980, the agency arrangement was renewed. It was agreed at this time that the agency would be automatically renewed on an annual basis until such time as either party chose to terminate by giving 90 days notice.

After the CAL came into force, the Plaintiffs asked the Defendants to notarize and legalize the agency agreement to enable them to register the agency with the Ministry, as was now required by the CAL. However, due to changes in the management of the Defendants and the merging of this company into another group, the Defendants failed to provide the notarized agreement as requested. Nonetheless, the Defendants confirmed on several occasions that the merger would not affect the Plaintiffs' status as agents for the Defendants in the UAE.

On 5 September 1991 the Plaintiffs were served with a notice by the Defendants advising them of the termination of their agency and their intention to appoint another agent in the UAE. The Plaintiffs objected and brought

the matter to the attention of the Ministry which advised them to bring the matter before the judicial authorities in the UAE.

It was the Plaintiffs' position, at this time, that the termination of the agency was invalid as they had been the Defendants' sole agents for many years and the previously agreed notice of 90 days was not given.

Court of First Instance

As regards the urgent application filed by the Plaintiffs, the Abu Dhabi Court of First Instance ordered a dismissal of the Plaintiffs' application to stop registration of the new agency agreement. It also dismissed the Plaintiffs' application on its merits. The Plaintiffs appealed.

Court of Appeal

The Abu Dhabi Court of Appeal granted the Plaintiffs an Order to stop the registration of the agency, as a precautionary order, pending the outcome of the proceedings to determine the validity of the termination. However, on the merits of the case, the Court of Appeal also upheld the judgment delivered by the Court of First Instance. The Plaintiffs again appealed.

Court of Cassation

The Court of Cassation held that according to the CAL, the meaning of commercial agency is the representation by a local agent of a foreign principal, for the sale and/or distribution of goods or services in the country for a percentage or profit. The principal is the party who manufactures goods inside or outside the country or who distributes or exports goods or services, provided that the principal does not carry out the services or sale directly to the consumer.

Article 5[1] of the CAL provides that the principal may not appoint more than one agent in the territory, which means each Emirate within the United Arab Emirates. Therefore, if an agent is appointed in one Emirate, the distribution of the goods in that Emirate will be exclusive to that agent. "Agency" is one form of brokerage of a commercial nature, and an "agent" is the party representing the interest or the products of the principal in the region, being a single Emirate or the whole UAE, as the case may be.

In this case, it was evident from the agreement that the Defendants, as principals, had appointed the Plaintiffs as their exclusive agent for the sale of the Defendants' products in the country. The Plaintiffs also confirmed that they were also appointed as commercial agents within the meaning of the CAL.

---

[1] Article 5 of the CAL provides (where relevant) as follows;
"The original Principal shall be allowed to seek the assistance of one Agent in the State, it being considered one region. He may also have one Agent in each Emirate, or in a number of Emirates, provided that distribution of the relevant commodities and services shall be restricted to the agency area. The Agent may engage the services of a distributor within any Emirate(s) covered by his Agency Agreement."

However, according to Articles 2[2], 3[3] and 20[4] of the CAL, commercial agency will only be granted to those persons whose name is registered in the Commercial Agency Register at the Ministry. This is restricted to UAE nationals or companies wholly owned by UAE nationals.

The Court of Cassation held further that Article 3 of the CAL provides that no recognition will be given to any agency agreement that has not been registered with the Ministry. Therefore, even if an agreement has been drawn up by the parties in this case, it will not be recognized as a comercial agency within the meaning of the CAL unless registered with the Ministry. The CAL clearly stipulates that any agent appointed prior to the CAL coming into force must have had their agency registered within a year. Since this did not occur, the Court has no option but to consider the agency terminated.

Accordingly, as the Plaintiffs had failed to comply with the CAL and register their agency agreement within one year of the same coming into force, the agreement is deemed to be cancelled.

---

2 Article 2 of the CAL provides (where relevant) as follows;
"Practice of the trade agency functions inside the State shall be limited to nationals being either individuals or companies totally owned by natural nationals."

3 Article 3 of the CAL provides (where relevant) as follows;
"Trade Agency activities may not be practised inside the State except by such commercial agents as are registered in the specified register maintained for this purpose by the Ministry. Any trade agency not registered in the above register shall not be considered, nor shall legal cases thereon be heard."

4 Article 20 of the CAL provides (where relevant) as follows;
"Within six months from the effective date of this Law, trade agents existing during the period when this law takes effect must present their application for entry in the register according to the stated provisions and conditions.
Those not fulfilling the stipulations provided for in this Law shall, within one year from the effective date of this Law, adjust their conditions accordingly.
A Commercial Agency failing to abide by the provisions stipulated in the said clause shall, by force of law, be deemed void."

Foreign Currency Transactions which Amount to Speculation in the Rise and Fall of a Currency's Value are Illegal

ABU DHABI COURT OF CASSATION JUDGMENT NO. 158&208/18
DATED 29 OCTOBER 1996

SUMMARY

In an action filed before the Courts in Abu Dhabi, the Court of Cassation held that currency transactions which are, in essence, speculation in the rise and fall of a currency's value are contrary to the principles of Islamic *Shari'a* Law and are therefore illegal.

CLAIM

An action was filed in Abu Dhabi Court by an expatriate investor, (the "Plaintiff"), against a local bank (the "Defendant"). The Plaintiff claimed that he deposited funds in the amount of US $401,366.73 with the Defendant who had been given a power of attorney and was instructed to purchase and sell foreign currencies on the Plaintiff's behalf. Within a short period of time, while the Plaintiff was outside of the UAE, the Defendant lost US $380,695 on currency transactions made for the Plaintiff's account. The Plaintiff, therefore, requested the Court to order the Defendant to refund this money and to award damages in the further amount of US $500,000.

COURT OF FIRST INSTANCE

The Abu Dhabi Court of First Instance dismissed the action. The Plaintiff appealed to the Abu Dhabi Court of Appeal.

COURT OF APPEAL

The Court of Appeal held that the contract signed between the Plaintiff investor and the Defendant bank was null and void as the essence of the transaction was gambling over the increase and decrease in foreign currencies. This is illegal according to the principles of Islamic *Shari'a* law. The Defendant was, therefore, ordered to pay the Plaintiff the equivalent in UAE Dirhams of US $ 401,366.73 as this was the amount originally deposited on the Plaintiff's account. The Defendant appealed this decision.

As the Plaintiff's claim for damages, plus interest, was dismissed, it also filed an appeal with the Abu Dhabi Court of Cassation.

COURT OF CASSATION

In the appeal filed by the Defendant, the latter based its argument on four main points. Firstly, the Plaintiff had never requested the Court to hold that the contract the parties signed was null and void. To decide on this basis is to go beyond what the Court was requested to do. The Defendant had never been given the opportunity to address this issue as it had never been raised or argued before in these proceedings. The Defendant argued that it should have been given the chance to prove that the contract was valid and legal.

Secondly, the Defendant argued that the Plaintiff's right to claim back the amounts paid out on its behalf was time barred, pursuant to Article 1021 (2)[1] of the UAE Civil Code ("the Code").

Thirdly, the Court misunderstood the nature of the transactions carried out by the Defendant. They were not speculating or gambling on the increase or decrease of a foreign currency. The lower Court's judgment was, therefore, based on a wrong finding of fact.

Finally, the Defendant argued that the transaction was not illegal according to Islamic Sharia principles as they allow for the sale of intangible goods as long as such a sale is not misleading. Furthermore, it is customary for banks and financial institutes to deal in foreign currencies.

In the Plaintiff's appeal, it argued simply that the Court of Appeal erred in not allowing a claim for damages due to the loss of earnings on the funds deposited with the Defendant plus interest at the rate of 12% from the date on which the amounts became due.

As regards the appeal filed by the Defendant, the Court of Cassation held that according to Articles 1012[2] and 1014[3] of the Code, speculation in foreign currency transactions is illegal as the transactions are normally carried out for a consideration which is never delivered and the only interest both parties have is in the profits generating from the speculation. Such transactions cannot be sanctioned by the UAE Courts.

---

1 Article 1021(2) of the Code provides (where relevant) as follows;
"Whoever loses a bet or a prohibited competition may recover what he has paid within a period of six months commencing from the time at which he paid over what he lost, notwithstanding that there may be an agreement to the contrary, and he may prove his claim by all proper means."

2 Article 1012 of the Code provides (where relevant) as follows;
"A competition (for reward) is a contract whereby a person is obliged to pay a sum of money or gives some other thing by way of agreed recompense to a person who succeeds in achieving the object specified in the contract."

3 Article 1014 of the Code provides (where relevant) as follows;
"The following conditions must be satisfied for a contract of competition to be valid:
(a) the prize must be known and the person who is obliged to give it must be specified in person; and
(b) the description of the subject matter of the contract must be sufficient for the avoidance of uncertainty, as in a race, where the distance between the start and the finish must be specified, and, in the case of a shooting match, the number of shots and the winning hit must be defined."

It is clear from a review of the Expert's report filed in this proceeding and all the transactions which were carried out by the Defendant that the latter related only to the purchase and sale of currencies for the purpose of generating profits from the fluctuation of the currency up or down.

Normally, in these transactions, clients (such as the Plaintiff) will deposit 10% of the amounts which will be speculated by the bank as security against potential losses. In this case, the Plaintiff deposited an amount of US $401,366.73 as a reserve deposit for the Defendant to carry out transactions in US Dollars, Sterling Pounds, Swiss Francs and German Marks, according to a schedule. Should the Plaintiff suffer losses, they were to be deducted from the 10 percent deposited with the Defendant. All of the transactions were carried out on paper and no currency was actually ever deposited in the Plaintiff's accounts.

The Court of Cassation held that it makes no difference with these transactions whether you are a buyer or seller. The seller usually has nothing to deliver and the buyer has nothing to receive. There is, therefore, no value payable in consideration for the things purchased.

The intention of both parties was to generate profit from the fluctuation of the various currencies. They would not know the result of their speculation until the transactions were closed. When the subject of a transaction is not assessed or known to either party and is based partially on luck, it is very misleading. They become, according to Articles 1012 and 1014 of the Code, illegal bets. The Court held, therefore, that if the subject matter of the power of attorney granted by the Plaintiff to the Defendant is illegal, the whole transaction will be illegal. Accordingly, the Court of Cassation dismissed the appeal filed by the Defendant.

As regards the appeal filed by the Plaintiff, the Court of Cassation held that the currency transactions were invalid. Therefore, the contract between the parties is invalid and the Plaintiff has no right to claim compensation for damages or interest pursuant to an invalid contract. Accordingly, its appeal was also dismissed.

A Non-Competition Clause is Invalid unless the Plaintiff can Prove Damages as a Result of the Competition Carried out by the Defendant

ABU DHABI COURT OF CASSATION JUDGMENT NO. 63/18
DATED 17 NOVEMBER 1996

SUMMARY

In an action initially filed before the Sharjah Court, the Abu Dhabi Court of Cassation held that a non-competition clause, in a commercial contract, will only be enforced if the Plaintiff can prove that damages were suffered as a direct result of competition provided by the Defendants.

CLAIM

A Sharjah national (the "Plaintiff") brought an action against a previous business partner (the "Defendant") claiming that the two parties had owned several companies and properties in Sharjah. The Plaintiff and the Defendant dissolved their business partnership and signed a settlement agreement dividing the properties and the assets which they jointly owned. The Plaintiff claimed that the Defendant had agreed, in this document, not to establish or carry out any maritime business which would be in competition with the Plaintiff's business for a period of six years. However, subsequent to the signing of the settlement agreement, the Defendant established a trading and shipping business which the Plaintiff claimed was in direct competition with his operations.

Therefore, the Plaintiff requested that the Court write to the Ships Registrar and to the Company Registrar in the Emirate of Sharjah to cancel the registration of the Defendant's company for being in violation of the settlement agreement and the non-competition clause contained therein. Additionally, the Plaintiff also requested that the Court order the Defendant to pay it 50 million Dirhams plus legal costs and expenses.

The Defendant denied the claim and provided evidence that the new shipping company which had been established was not owned by him. Furthermore, the Defendant argued that the non-competition clause specified

in the settlement agreement was null and void as it violated Articles 89,[1] 126[2] and 206[3] of the UAE Civil Code (the "Civil Code").

Court of First Instance

The Sharjah Court of First Instance dismissed the Plaintiff's request to cancel the trade licence and the ship registration and referred the matter to an expert to assess whether or not the Plaintiff had suffered damages as a result of the Defendant's actions. The expert report was filed and the Court subsequently delivered judgment dismissing the Plaintiff's action and also ordering the Plaintiff to bear all costs and expenses. The Plaintiff appealed against this judgment to the Sharjah Court of Appeal.

Court of Appeal

The Sharjah Court of Appeal dismissed the Plaintiff's appeal and upheld the judgment of the lower Court. The Plaintiff appealed further to the Abu Dhabi Court of Cassation.

Court of Cassation

Before the Court of Cassation, the Plaintiff argued that the Court of First Instance had dismissed the Plaintiff's application to have the Defendant's two children, who were partners in the Defendant's business, join the proceedings, on the ground that they were not parties to the settlement agreement. The Plaintiff argued that the Defendant signed the document on behalf of himself and his two children and that therefore the latter should properly have been parties to the agreement.

The Plaintiff argued further that it was not incumbent upon him to prove material damages resulting from the breach of the non-competition clause. The fact of the breach itself, the Plaintiff argued, should have been sufficient. The Plaintiff argued that the lower Courts had ignored evidence and documents submitted by the Plaintiff corroborating this fact.

---

1 Article 89 of the Civil Code provides (where relevant) as follows;
"No person may divest himself of his personal liberty or of his capacity, or vary the concomitants thereof."

2 Article 126 of the Civil Code provides (where relevant) as follows;
"The following may be the subject matter of a contract:
(a) property, whether moveable or immoveable, or corporeal or incorporeal;
(b) benefits derived from property;
(c) a particular act or service; and
(d) any other thing which is not prohibited by a provision of the law and is not contrary to public order or morals."

3 Article 206 of the Civil Code provides (where relevant) as follows;
"The contract may be accompanied by a condition confirming its purport or consistent with it or in accordance with usage and custom or containing an advantage to one of the contracting parties or a third party, provided that, in the case of all the foregoing, it is not prohibited by law or contrary to public order or morals."

The Abu Dhabi Court of Cassation held that for the Court to accept an application to join a party to a proceeding, the Plaintiff on whose request the application is filed must have an interest in joining the named parties. Additionally, the parties requested to be joined must be relevant to the proceeding or connected in some way to the subject matter of the action. In this particular case, the lower Court was of the opinion that the two children had no direct connection to the subject matter of the proceeding nor was there any evidence to show that the original Defendant had any authority to sign the settlement agreement on their behalf. Furthermore, it was evident that the non-competition clause was signed between the Plaintiff and Defendant and the parties the Plaintiff requested to be joined were not party to that agreement.

Regarding the non-competition clause, the Court of Cassation further held that normally such a clause is stipulated by law or by agreement. For the Plaintiff to request damages for breach of a non-competition clause, he must prove damages in accordance with the principles of tort. More specifically, he must prove that damages were suffered and that these damages were caused by the Defendant as a result of the breach of the non-competition clause. The Plaintiff must be able to prove that the competitive business had attracted customers who previously dealt with the Plaintiff or, alternatively, had been influenced to conduct business with the Defendant in breach of the non-competition clause. In addition the Plaintiff must have suffered actual damages as a result of either of these two possibilities.

However, the Court held that if the Plaintiff has closed down his business and was not carrying out business similar to the Defendants, there can be no ground to claim damages. In this case, it was evident from the expert report filed with the Court that the company established by the Defendant, which was similar to the Plaintiff's, had not come into being until the Plaintiff's operations had been fully liquidated.

Accordingly, the Court dismissed the Plaintiff's appeal and upheld the judgment delivered by the lower Courts.

A Local Sponsor will be Held Responsible for a Company's Debts

DUBAI COURT OF CASSATION JUDGMENT NO. 121/91
DATED 16 NOVEMBER 1991

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that a local sponsor who arranges a company trade licence to enable an expatriate to carry on business and authorizes the latter to open a bank account on behalf of the company, is personally responsible for the company's debts. This, the Court held, will hold true even if a sponsorship agreement was signed between the parties whereby the expatriate partner agreed that the local sponsor will not be liable for any debts incurred by the expatriate while conducting company business.

CLAIM

A local individual (the "Plaintiff") brought an action against a company and its sponsor (the "Defendants") claiming payment of the value of cheques which had been signed and dishonoured by an expatriate who had been running the Defendant company on behalf of the local sponsor (the second Defendant).

The second Defendant argued that he had leased the trade licence of the company for a lump sum payable to him annually by the expatriate and had an agreement signed in the presence of a Dubai Court Notary, in which it had been agreed that the expatriate would be responsible for the company's debts and its management and for any money drawn on its bank account. The second Defendant further argued that the Plaintiff to this proceeding were aware of the existence of this agreement and of the fact that he had only leased the company's trade licence to the expatriate.

The second Defendant also argued that as the Plaintiff had only ever been dealing with the expatriate and the first Defendant company and had no dealings whatsoever with him personally, its claim should properly be directed to the company and the expatriate without recourse to the local sponsor.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance gave judgment, jointly and severally, against the two Defendants (company and local sponsor) to pay the full amount claimed by the Plaintiff. The second Defendant appealed to the Court of Appeal.

COURT OF APPEAL

The Dubai Court of Appeal upheld the judgment of the Court of First Instance. The second Defendant appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

The Dubai Court of Cassation held the following;

1. Firstly, that it is within the jurisdiction of the lower Courts (i.e. the Court of First Instance and Court of Appeal) to evaluate the evidence submitted by the parties. There is no obligation on the Court of Cassation to re-evaluate such evidence. Therefore, since the lower Courts had held that the local sponsor was responsible for the value of the cheques issued in favour of the Plaintiff, basing their judgments on the documents and evidence which they had before them, the judgments which they delivered should be upheld.
2. Secondly, it was evident that the expatriate who had signed the cheques had done so pursuant to a Power of Attorney signed by the local sponsor to enable the former to act on behalf of the company. Any act carried out by an attorney will, under normal circumstances the Court held, bind the principal and not the attorney. As the cheques drawn in favour of the Plaintiff were drawn on the company's account and the expatriate who had done so held a valid Power of Attorney to act on behalf of the company, which had been signed by the sponsor, the latter should therefore be responsible for their value.
3. Thirdly, it was not valid for the second Defendant to argue that the expatriate had admitted liability for the value of the cheques and had acknowledged the sponsorship agreement, as such an agreement had no value *vis-à-vis* a third party.
4. Fourthly, the fact that a sponsorship agreement is signed before a Court Notary between a local sponsor and an expatriate, does not constitute notification of the agreement to all innocent third parties. Notarizing a document before a Court Notary does not constitute notice to the public of the contents of such document.

Accordingly, the second Defendant's appeal was dismissed and the Court of Cassation upheld the judgment delivered by the Court of Appeal.

A Credit Card Company may Charge Interest as High as 24 Percent if the Cardholder Agrees

DUBAI COURT OF CASSATION JUDGMENT NO. 201/91
DATED 28 DECEMBER 1991

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that the interest rate to be charged on credit card transactions will be the rate agreed to between the parties and according to accepted practice in commercial transactions of this nature.

CLAIM

An action was brought by an international credit card company (the "Plaintiff"), against local individuals (the "Defendants") by which the Plaintiff claimed an amount of Dhs. 290,808 plus interest, legal fees and costs. The Plaintiff claimed that the Defendants had been issued with a credit card to enable them to use the Plaintiff's services. The Defendants purchased consumer goods charged to the credit card which totalled Dhs. 250,299.03, all of which was settled by the Plaintiff. The Defendants failed to settle the debt to the Plaintiff within an agreed period of time. Accordingly, charges for late payment accumulated on the debt at the rate of 2 percent per month, in addition to service charges totalling Dhs. 40,509.00.

The Defendants commenced a counterclaim against the Plaintiff claiming damages in a minimum of Dhs. 1,000,000 plus court fees and expenses. The Defendants claimed that the Plaintiff issued the credit card to enable them to complete business transactions in England. The Plaintiff withdrew the right to use the credit card and the Defendants claimed that this action had caused them a loss in an amount of Pounds Sterling 200,000.

COURT OF FIRST INSTANCE

The Court of First Instance ordered the Defendants to pay the Plaintiff the full amount claimed plus legal fees and interest at the rate of 9% from the date the action was filed. The Court also dismissed the counterclaim filed by the Defendants who appealed this decision to the Court of Appeal.

COURT OF APPEAL

The Court of Appeal upheld the decision of the Court of First Instance. The Defendants appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Defendants argued that the lower Courts had given an order in favour of the Plaintiff with interest at an excessive rate which amounted to 24 percent *per annum*. They argued that the lower Courts were wrong to hold that there is no ceiling for interest rates applied in Dubai where the practice has been that the Court takes into consideration the average interest rates charged in the local market to determine an appropriate interest rate applicable to each transaction.

The Dubai Court of Cassation held that interest rates woul be charged on the transactions according to the rate agreed to between the parties and having reference to the common practise for commercial transactions, interest rates may be charged according to a rate agreed to by the parties.

The Court further held that the Defendants should have proved that the Plaintiff had breached the contract and provided the Court with proof that they had not fulfilled their obligations. The Defendants had failed to do so.

Accordingly, the Defendants' appeal was dismissed and the judgment of the lower Courts was upheld.

Names on a Trade Licence will not Automatically Establish who is Ultimately Responsible for a Company's Debts

DUBAI COURT OF CASSATION JUDGMENT NO. 113/91
DATED 25 JANUARY 1992

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that the existence of a trade licence issued for a company will not be enough to establish that the proprietor of the company is automatically responsible for the company's debts. If a creditor is aware of the fact that persons other than those stated on the trade licence (i.e. third parties) have made themselves responsible for the company's debts, the license itself is irrelevant insofar as liability for the debts is concerned.

CLAIM
A local trading company (the "Plaintiff") brought an action in the Dubai Court against two local Defendants and expatriates associated with two trading companies in Dubai. The Plaintiff claimed that the first Defendant was a local national who was the sole proprietor of a local company and was also the employer of four of the Defendants. The second Defendant was also a local national and a partner, while the fifth Defendant was a local company trading in Dubai. The third Defendant was an Indian expatriate partner in the two trading companies, named as fourth and fifth Defendants in this action and was the person who, the Plaintiff claimed, managed the operations of the companies on a daily basis.

The Plaintiff claimed that it had supplied the two Defendant trading companies with goods in the amount of Dhs. 539,202.75. It requested that the Court order the Defendants, jointly and severally, to pay this amount, plus interest and legal costs.

COURT OF FIRST INSTANCE
At the Dubai Court of First Instance judgment was delivered against the third Defendant, the expatriate named in this action, to pay the amount claimed jointly with the fourth and fifth Defendants who were the trading establishments. The two local national Defendants escaped liability. The Plaintiff chose to appeal this decision.

COURT OF APPEAL

The Dubai Court of Appeal dismissed the Plaintiff's appeal and upheld th judgment delivered by the Court of First Instance. The Plaintiff appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that the judgment of the lower Courts was not in accordance with either the law or the facts. The Plaintiff argued that it had submitted a copy of the trade licence of the two companies showing that the trading establishments were registered in the names of the first and second Defendants who were local nationals from Dubai. The fourth Defendant was a trading establishment wholly owned by the first Defendant and the second Defendant was a partner in the fifth Defendant's company. They should, the Plaintiff argued, also be held responsible for the companies' debts jointly with the expatriate third Defendant who handled the two companies' day to day operations.

The Plaintiff also argued that at no time was it aware of a private agreement between the expatriate third Defendant and the first and second Defendants that the former would be responsible for the operations and debts of the two companies.

The Dubai Court of Cassation held that the existence of a trade licence issued for a company will not be enough to hold the proprietors named therein liable for all debts incurred on the company's behalf. If a creditor was aware of the fact that a third party was responsible for debts, the terms of the trade licence become irrelevant when determining liability for the company's debts. In this particular case, there was an agreement between the third Defendant and the first and second Defendants, dated July 1989, by which the former agreed to be responsible for the business operations and the debts of the two companies, named as fourth and fifth Defendants in this action. It is not open to the Plaintiff to argue that it had no knowledge of this when, in fact, it had filed the agreement before the Court. Furthermore, at no point in these proceedings did the Plaintiff argue that it only became aware of the private contract after the transaction was complete and default occured.

Accordingly, the Plaintiff's appeal was dismissed and the judgment delivered by the lower Courts was upheld.

Attachment Orders will Only be Granted when a Valid Debt is Due and there is a Risk of Debtor Insolvency

DUBAI COURT OF CASSATION JUDGMENT NO. 268/93
DATED 16 JANUARY 1994

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that an attachment order against a Defendants' assets will only be granted if the pre-conditions set out in Article 252 of the UAE Law of Civil Procedure have been satisfied. It is not necessary that the debt be quantified. However, it must be valid and due for payment. Also, the burden is on the Plaintiffs to prove that there is a risk that the Defendants may dispose of their assets to avoid payment before an attachment order will be granted.

CLAIM
The Plaintiffs in this proceeding filed an application for attachment in the Dubai Courts against the Defendants' assets (stored at their warehouse), and their bank accounts located in the UAE, to secure payment of a debt in the amount of Dhs. 3,900,000. The Plaintiffs claimed that this figure represented the value of their share in a company which the Defendants failed to purchase after they had agreed to do so according to a signed agreement between the two parties.

The Court gave an order for attachment for a reduced amount of Dhs. 930,000 as this was the Court's assessment of the true value of the claim. The Defendants filed a bank guarantee as security for the attachment order and the attachment was lifted.

Subsequent to the filing of the bank guarantee, the Defendants filed an objection to the attachment order arguing that it was illegal and should never have been ordered against them.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance, having considered the objection, dismissed the application and upheld the order given in connection with the attachment application.

COURT OF APPEAL
The Defendants appealed to the Dubai Court of Appeal. The Court cancelled the order for attachment, lifted the attachment against the Defendants' assets

and ordered the release of the bank guarantee. The Plaintiffs were ordered to bear costs and expenses.

COURT OF CASSATION

The Plaintiffs appealed to the Dubai Court of Cassation. The Court of Appeal in lifting the order for attachment had held that the debt was not proved or substantiated. The Plaintiffs argued that it need not be substantiated in full and proved when a precautionary attachment order is granted.

The Court held that Article 252 of the UAE Civil Procedure Law ("the CPL")[1] confirms that an attachment is only a precautionary order meant to protect the interest of the Plaintiffs against any transaction, sale or disposal of assets by the Defendants.

The CPL sets out pre-conditions which must be met before an attachment order will be granted. Firstly, the debt must be a valid debt between the parties and due for payment, although it need not be quantified. Secondly, there must be a risk that the interests of the Plaintiffs in the main action will be prejudiced or that the Plaintiffs will be unable to recover what is due to them from the Defendants if the attachment order is not granted.

It is the responsibility of the presiding judge in the main action to assess the evidence and, using his own discretion, determine whether the Plaintiffs' claim is genuine and serious and whether or not the assets are at risk.

In this case, it was not evident from the documentary evidence presented that the Plaintiffs had a genuine claim. Additionally, there was no evidence of risk which would justify granting the Plaintiffs an order for attachment against the Defendants' assets. There may have been an offer to sell the company which the Defendants were to have originally purchased, but this never evolved into a contract for sale. Accordingly, the appeal was dismissed and the judgment delivered by the Dubai Court of Appeal upheld.

---

[1] Article 252 of the CPL provides (where relevant) as follows:
"Without prejudice to the provisions of any other law, the creditor may request the examining court, or the summary judge as the case may be, to levy a preventive attachment on his adversary's movables in any of the following cases:
1. Cases in which he fears to lose security for his right as in the following cases:
   (a) If the debtor did not have a permanent residence in the State.
   (b) Should the creditor fear his debtor may abscond, smuggle or conceal his monies.
   (c) If the collateral for the debt is threatened to be lost.
2. Where he is a lessor of property with a claim against the tenant on movables, fruits and crops on the rented realty as security for his legally decided lien. A property lessor may take this step also if the movables, fruits and crops were moved without his knowledge unless thirty days had lapsed after the movement thereof or there has been left enough monies to guarantee his decided lien.
3. If the creditor was holding an official or a normal unconditional note of a due debt.
4. If, from the papers enclosed with the request for attachment, the judge establishes the presence of a serious claim on the part of the plaintiff against the defendant.
5. In all cases, the court may, whenever it deems necessary before responding to any request for attachment, ask for any information, evidences or affidavits."

Damages under Construction Contracts will Not be Limited to Ten Percent

DUBAI COURT OF CASSATION JUDGMENT NO. 138/94
DATED 13 NOVEMBER 1994

SUMMARY

In an action filed before the Dubai Courts, the Court of Cassation held that in cases where the measure of damages has been agreed to between the parties, there will be no need for a Plaintiff to prove that damage has occurred or to quantify its extent. However, if the Defendant seeks to deny liability, the burden of proof will lie with the latter to prove that the Plaintiff has suffered no damages. The Court further held that it would be wrong to apply a ten percent maximum damage penalty, recommended by a Court appointed Expert, relying on customary usage in the construction industry, when there had been no agreement between the parties to impose such a limit.

CLAIM

An action was filed in Dubai Court by a sub-contractor (the "Plaintiff") against a contractor (the "Defendant") requesting the Court to order the Defendant to pay the Plaintiff Dhs. 70,000. The Plaintiff claimed that it had contracted with the Defendant to manufacture and install aluminum windows and doors for a villa under construction. It had been agreed in advance between the parties that all work would be completed within twenty-five days from the date of the contract, failing which the Defendant would be liable in the amount of Dhs. 1000 per day as a penalty. The Defendant failed to complete the contract on time. The Plaintiff, therefore, sought to recover the full amount of the penalty provided for in the contract.

COURT OF FIRST INSTANCE

The Court of First Instance ordered the Defendant to pay an amount of Dhs. 14,000 (less than the quantified damages) and dismissed the action for the amount claimed in excess. Both parties filed cross-appeals to the Dubai Court of Appeal.

COURT OF APPEAL

The Court of Appeal referred the matter to an Expert to advise the Court on the nature of the work, whether or not there had been a delay and if so, the

extent of damage caused by the delay. Subsequent to the filing of the Expert's report, the Court of Appeal modified the judgment of the Court of First Instance and ordered the Defendant to pay Dhs. 7,492 only. The Plaintiff's appeal was dismissed. The Plaintiff then appealed to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued the following;

(1) That the Court of Appeal should have taken into consideration an amount of Dhs. 31,500 which had been paid to the owner of the construction project by the Plaintiff as a penalty for the delay in delivery;

(2) That the Court of Appeal had relied on the Expert's recommendations in holding that the maximum penalty should not exceed ten percent of the value of the contract as this is the usage and practice in Dubai with regard to contracting companies, and in so doing had completely ignored the agreement of the parties on the issue of damages;

(3) That the Plaintiff should have been compensated in full and compensation should not have been limited to an amount of ten per cent as the parties had not between themselves chosen to limit their liability to this amount.

The Court of Cassation held that it is permissible for parties to agree on a lump sum or specific amount as compensation for damages under a contract. In such a case there would be an assumption that damages had accrued and the Plaintiff need not prove the damages or their extent because the parties had agreed to quantify this in advance. However, the Court held that, if the Defendant wishes to reduce the claim to less than the agreed figure, it must first prove to the Court that there had been no damages suffered by the Plaintiff.

In the event that the contract is silent on the subject of damages, the Court may apply 'custom and usage'. Usage should not be applied in those cases where the parties have provided a specific amount for damages in their contracts.

The Court of Cassation further held that the Court has a general power to reduce the amount of damages agreed to, in order to balance the equities between the parties, should it become evident that the actual damages suffered were less than the total amount of damages agreed to.

Accordingly, the Court of Cassation set aside the judgment of the Court of Appeal and referred the matter back to the lower Court for a re-evaluation according to the guidelines established in this decision.

A Party may Cease to Perform a Contractual Obligation if the Other Party Fails to Comply with the Contract's Terms and Conditions

DUBAI COURT OF CASSATION JUDGMENT NO. 90/95
DATED 5 NOVEMBER 1995

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that where two parties have a contractual obligation to each other, either party may cease to perform if the other party fails to perform its duties and obligations under the contract.

CLAIM
A Dubai trading company (the "Plaintiff") brought an action against a similar company which was based in Jebel Ali (the "first Defendant") requesting that the Court order the first Defendant to pay an amount of US $493,000 plus interest and costs. The Plaintiff claimed that the first Defendant had purchased chemicals from it for a second Defendant which were valued at US $421,869.18 but paid only US $148,035.18. The balance remained outstanding.

COURT OF FIRST INSTANCE
The Court of First Instance dismissed the claim against the second Defendant. However, the first Defendant was ordered to pay the Plaintiff an amount of US $266,79.60 or the equivalent in UAE Dirhams plus interest at the rate of 9 percent from the date the amount was due until final settlement. The first Defendant appealed to the Court of Appeal.

COURT OF APPEAL
The Court of Appeal upheld the judgment of the Court of First Instance and dismissed the first Defendant's appeal. The first Defendant appealed further to the Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation the first Defendant argued that the lower Courts had ignored the fact that the Plaintiff had not complied with its contractual obligation to deliver to the first Defendant a bill of exchange and promissory note. The first Defendant's reason for not paying the balance of the debt was

because it was concerned that the bill of exchange and promissory note, which had been signed by the Plaintiff, may have been assigned to a third party. It withheld payment until such time as the documents promised by the Plaintiff in the contractual agreement between the two were delivered.

An Expert who had been appointed by the Court confirmed that the Defendant had not refused payment but had merely requested that the contractual documents be delivered to it before effecting payment for the chemicals.

The Court of Cassation held that when an obligation is established by contract between two parties, non-performance by one of the parties will release the other party from the necessity of honouring its part of the contractual obligation. Therefore, it will be permissible for a buyer to stop payment even if such payment is due and payable until such time as the other party complies with its contractual obligations.

In this case, it was true that the first Defendant was responsible for paying for the chemicals sixty days after receipt of the same. However, the Plaintiff did not discharge its contractual duties by providing the Defendant with the required documents. Accordingly, the Court of Cassation quashed the judgments of the lower Courts and referred the matter back to the Court of Appeal for review.

A Sub-Contractor must be Paid upon the Completion of its Work Irrespective of Whether or Not the Main Contractor to the Project has been Paid

DUBAI COURT OF CASSATION JUDGMENT NO. 281/95
DATED 6 JULY 1996

SUMMARY
In an action filed before the Courts in Dubai, the Court of Cassation held that a sub-contractor on a construction project who has completed all its work and delivered the project to the main contractor should be paid immediately and does not have to wait for final payment until such time as the main contractor has been paid by its client. This payment to the sub-contractor will include the release of all monies retained by the main contractor as a performance bond.

CLAIM
A local contracting company (the "Plaintiff") brought an action against another contracting company and its two partners (the "Defendants") requesting that the Court order the Defendants to pay the Plaintiff an amount of Dhs. 1,744,493.55 plus interest and legal costs, cancel the performance bond issued by a local bank in the amount of Dhs. 1,183,733.70, release the same to the bank and uphold an attachment order issued against the Defendants, by the Plaintiff, earlier in the proceedings.

The Plaintiff claimed that the first Defendant, which was owned by the second and third Defendants, had contracted with a government ministry to construct a building at a total cost of Dhs. 100,000,000.00. The first Defendant was the main contractor on this project which had, in turn, contracted with the Plaintiff as a sub-contractor to carry out sanitary and electrical works in the amount of Dhs. 11,843,965, pursuant to a contract dated 22 March 1981. According to this latter contract, the Plaintiff had given the Defendants a performance bond in the amount of 10 percent of the value of the contract.

The Plaintiff claimed that it had completed work valued at Dhs. 12,502,330.54 by 1986 yet prior to launching this lawsuit had only been paid Dhs. 10,757,836.99. The balance was the amount claimed in these proceedings. Furthermore, the Plaintiff also claimed that the performance bond placed with the bank had not been released even though the required maintenance period had long since passed.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance appointed an Expert to calculate the amounts due and payable to the Plaintiff. Following the filing of the Expert's report, the Court ordered the Defendants to pay the Plaintiff an amount of Dhs. 1,159,152.27 plus interest at 9 percent from 7 October 1991 until the date of final payment. The Court also cancelled the performance bond issued by the bank and upheld the attachment proceedings ordered against the Defendants. The Defendants appealed.

COURT OF APPEAL

The Defendant's appeal was dismissed by the Court of Appeal and the judgment delivered by the Court of First Instance was upheld. The Defendants appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Defendants argued that the lower Courts had wrongfully interpreted the sub-contract signed between the parties on 22 March 1981 by not taking into consideration the Defendant's obligations under the main contract signed between it and its government ministry client.

Specifically, the Defendants argued that any payment to the Plaintiff as a sub-contractor would only be due and payable at the time that payment is received by the Defendants, as the main contractor, from its client. The same line of argument, the Defendants said, applied to the retention of the performance bond.

The Court of Cassation held that it is the responsibility of the Court to interpret the terms and conditions of the contract between the parties. In doing so, the Court will consider guidelines, usage and customs applicable to the construction industry and the intentions of both sides and will attempt to balance the competing interests of both parties to the contract.

While it is true, the Court held, that a sub-contractor such as the Plaintiff will only be entitled to a proportional payment during the performance period from any payments received by the main contractor from its client, the same does not apply when a sub-contractor has completed all his work and delivered the project to the main contractor. A sub-contractor has no obligation to wait for payment until such time as the main contractor has been paid. To find otherwise would subject sub-contractors in the construction industry to considerable suffering.

Accordingly, the Dubai Court of Cassation upheld the judgment of the Dubai Court of Appeal and dismissed the Defendant's appeal.

A Local Trader who is Not a Party to a Registered Commercial Agency Agreement cannot be Criminally Prosecuted under the Commercial Agency Law 1981

DUBAI COURT OF CASSATION JUDGMENT NO. 95/96
DATED 21 DECEMBER 1996

SUMMARY

In an action filed before the Dubai Courts, the Court of Cassation held that a local trader who is not a party to a registered commercial agency agreement cannot be criminally prosecuted under the Commercial Agency Law of 1981. The application of the penal provisions of this legislation will not be extended to third parties who have not registered a commercial agency.

CLAIM

A complaint was filed with the Dubai Police by a commercial agent (the "Plaintiff") registered with the Ministry of Economy & Commerce under the Commercial Agency Law of 1981 ("the CAL") against a trading entity (the "Defendant") who was trading products which were the subject matter of the Plaintiff's registered agency. After investigation, the Dubai Police referred the matter to the Prosecutor's Office for violating Articles 22[1] and 23[2] of the CAL. The Plaintiff also filed a civil complaint together with the criminal proceedings.

COURT OF FIRST INSTANCE

The Dubai Criminal Court referred the matter to the Civil Court to be dealt with, since in their opinion, there had been no crime committed. The Prosecutor's Office appealed against this decision to the Dubai Court of Appeal.

---

1 Article 22 of the CAL provides (where relevant) as follows;1
"Practice of commercial agency activities contrary to the provisions hereof shall subject the offender to a fine not less than Dirhams five thousand. The District Court's Clerk shall immediately communicate such judgment to the Ministry and to the competent authority and to the Chambers of Commerce and Industry and Trade Union thereof."

2 Article 23 of the CAL provides (where relevant) as follows;
"No one shall be allowed to import and cause entry into the country with an intention to trade other than for its agency in such goods, products, manufactured items or any other items which constitute the subject of an agency existing in the State and registered in another person's name and the Customs Departments in the Emirates shall not release such imports which were not brought in through the agent except with the approval of the Ministry or that of the agent, and the Customs Departments and the competent authorities in the Emirates, each within its jurisdiction, shall, under request by the Ministry, seize such imports at ports' stores or warehouses until a final decision shall have been made on the dispute."

COURT OF APPEAL

The Dubai Court of Appeal upheld the judgment delivered by the Court of First Instance. The Dubai Prosecutor's Office appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Prosecutor's Office argued that the lower Courts had wrongly interpreted Articles 22 and 23 of the CAL. The accused Defendant had imported goods into the Emirate of Dubai which were the subject of a registered commercial agency agreement. It is, they argued, prohibited by Article 23 to import such goods by any means other than through legally registered agents.

The Court of Cassation held that the CAL (as amended by Law No. 14 of 1988) has served to organize and regulate commercial agency practice in the UAE. Basically, it is provided that a local agent will represent a foreign principal for the distribution, sale and exhibition of goods or services in the UAE against a commission or margin profit. Articles 1 to 21 of the CAL regulate and elaborate the meaning and practice of agency law and the conditions under which a person can carry out an agency function.

One of the pre-conditions to an agency practice is that an agent be registered with the Ministry of Economy & Commerce. The CAL further provides that no agency will be recognized unless it is registered, nor will the Court hear actions filed with regard to a commercial agency unless the agency is registered.

A commercial agency is, the Court held, limited by the terms and conditions set out in the signed and registered agency agreement. Article 22 of the CAL establishes the legal obligations of the agent and provides for a punishment for anyone who carries out work inconsistent with these obligations of a fine of not less than Dhs. 5,000. The CAL also provides in Article 26[3] that the Court may order that the business by which the agent is illegally carrying out agency practice be closed down.

Article 23 of the CAL provides for the seizure of imported products by the Customs Department from parties who conduct agency business by means and conditions other than those provided for. A person will not be prosecuted simply for the mere fact of importing goods subject to an agency agreement. He will be prosecuted if he has declared he is an agent and has acted as an agent. However, if the agency is not registered, it will not be recognized by this Court and no action may be filed thereon.

---

[3] Article 26 of the CAL provides (where relevant) as follows;
"In addition to the penalties herein provided for, the competent court may order the commercial agent's place of business to be closed. However, the competent authority may determine re-opening of the premises on the application from the parties concerned and upon rectification of the reasons for closure or for liquidation purposes."

Any party, other than a registered agent, who imports goods into the UAE and is not registered with the Ministry of Economy & Commerce will not be subject to criminal prosecution under the terms of the CAL (unless he purports to be an agent for the goods) since this legislation is not applicable to them. Further, UAE law will not punish any person unless there is a specific provision under criminal law to provide that such an act is punishable by the Criminal Courts.

The Court of Cassation held that the only remedies available to a legally registered agent in these circumstances are to sue for damages, if applicable, through the Civil Courts and to pursue the administrative alternative provided under Ministerial Decree No. 22 of 1990. According to this Decree, the Ministry will respond by acting to attach the goods, will prepare a report and will refer the matter to the Under-Secretary to make an appropriate decision either to release the goods, settle the matter between the parties or ask the plaintiff to refer the matter to Court within 21 days.

Accordingly, the Court of Cassation dismissed the appeal filed by the Prosecutor's Office on the grounds that there was no crime, *per se*, to answer and upheld the judgment originally delivered by the Court of First Instance.

An Innocent Third Party may Claim Against a Company for Transactions Carried out by an Employee "Apparently" Authorized to Act on the Company's Behalf

DUBAI COURT OF CASSATION JUDGMENT NO. 249/96
DATED 5 JANUARY 1997

SUMMARY

In an action filed before the Courts in Dubai, the Court of Cassation held that it is enough for a person to be 'apparently' authorized to act on behalf of a company for an innocent third party to claim against the company for any transactions which were carried out by this individual on behalf of the company. To rebut this presumption of apparent authority, evidence must be provided to show that the third party was aware of the identity of the employee and the lack of his authority.

CLAIM

An action was filed by a businessman (the "Plaintiff") against three Defendants. The first Defendant was a local company while the second and third Defendants were individuals. The Plaintiff requested that the Court order the Defendants, jointly and severally, to pay him Dhs. 600,000, plus costs, and to uphold an attachment proceeding against them.

The Plaintiff claimed that the first Defendant had obtained a loan from him for Dhs. 600,000 which he had paid by cash and cheque. The first Defendant issued receipts acknowledging the debts and issued three cheques having a total value of Dhs. 500,000 whilst a fourth cheque in the amount of Dhs.100,000 was issued from the second Defendant's account. The cheques were returned due to insufficient funds.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance delivered judgment in favour of the Plaintiff against the Defendants and ordered them to pay Dhs. 600,000, including Dhs. 100,000 from the second Defendant. The attachment ordered against the three Defendants was also upheld. The first and third Defendants appealed against this judgment to the Dubai Court of Appeal.

COURT OF APPEAL

The Dubai Court of Appeal ordered the Defendants to pay Dhs. 500,000 only and upheld the attachment proceedings. The first and third Defendants appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Defendants argued that the second Defendant in this proceeding did not represent the first Defendant. The Court was, therefore, wrong in finding the first Defendant liable for cheques which were issued by the second Defendant as the latter had no authority to represent the first Defendant and, in fact, had no connection whatsoever with it.

The Court of Cassation held that whenever a principal, through positive or negative conduct, leads the public, or an innocent third party, to believe that one person has the authority to act or deal on behalf of the principal, the innocent third party who relies on this apparent act or omission may claim from the principal in respect of any transactions carried out by the person who apparently represented the principal. However, if the principal has evidence to show that the innocent third party was aware of the identity of the person and that he did not represent the principal, or if such third party acted in bad faith, this will absolve the principal of his liability in this matter. This concept is described in law as acting under "apparent authority".

In this case, it was evident, from the documents and facts presented, that the cheques were issued from the first Defendant's accounts in favour of the Plaintiff and that they were returned, not because the person who signed them was not authorized to do so, but for reason of insufficient funds in the account. Therefore, even if the second and third Defendants were not authorized to act on behalf of the first Defendant company, the apparent fact is that they were in possession of the cheques and drew cheques on the company's account which the bank then returned for insufficient funds. These facts confirm that there had been an apparent authorization from the first Defendant to the second and third Defendants to act on its behalf. Furthermore, the Court held that because the Plaintiff was not aware that there had been no official authorization given to the second and third Defendants, the principals would remain liable.

Accordingly, the judgment delivered by the Court of Appeal was upheld and the appeal to the Court of Cassation was dismissed.

Parties to a Commercial Contract are Free to Stipulate any Interest Rate for the Late Payment of a Debt

DUBAI COURT OF CASSATION JUDGMENT NO. 261/96
DATED 22 FEBRUARY 1997

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that parties to a commercial contract are free to determine amongst themselves the interest to be calculated on the late payment of a debt. The Court will intervene to alter this determination only if the amount stipulated contravenes public policy.

CLAIM
A Dubai trading company (the "Plaintiff") filed an action against an interior decoration firm based in Dubai and the proprietor of the company (the "Defendants") requesting that the Court order the Defendants, jointly and severally, to pay an amount of Dhs. 35,071 plus legal costs and interest at the rate of 15 percent from the date on which the action was filed until final payment. The Plaintiff also requested that the Court uphold an attachment order previously ordered by the Dubai Court against the Defendants' assets.

COURT OF FIRST INSTANCE
The Court of First Instance delivered judgment against the two Defendants ordering them jointly and severally to pay the Plaintiff the amount claimed (Dhs. 35,071) plus interest in the amount of 9 percent from 3 April 1994, the date on which the Court held the debt became due, until final payment. The Court also upheld the attachment order against the Defendants' assets, as requested by the Plaintiff. Both the Plaintiff and Defendants appealed this decision to the Dubai Court of Appeal.

COURT OF APPEAL
Before the Court of Appeal, the Plaintiff requested that the Court amend the decision of the lower Court and award the Plaintiff interest at the rate of 15 percent from 2 November 1993, which was the rate specified in the Plaintiff's invoice. The Plaintiff also requested, in the appeal filed, that the Court order the Defendants to pay advocacy fees as the Court of First Instance had not done so.

The Court of Appeal dismissed the Defendant's appeal and awarded the Plaintiff an additional Dhs. 1,000 as an advocacy fee. The Plaintiff's application for additional interest was dismissed. The Plaintiff appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

The Plaintiff requested that the Court of Cassation review the judgment delivered by the Appeal Court and award it interest at the rate of 15 percent from 2 November 1993 until final payment, plus costs and expenses.

The Plaintiff argued that it was evident from the documents filed that the invoice which was issued to and signed by the Defendants to this action bore a statement to the effect that if payment was not received within 30 days, interest will be calculated on the amount due at the rate of 15 percent. The Defendants never denied that they had agreed to this rate.

The Dubai Court of Cassation held that it was evident from the agreement between the parties that the goods were delivered as stated in the invoice, that payment should be within 30 days and that interest should be calculated at the rate of 15 percent as agreed. The Court held that it is established law that, in a commercial transaction, a party may agree to and be awarded interest for late payment when the opposite party defaults in its obligation to pay within a specified time. The Court had no power to amend or minimize the rate contained in an agreement to this effect unless the agreement was contrary to UAE public policy.

The Court also held that it was evident from the facts presented that the last invoice was dated 3 October 1993 and the rate agreed therein was 15 percent to be calculated 30 days after the date of the invoice. Therefore, interest should properly be calculated from 2 November 1993.

Accordingly, the Dubai Court of Cassation amended the interest rate awarded to the Plaintiff to 15 percent, to be calculated from the date of 2 November 1993.

Interest on a Debt will be Payable from the Date on which the Debt became Due and Not from a Subsequent Judgment Date

DUBAI COURT OF CASSATION JUDGMENT NO. 52/97
DATED 6 APRIL 1997

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that the time bar provisions contained in Article 1092 of the UAE Civil Code (Law No. 5 of 1985) will only apply to transactions which were carried out after this legislation was enacted. The Court further held that interest on a quantified amount will be payable on the date from which the debt became due even if the debtor challenged liability to payment of interest on the debt.

CLAIM
An action was filed by an individual in Dubai (the "Plaintiff") against two Defendants requesting that the Court order the Defendants jointly and severally to pay an amount of Dhs. 1,450,525. The Plaintiff claimed that he had stood as guarantor for the second Defendant to this proceeding in respect of a loan which the second Defendant obtained from a local bank. This guarantee had subsequently been called.

COURT OF FIRST INSTANCE
The Court of First Instance referred the matter to a Court-appointed expert and, after the filing of the latter's report, ordered the Defendants, jointly and severally, to pay an amount of Dhs. 451,250 plus legal interest and costs. The first Defendant appealed to the Dubai Court of Appeal.

COURT OF APPEAL
The first Defendant's appeal was dismissed at the Court of Appeal and the judgment delivered by the Court of First Instance was upheld. The first Defendant appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Dubai Court of Cassation the first Defendant argued the following;

(1) Firstly, the Defendant argued that Article 1092 of the UAE Civil Code[1] should have been applied to this case, and not the 1971 Dubai Contract Law which preceded the enactment of the Civil Code, and that therefore the claim was time-barred.

(2) Secondly, the Defendant argued that the Court was wrong to allow the Plaintiff interest from the date on which the original debt was payable. As the parties were awaiting a court judgment regarding the Defendant's liability for the principal amount, payment of interest should have been calculated from the date of the judgment pronouncing liability and not earlier.

(3) Finally, the Defendant argued that the lower Courts had ignored the argument that the Plaintiff, as guarantor, had only paid an amount of Dhs. 326,250 to the bank and not Dhs. 451,250, as awarded by the Court.

The Dubai Court of Cassation held that according to Article 112 of the UAE Constitution,[2] a Law will normally apply to transactions carried out only after its enactment and not before. Article 1092 does not deal with a matter of public policy and, therefore, will only apply to those transactions which were carried out after its enactment. The Civil Code was not applicable until 29 March 1986. Therefore, Article 1092 will not apply to any transactions completed or entered into before this date, even if an action regarding the transaction was filed at a later date.

Regarding the commencement date for interest, the Court of Cassation held that whenever the amount of a claim is quantifiable at the time when an action is filed and the debtor has failed to pay the same, the debtor will be liable for payment of interest by way of damages for late payment, commencing from the date upon which the debt became due, regardless of whether or not the debtor sought to challenge liability for the same. In this particular case, the Defendants failed to pay their debt and therefore they are liable to pay interest for late payment from the due date of the debt as judged by the Court.

Finally, the Court of Cassation held that while the lower Courts have the right to determine the relevant facts of a case, their judgment must show that they have actually reviewed and understood the documents filed and the arguments submitted by the parties to the dispute. If the judgment subsequently delivered is inconsistent with the filed documents or does not properly reflect the meaning of those documents, the judgment should be cancelled or

---

1 Article 1092 of the Civil Code provides (where relevant) as follows;
"If a debt is due, the creditor must claim it within six months from the date on which it fell due, otherwise the surety shall be deemed to have been discharged."

2 Article 112 of the UAE Constitution provides (where relevant) as follows;
"No Laws may be applied except as from the date they came into force and no retroactive effect shall result from such Laws. A Law may, however, stipulate the contrary in matters other than criminal, if necessity so requires."

revised. In this case, the Defendant confirmed that the bank advised in a letter that the total amount paid by the Plaintiff was Dhs. 326,250 and requested that the Court give a judgment for this amount. However, despite this letter the Court ordered the Defendant to pay an amount of Dhs. 451,250. The Court should have investigated and examined whether the Plaintiff had actually paid only the lesser amount. If so this lesser figure should have been awarded against the Defendants and no more.

Accordingly, the Court of Cassation cancelled the judgment of the Court of Appeal and referred the matter back to it for a review consistent with the guidelines outlined above.

Owner of a Hotel will not be Liable to a Creditor for Debts if the Creditor Knew that the Property was Leased to and Operated by a Third Party

DUBAI COURT OF CASSATION JUDGMENT NO. 179/96
DATED 12 APRIL 1997

SUMMARY

In an action filed before the Courts in Dubai, the Court of Cassation held that the local owner of a hotel will not be liable to a creditor for debts incurred on behalf of the hotel, if the creditor knew that a third party was responsible for investing in the operation and its day to day management.

CLAIM

An action was commenced by an individual creditor (the "Plaintiff") against a Dubai hotel, its owner, and two other individuals named as third and fourth Defendants in these proceedings. The Plaintiff requested that the Court order the Defendants, jointly and severally, to pay them an amount of Dhs. 120,900, plus legal costs and interest. This amount represented the value of four cheques drawn by the second, third and fourth Defendants in the Plaintiff's favour which were returned by the bank for reason of insufficient funds. The Plaintiff claimed that the third Defendant was an investor in the hotel owned by the second Defendant, while the fourth Defendant managed the hotel and was authorized to sign cheques on behalf of the other named Defendants.

COURT OF FIRST INSTANCE

Judgment was delivered *ex-parte* against all the Defendants, save the second Defendant, jointly and severally, to pay the full amount claimed, plus legal costs and interest. The Plaintiff appealed to the Dubai Court of Appeal.

COURT OF APPEAL

The Dubai Court of Appeal heard from witnesses who confirmed that the hotel was in actual fact leased from the second Defendant by the third Defendant in this proceeding. The Court of Appeal, therefore, upheld the judgment delivered by the Court of First Instance. The Plaintiff appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that the lower Court should not have relied on witness testimony to confirm the Plaintiff's knowledge of the fact that the hotel property had been leased, as these witnesses were not parties to the transaction.

The Court of Cassation held that, in general, the owner of a hotel or any such establishment will be personally liable for the debts and liabilities incurred to third parties. However, an owner may absolve itself of liability if it can prove that whoever is claiming from him as a third party had knowledge of the fact that he had leased the hotel or that it was invested in and operated by someone other than the registered owner.

The Court held that to establish whether the Plaintiff had the requisite knowledge was a factual determination which the Court was free to investigate through the submissions and facts placed in evidence before it. To this end, the Court had full authority to assess the statements of witnesses.

In this particular case, the Court had come to the conclusion, aided by the witness statements, that the Plaintiff was fully aware at the time the cheques were drawn by the fourth Defendant in the name of the hotel, that the hotel was actually leased from the owner (the second Defendant) to the third Defendant to this proceeding. In a case such as this, the owner of the hotel will be absolved of liability for debts incurred on behalf of the property.

Accordingly, the Court dismissed the appeal filed by the Plaintiff and upheld the judgment delivered by the Court of Appeal.

A Car Manufacturer's Warranty does Not Cover Damage by the Car Dealer while the Vehicle is under Repair

DUBAI COURT OF CASSATION JUDGMENT NO. 30/97
DATED 14 JUNE 1997

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that where damage to a vehicle is not attributable to a manufacturing defect this damage is not covered under the manufacturer's warranty. The Court also held that an insurance company will not be liable to compensate an insured party for the expenses incurred by its insured or for the devaluation of its vehicle in cases where the insured has withheld approval to commence the required repairs.

CLAIM
A vehicle owner in Dubai (the "Plaintiff") filed an action against a car dealer and an insurance company (the "Defendants") requesting that the Court order the Defendants, jointly and severally, to pay the Plaintiff an amount of Dhs. 60,000 plus a monthly payment of Dhs. 3,000. In April 1992 the Plaintiff had purchased a four wheel drive vehicle from the first Defendant which was subsequently damaged in December 1992 when water penetrated the engine during a period of heavy rainfall. The Plaintiff had the vehicle towed to the first Defendant's workshop wherein he requested a replacement vehicle or alternatively, the reimbursement of its full value since it was still within the original warranty period. Mechanics employed by the first Defendant checked the engine when the vehicle was first brought to their attention. However, by not checking first to see that the engine was drained of all water, they damaged it. The Plaintiff refused to authorize the repairs necessitated by the latter incident and, consequently, the car remained with the first Defendant for a period of two years.

In addition, the Plaintiff claimed from the second Defendant, under a comprehensive insurance policy, the full value of the vehicle or compensation for its devaluation over the two year period plus reimbursement of transport expenses incurred by the non-availability of the Plaintiff's vehicle. The Plaintiff estimated these latter expenses to be in the order of Dhs. 3,000 per month.

COURT OF FIRST INSTANCE

The Court of First Instance referred the matter to an expert requesting the latter to assess the reasons for the damage to the car and, specifically, whether the damage was caused by driver's negligence or a manufacturer's defect. Upon receipt of the expert's report the Court ordered the first Defendant to pay the Plaintiff its claim of Dhs. 60,000 and rejected all claims against the second Defendant. Both the Plaintiff and the first Defendant appealed this decision to the Court of Appeal.

COURT OF APPEAL

The Court of Appeal consolidated the appeals which were heard together. The Court rejected the appeal filed on behalf of the Plaintiff and confirmed the judgment of the lower Court by refusing to attribute any responsibility to the second Defendant. However, the Court also reduced the amount awarded the Plaintiff to Dhs. 12,000 as the expert's report had estimated repairs to the engine caused by the first Defendant's mechanics at this amount. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that it had been clearly established that the first Defendant's employees had negligently attempted to repair the 'flooded' vehicle, thereby accelerating its devaluation.

The lower Court had held that the damage to the car was a direct result of mistakes committed by the first Defendant's employees yet the Plaintiff bore the responsibility for not authorizing the necessary repairs. The Plaintiff argued that there was no evidence to this effect and that the lower Court's decision was contradictory on this point. The Plaintiff further criticized the lower Court for ignoring the technical findings contained in the expert's report and refusing to order compensation to the Plaintiff for transport expenses incurred, despite the Plaintiff producing invoices to support this latter claim.

The Court of Cassation held that it is the responsibility of the Court of First Instance to establish the relevant facts in accordance with the documentary evidence produced. The Court of Cassation will not interfere with a lower Court's decision in this regard as long as there is supporting evidence. There was considerable supporting evidence in this case.

The Court of Cassation further held that the judgment of the Court of First Instance clearly stated its reasoning in establishing the first Defendant's liability *vis-à-vis* the Plaintiff. It was undisputed that the damage which occurred was not due to a manufacturer's defect in the ordinary usage of the vehicle. Consequently, the damage would, the Court held, not be covered by the warranty.

It was clear to the Court from the expert's report that the most serious damage to the vehicle occurred when the first Defendant's employees attempted to

turn on the engine before checking to see whether or not it still contained water. The repair cost for the damage caused by this was estimated by the expert at Dhs. 12,000, which was the amount awarded to the Plaintiff by the Court of Appeal. The Court of Cassation held that it considered this amount to be fair and reasonable. The Plaintiff had been responsible for the car sitting at the first Defendant's premises for two years since it had refused to have the vehicle repaired on the basis that a replacement vehicle or a reimbursement of the vehicle's full original value had been requested. Because of this the Court of Cassation held that the first Defendant was not liable to the Plaintiff for transport expenses incurred by leaving the car unrepaired.

Regarding the Plaintiff's claim against the second Defendant (the insurance company) the Court of Cassation relied on Clause 1 of the "Special Circumstances for Loss and Damage" addendum provided in Ministerial Decision No. 54 of 1984, which states that an insurance company will not be responsible for compensating an indirect loss incurred by an insured or for the loss of the value of the car or for any other damage which is suffered by the vehicle's technical or electrical equipment and devices. In this regard the Court of Cassation confirmed the judgment of the Court of Appeal in rejecting the claim against the second Defendant. The second Defendant was, therefore, not liable to compensate the Plaintiff for any loss.

Accordingly, the Court of Cassation dismissed the Plaintiff's appeal and upheld the judgment delivered by the Court of Appeal.

A Guarantor will be Liable under a Guarantee until the Date on which the Guarantee is Withdrawn in Writing

DUBAI COURT OF CASSATION JUDGMENT NO. 356/97
DATED 11 JANUARY 1998

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that the guarantor of a debt shall remain responsible as guarantor of the same, until the date on which the guarantor withdraws from the guarantee in respect of any future transaction.

CLAIM
A local bank (the "Plaintiff") brought an action against an individual (the "Defendant") who had guaranteed a borrower who had been granted a loan by the Plaintiff. The loan was never repaid. The Plaintiff therefore requested that the Court order the Defendant as guarantor to pay the full amount outstanding which was Dhs. 274,313.00

COURT OF FIRST INSTANCE
The Dubai Court of First Instance ordered the Defendant to pay the full amount claimed. The Defendant appealed this judgment to the Dubai Court of Appeal.

COURT OF APPEAL
The Court of Appeal reduced the amount awarded to the Plaintiff from Dhs. 274,313.00 to Dhs. 133,914.00. The Defendant was also ordered to bear the costs and expenses on a *pro rata* basis.

The Defendant appealed further to the Dubai Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation, the Defendant argued that the judgment delivered by the lower Courts violated Article 1092 of the UAE Civil Code[1] which

[1] Article 1092 of the Civil Code provides (where relevant) as follows;
"If a debt is due, the creditor must claim for it within six months from the date on which it fell due, otherwise the surety shall be deemed to have been discharged."

states that the Plaintiff should have filed the action within six months from the date on which the monies became due, otherwise the guarantor will not be liable under the guarantee. It was evident, the Defendant argued, that the debtor to the Plaintiff had failed to pay the debts within the time period specified in the original loan agreement and as there was no evidence to show that the Plaintiff had actually requested the Defendant torepay the debt within six months from the date on which the loan became due, the guarantee should have been considered by the Court to be no longer valid.

The Dubai Court of Cassation held that the guarantor of a debt, the Defendant in this case, shall remain the guarantor of the same until the date on which the guarantor formally withdraws from the guarantee in respect of any future transaction. This must be done by a written notice given to the bank by the guarantor in order to be effective.

The Court also held that a guarantor will remain indebted for those debts which have accrued before the cancellation of the guarantee. It was evident in this case that the Defendant had guaranteed a bank loan facility which had no specified time period for payment. The Defendant had written to the Plaintiff on 25 November 1984 to advise them of the cancellation of the guarantee. At this date the accrued debts amounted to Dhs. 133,914.00 which was the amount awarded to the Plaintiff by the Court of Appeal in this matter.

Accordingly, the Court of Cassation held that the Defendant was liable under the guarantee for the amount outstanding until the date of his withdrawal. The Defendant's appeal was dismissed and the judgment delivered by the Court of Appeal was upheld.

Civil Procedure Cases

Table of Contents
Civil Procedure Cases

An Innocent Party cannot Claim Damages for an Ungrounded Complaint if the Complainant was Exercising its Rights *Bona Fide*

ABU DHABI COURT OF CASSATION JUDGMENT NO. 42/14
DATED 29 SEPTEMBER 1992

SUMMARY
In an action filed before the Abu Dhabi Court, the Court of Cassation held that an innocent party cannot claim damages for ungrounded complaints filed with the police if the complainant had exercised his right to file such a complaint *bona fide.*

CLAIM
A police complaint was filed by three companies owned by a local individual (the "Defendants") against one of their employees (the "Plaintiff") alleging that the Plaintiff had used the Defendants' money for his own benefit and had forged company documents. The Plaintiff was held in a later court case not to have committed a criminal offence. The Plaintiff filed an action for damages in the amount of Dhs. 3,000,000.00 allegedly suffered as a consequence of the false complaint.

The Plaintiff argued that he had suffered both mental and physical damage and loss of reputation as a result of the complaint filed against him. In addition, he was not paid his outstanding employment dues when he was arrested and had his job terminated.

COURT OF FIRST INSTANCE
The Abu Dhabi Court of First Instance dismissed the Plaintiff's action. The Plaintiff appealed.

COURT OF APPEAL
The Abu Dhabi Court of Appeal decided in favour of the Plaintiff. The Defendants were ordered to pay Dhs. 150,000.00 in damages, plus court fees. The Defendants appealed to the Abu Dhabi Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation the Defendants argued that they had not committed any fault or been negligent in reporting the matter to the local police. They had merely, they argued, brought to the attention of the police, a case, which in their opinion was supported by the facts and evidence.

The Court of Cassation held that every person has the right to file a criminal complaint. To do so, it is not necessary that there should be overwhelming or uncontroverted evidence of the complaint alleged. It is enough if there is sufficient evidence to merit further investigation. This was true in this case. A party will not be held liable for damages caused by exercising his right to refer the matter to the police unless the complaint was filed *mala fide* with intent to cause damage to the other party, or it was evident that the complaint was filed negligently without taking due care. If, however, it was evident that the complainant was under a reasonable impression that the facts reported were true and there were no other facts known to the complainant showing the innocence of the accused, the complainant would not be held liable.

The Court held that, on the facts before it, at the time the Defendants filed their complaint with the police they had enough grounds to reasonably believe, and did believe, that the Plaintiff was guilty of acts which amounted to a criminal offence. The Defendants' belief was vindicated by the fact that, after further investigation, both the police and the Prosecutor's office thought it fit to initiate criminal process on the basis of the complaint. It is irrevelant that a later Court found the Plaintiff to be innocent of the charges.

The Plaintiff could have succeeded in his claim only if he could prove that the Defendants had no reason to believe that any criminal offence had been committed and had still filed a complaint.

Accordingly, the Court of Cassation set aside the judgment of the Court of Appeal and dismissed the action filed by the Plaintiff.

In Accordance with Islamic *Shari'a* Principles, an Action can be Time-Barred if Not Filed within a Legally Specified Time Limit

ABU DHABI COURT OF CASSATION JUDGMENT NO. 24/15
DATED 19 JUNE 1993

SUMMARY
In an action filed before the Abu Dhabi Court the Court of Cassation held that while Sharia Islamic principles do not permit a time-bar because a debt is always due from a debtor, an action filed before the Court may be time-barred if the Defendant has denied the claim.

The Court further held that the fact that a judgment does not mention that it has been delivered by the Court in the name of the President of the UAE will not nullify the same.

CLAIM
A local company (the "Plaintiff") brought an action before the Abu Dhabi Sharia Court against an individual (the "Defendant") requesting that the Court order the Defendant to pay the Plaintiff an amount of Dhs. 51,550 for air conditioning units which had been supplied to the Defendant's newly constructed villa. The Plaintiff claimed that the Defendant had neglected to pay the outstanding amount despite repeated requests.

COURT OF FIRST INSTANCE
The Court of First Instance delivered judgment against the Defendant and ordered it to pay the Plaintiff the full amount requested. The Defendant appealed to the Court of Appeal.

COURT OF APPEAL
The Court of Appeal cancelled the judgment of the Court of First Instance and dismissed the action on the ground that the case had been filed later than two years after the debt was due and was therefore time-barred. The Plaintiff appealed to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that according to Article 125[1] of the UAE Law of Procedure (the "CPL"), all judgments delivered by the Court must be issued in the name of the President. Further, Article 130[2] of the CPL has set out, in detail, the information which must be contained in any judgments delivered by the UAE Courts. Accordingly, the Plaintiff argued, all judgments not delivered in the name of the President (as was the case with the Court of Appeal decision herein) must be considered null and void.

Secondly, the Plaintiff argued that the lower Court's imposition of a time-bar defence was in violation of *Shari'a* Islamic principles which hold that a case can never be time-barred. If a time-bar was to be applied, the Plaintiff argued, then the Court should have given due consideration to Article 477 of the UAE Civil Code which confirms that an action cannot be time-barred for 15 years, especially in cases such as this where the debtor had executed a written document acknowledging its debt.

The Court of Cassation held, firstly, that it is true that the law requires that a judgment be delivered in the name of the President of the UAE. However, the legislators did not intend that the Court should take any positive steps to implement such a rule. Accordingly, the express drafting of a judgment in the name of the President and its delivery by the Court is not considered to be part of the information and details which are required for such judgments to be valid and enforceable. Judgments will, in any event, be implemented and enforced in the name of the President as a constitutional rule and a matter of public policy. A judgment omitting the name of the President from the text does not therefore invalidate the judgment delivered in the case in question.

Secondly, the Court of Cassation held that as *Shari'a* Islamic principles do not permit the application of a time-bar, a debt will always be considered due from the debtor. However, an action filed before the Court may be time-barred if the Defendant has denied the claim. This is according to the Maliki School of Islamic principles which hold that a party who has failed to file an action at a

---

1 Article 125 of the CPL provides, where relevant, as follows;
"Judgments are passed by the Federal Courts and are implemented in the name of HH the UAE President."

2 Article 130 of the CPL provides, where relevant, as follows;
"1. The judgment must specify the court issuing it, the date of issue, the nature of the matter, the names of the judges who heard the argument and participated in the judgment and were present when it was pronounced, where applicable, the member of the public prosecutor's staff who gave his opinion on the matter, and the full names, home addresses or places of work of the adversaries and whether they were present or absent.
2. The judgment must further contain a summary of the facts of the action, the requests of the adversaries, a synopsis of the material arguments, the opinion of the public prosecutor and finally the grounds and wording of the judgment.
3. The judgment shall be null and void in the event of any objective defect in the grounds of the judgment, serious shortcoming or error in the names and capacities of the adversaries or failure to state the names of the judges who issued the judgment."

time when it is capable of doing so, has no right to the claim. For practical and evidentiary reasons (i.e. the non-availability of witnesses and/or documents) a Court action may be time-barred whereas the cause of action itself will not be.

The Court held that there is no contradiction in this as the Court action is independent of the cause of action itself. A cause of action arises after a legal right has been violated and the claim disputed, at which stage it requires legal protection. The legal action is the means of protecting the cause of action. *Shari'a* scholars authorize the Ruler to specify limits to hearing actions for certain periods and certain categories. Such limits are simply orders to the judicial authority not to hear certain actions without prejudice to the substance of the cause of action itself. If a law is enacted prescribing a time limit for actions to be filed, such a limit conforms to *Shari'a* and should be respected and upheld.

The Court also gave due consideration to the application of Articles 476[3] and 477[4] of the UAE Civil Code and held that claims for the supply of goods from merchants will be time-barred within two years. As this case was filed later than two years after the original debt for the supply of the air conditioning units became due, the Defendant was justified in rejecting the Plaintiff's claim.

Accordingly, the judgment in this case was upheld and the Plaintiff's appeal dismissed.

---

[3] Article 476 of the Code provides, where relevant, as follows;
"If denied and in the absence of lawful excuse, no claim shall be heard in respect of the following rights upon the expiry of two years:
(a) rights of merchants and craftsmen in respect of items supplied by them to persons not trading in those items, and rights of owners of hotels and restaurants in respect of the cost of accommodation and the cost of food, and monies expended by them on account of their customers.
(b) rights of workers, servants, and hired people for daily or non-daily wages and the cost of supplies provided by them."

[4] Article 477 of the Code provides, where relevant, as follows;
"(1) Claims shall not be heard in the circumstances referred to in the foregoing Article notwithstanding that the obligee may still be carrying out other work for the obligor.
(2) If there is a written acknowledgement or document proving any of the rights set out in Articles 474, 475 or 476, the claim shall not be heard upon the lapse of fifteen years from it becoming due."

The Thirty Day Period for Filing Appeals to the Court of Appeal is to be Calculated on a Daily Basis from the Day Following Judgment

ABU DHABI COURT OF CASSATION JUDGMENT NO. 306/16
DATED 28 FEBRUARY 1995

SUMMARY
In an action which originated in the Sharjah Court, the Abu Dhabi Court of Cassation held that in calculating the time period for filing an appeal, elapsed time is usually calculated from the day following when a decision has been rendered. An appeal period, the Court held, is to be calculated on a daily basis.

CLAIM
A local Sharjah company (the "Plaintiff") brought an action against another local establishment (the "Defendant") requesting that the Court order the Defendant to pay the Plaintiff an amount of Dhs. 105,186. The Plaintiff claimed that this sum represented the value of mixed ready made concrete which the Plaintiff had supplied to the Defendant which had never been paid for.

COURT OF FIRST INSTANCE
Basing its decision, in part, on an expert report which had been filed with the Court, the Court awarded the Plaintiff the full amount claimed, plus costs. The Defendant appealed to the Sharjah Court of Appeal.

COURT OF APPEAL
The Defendant's appeal was dismissed on the ground that the appeal was not filed until after the expiry of the thirty day filing period, determined by statute. The judgment of the Court of First Instance was, therefore, upheld. The Defendant appealed further to the Abu Dhabi Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation the Defendant argued that the Sharjah Court of Appeal had not taken into account the fact that the last day of the relevant appeal period was a public holiday. The Defendant argued that, in these circumstances the appeal period should properly have been extended by one day.

The Court of Cassation held that the day on which a judgment is delivered by the Court is not to be counted when calculating the time period open to

appeal. Furthermore, the relevant appeal period is usually counted in days, as opposed to months for greater clarity and accuracy. The Defendant was quite right in pointing out that in those situations where the final day for filing an appeal falls on a holiday, the appeal period will be extended until the next day. However, in this particular case judgment was delivered by the Sharjah Court of Appeal on 29 March 1994. The appeal period would therefore lapse on the close of business 28 April 1994. This was not a holiday yet the Defendant did not file its appeal until 30 April 1994.

Accordingly, the Court of Cassation held that the Defendant had neglected to file its appeal on time and therefore, the judgment delivered by the Sharjah Court of Appeal would be upheld.

The Fact that the Original Copy of a Judgment is Not Signed by One of the Court of Appeal Judges is Not Enough to Invalidate the Judgment

DUBAI COURT OF CASSATION JUDGMENT NO. 117/88
DATED 8 APRIL 1989

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that the fact that the original copy of a judgment was not signed by one member of the Court will not be a valid ground to reverse the judgment, so long as it is evident that the same judge participated in the deliberation.

CLAIM
A merchant (the "Defendant") bought textile goods from another local merchant (the "Plaintiff") and promised to pay for the merchandise on delivery. Because the Defendant failed to pay, the Plaintiff commenced an action requesting that the Court order the Defendant to pay the agreed amount plus court expenses.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance found for the Plaintiff and ordered the Defendant to pay the claim amount in addition to advocacy fees. The Defendant appealed.

COURT OF APPEAL
The Dubai Court of Appeal upheld the decision of the Court of First Instance. The Defendant appealed further to the Dubai Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation, the Defendant argued that one of the judges at the Court of Appeal had not signed the original copy of the judgment which had been signed instead by the Chairman of the Court.

The Court of Cassation found that the said judge did sign the handwritten copy of the judgment, a fact which was in itself proof that he had participated in the deliberation of the case with the other judges on the panel. The judge's failure to sign the final, original judgment did not therefore invalidate the same. The Defendant's argument was therefore rejected.

Accordingly, the Dubai Court of Cassation upheld the judgment of the lower Court. The Defendant was ordered to pay court fees, expenses and a sum in respect of advocacy fees, in addition to the full amount claimed by the Plaintiff in this matter.

A Claim for the Payment of Blood Money (*Diya*) is Not Subject to Rights of Limitation

DUBAI COURT OF CASSATION JUDGMENT NO. 263/90
DATED 5 MAY 1991

SUMMARY

In action filed before the Dubai Court, the Court of Cassation held that a claim for blood money (*diya*) will not be subject to the rules applicable to time limitations. However, the Court also held that a claim for damages, in addition to the payment of the *diya*, will not be allowed.

CLAIM

A UAE national was killed in a traffic accident while a passenger in a taxi. His relatives (the "Plaintiffs") made a claim in the Dubai Court for payment of blood money (*diya*) plus damages resulting from his death against the owner of the taxi and his insurer (the "Defendants").

COURT OF FIRST INSTANCE

The Court of First Instance rejected the Plaintiffs' claim. The Plaintiffs appealed to the Dubai Court of Appeal.

COURT OF APPEAL

The Dubai Court of Appeal also rejected the Plaintiff's claim on the ground that the death had occurred on 23 July 1984, but this action had not been commenced within three years from that date as required by Article 298 of the UAE Civil Code (the "Code").[1] The Plaintiffs appealed further to the Dubai Court of Cassation.

[1] Article 298 of the Code provides (where relevant) as follows:
"1. Claims for reparation of damage due to injurious acts shall be prescribed at the end of three years from the date on which the victim was aware of the injury and its perpetrator.
2. Provided that if the claim arises from a crime and if the criminal action is not prescribed, although the period provided for it in the previous paragraph has elapsed, the action for reparation shall not be prescribed.
3. In all cases, claims for reparation shall be prescribed at the end of fifteen years from the date on which the injurious act was committed."

COURT OF CASSATION

The Court of Cassation, after a careful review of the respective arguments made by both parties, confirmed that blood money is a basic punishment in Islamic law in all death by negligence cases. The source of the punishment is the Holy Quran in which it is clearly stated, "never should a believer kill a believer; but (if it so happens) by mistake, compensation is due. If one so kills a believer, it is ordained that he should free a believing slave and pay compensation to the deceased's family unless they remit it freely." (Al Nisa Sourah No. 92)

The Court held that this verse means that blood money must be paid by the person who is charged with causing death and the obligation to pay it cannot cease unless it is either paid or the allegedly responsible party is acquitted. Therefore, the rules normally governing limitation of actions are not applicable to the payment of *diya* and, if the relatives of the deceased person are not known at the time of death, *diya* should be paid to the Sharia Court until claimed by the relatives of the deceased.

With regard to the Plaintiffs' additional claim for damages, the Court of Cassation rejected the same and relied upon Articles 298 and 299[2] of the Code. The former states that no claim for damages resulting from a wrongful act shall be accepted after three years from the date of knowledge of that damage and of the identity of the person responsible for it. The death certificate showed the death in the present case to have occurred on 23 July 1984. There was no evidence before the Court, save for a vague letter from the Popular Front for the Liberation of Eritrea, written on the Plaintiffs' behalf and dated 23 October 1988 to indicate exactly when the Plaintiffs knew of the death.

In any event, the Court held that Article 299 of the Code makes it clear that blood money cannot be ordered in addition to damages. The Plaintiffs' request to order the Defendants to also pay damages must, therefore, be rejected.

Accordingly, the Court of Cassation ordered payment to the Plaintiffs of blood money and rejected their request for additional damages. The Defendants were also ordered to pay all legal costs associated with this action.

---

2 Article 299 of the Code provides (where relevant) as follows;
"Compensation shall be due for each prejudice caused to a man's life. Provided that in the cases where *diya* (blood money) or *arsh* (*Shari'a* damages for a non-fatal injury) is due, cumulation between either of them and the compensation shall not be allowed, unless otherwise agreed to by the parties."

An Admission of Liability in a Letter or any Signed Document will be Considered by the Court to be Good and Sufficient Proof of the Same

DUBAI COURT OF CASSATION JUDGMENT NO. 109/92
DATED 11 JULY 1992

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that an admission of liability in a letter or other signed document will be considered by the Court to be sufficient to establish liability, without recourse to additional evidence.

CLAIM
Court proceedings were initiated by a local company (the "Plaintiff") against another local company (the "Defendant") requesting that the Court order the Defendant to pay the Plaintiff an amount of Dhs. 83,751.00. The Plaintiff claimed that this amount was payable pursuant to a commercial transaction carried out between the parties in respect of which the Defendant subsequently refused to pay, despite the fact that it had admitted its liability for the debt in a letter.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance delivered judgment in favour of the Plaintiff. The Defendant was ordered to pay the full amount claimed, plus court fees and expenses. The Defendant appealed this decision.

COURT OF APPEAL
At the Court of Appeal, the Defendant's appeal was dismissed and the judgment delivered by the Court of First Instance was upheld. The Defendant appealed further to the Dubai Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation, the Defendant argued that a letter which had been issued by it to the Plaintiff was not a proper admission of liability for the debts claimed in these proceedings. It was only an offer to settle the Plaintiff's dues. The Defendant argued that the lower Courts should have ordered the Plaintiffs to submit a statement of account and provide the Court with docu-

mentation regarding the work and transactions which had been carried out between the parties.

The Court of Cassation, however, held that an admission of liability in a letter or any other signed document will be sufficient evidence for the purpose of establishing liability. The Court further held that it is not required by law to consider each and every argument raised by parties to the proceedings if there is sufficient evidence based on good ground to support the Court's conclusions.

Accordingly, the Defendant's appeal was dismissed and the judgment delivered by the Court of First Instance was again upheld.

The Court of Cassation will Not Disturb Evidentiary Findings of Lower Courts Nor Allow the Joining of a New Defendant

DUBAI COURT OF CASSATION JUDGMENT NO. 56/93
DATED 23 MAY 1993

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that the Court of Cassation will not disturb evidentiary findings made by lower Courts and that new parties cannot be joined to proceedings at the Court of Appeal level. Furthermore, the Court also held that using an insured motor vehicle for purposes other than those for which it was insured will not free an insurance company from liability. It only entitles the insurance company to launch a recourse action against its insured for the recovery of any monies paid out on the insured's behalf.

CLAIM
An individual (the "Plaintiff") brought an action against the driver of a private vehicle registered in Dubai (the "first Defendant") and the insurance company who insured the driver and his vehicle (the "second Defendant"). The Plaintiff was involved in an accident with the first Defendant which resulted in serious injuries to the Plaintiff including the loss of one eye and several broken bones and rendered him permanently unable to continue working. The Plaintiff 's claim was in the amount of Dhs. 200,000 plus legal costs and interest.

COURT OF FIRST INSTANCE
The Court of First Instance awarded the Plaintiff Dhs. 100,000 plus legal costs and interest. Both the Plaintiff and the second Defendant appealed against this judgment to the Court of Appeal.

COURT OF APPEAL
The Court of Appeal ordered the first and second Defendants, jointly and severally, to pay the Plaintiff Dhs. 200,000 plus legal costs and interest, as claimed. The second Defendant appealed this decision to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the second Defendant argued that the Plaintiff had contributed, in part, to causing the accident and the subsequent injuries which he suffered. Furthermore, it was argued that the vehicle, at the time of the accident, was being used in a manner different from that for which it was insured and by persons who were not expressly covered by the policy.

The second Defendant also argued that the Court of Appeal had refused to join the owner of the insured vehicle as a third Defendant to these proceedings at the Court of Appeal level and this decision had unfairly prejudiced the second Defendant in this case.

The Court of Cassation held that the Courts of First Instance and Appeal have absolute discretion to consider all the relevant facts and documentation in cases before them including the interpretation of all pertinent agreements and contracts. It was evident to the Court that the Court of Appeal had carefully considered the contracts and the arguments raised by both parties regarding the issue of liability in this case. It was a finding of fact by the Court of Appeal that the insurance policy issued by the second Defendant covered the accident in question. It was not open to the Court of Cassation to alter this finding.

It was also evident to the Court of Cassation that the Court of Appeal had considered the argument raised by the second Defendant regarding the improper use that was being made of the insured vehicle. The Court of Appeal had rightly held that using the vehicle for purposes other than that for which it was originally insured does not free the second Defendant from liability. It only entitles them to launch a recourse action against their insured for the recovery of any monies paid out on its behalf.

The Court of Cassation further held that it is up to the Courts of First Instance and Appeal to determine how much damage should be awarded to a successful Plaintiff in any action. The Court of Appeal had already considered the arguments regarding the contributory negligence of the Plaintiff to these proceedings and nevertheless chose to award the Plaintiff the full amount claimed. Again, it is not open to the Court of Cassation to disturb this determination.

Finally, the Court of Cassation held that the Court of Appeal was correct in refusing the second Defendant's request to join the owner of the motor vehicle as a third Defendant to this action. It is not possible by law to join a new Defendant at the appeal stage of the proceedings. An appeal is filed to argue a matter which has been previously judged by the Court of First Instance. A subsequent appeal should, therefore, be based on arguments which have been considered by the lower Court. A request to join a new party will bear no connection to the judgment delivered by the Court of First Instance.

Accordingly, the second Defendant's appeal was dismissed and the judgment delivered by the Dubai Court of Appeal was upheld.

A Facsimile Transmission will be Considered a Reliable Document and cannot be Challenged or Ignored by the Court

DUBAI COURT OF CASSATION JUDGMENT NO. 343/93
DATED 12 FEBRUARY 1994

SUMMARY

In an action before the Courts in Dubai, the Court of Cassation held that a copy of a facsimile transmission will have the same value as a telex or telegram and, as such, will be admissible as evidence before the Court.

CLAIM

A local insurance company (the "Plaintiff") brought an action before the Dubai Courts against the owners and charterer of a vessel (the "Defendants") requesting that the Court order the Defendants jointly and severally to pay an amount of Dhs. 37,316 plus interest and legal costs. The Plaintiff claimed that one of their clients had insured a consignment shipped from Italy on a ship owned by the first Defendant and chartered by the second Defendant, which was to be discharged in Dubai. When the goods were offloaded they were found to be damaged in the amount claimed. A claim was subsequently made against the Defendants by way of subrogation as the Plaintiff had already settled their client's claim under the policy. The Defendants, however, refused to pay.

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment in favour of the Plaintiff for the full amount claimed plus legal costs and interest. The Defendants appealed.

COURT OF APPEAL

The Court of Appeal dismissed the action on the grounds that the case was time-barred as the Plaintiff's claim was brought before the Court after the lapse of a year from the date on which the goods were delivered to the consignee contrary to Article 287 of the 1981 Maritime Law[1] (the "Maritime Law"). The

[1] Article 287 of the Maritime Law provides (where relevant) as follows;
"The following claims shall not be heard if opposed and in the absence of lawful excuse;
(a) Claims arising out of a marine contract of affreightment after the expiry of a period of one year from the date of delivery of the goods or from the date on which the goods should have been delivered."

Plaintiffs had filed with the Court a copy of a facsimile transmission which, purportedly, extended the time limits for filing of a claim. The Court of Appeal set aside this document because it was a copy and not an original. The Plaintiff appealed to Dubai Court of Cassation.

COURT OF CASSATION

The Court of Cassation held that it is common knowledge that transmitting a fax through a fax machine requires placing an original document through the machine at the place the fax originates, with only a copy of the same being available at the destination. The original is usually maintained by the sender.

In these circumstances, the Court held, a fax should be considered as reliable evidence within the intended meaning of Article 14 of the UAE Law of Evidence of 1992 (the "Evidence Law").[2] According to this legislation, telegrams or telexes have the same value as a copy of a document in establishing evidence. The only time that this document would be ignored is if the party who had sent it had challenged the fact that they had sent it or claimed that the signatures upon it were fraudulent or copied. Neither scenario applied to the facts in this case since the Defendants themselves never denied the fact that the extension letter had been issued by them and they had actually filed the original of the same with the Court. To argue otherwise would mean that faxes and the documentary exchange of faxes will not be used in commercial transactions at a time when speedy communications are important.

Accordingly, the judgment of the Court of Appeal was cancelled and the matter was referred back to the Court of Appeal to be dealt with in accordance with the principles set forth herein.

---

[2] Article 14 of the Evidence Law provides (where relevant) as follows;

"1. Signed correspondence shall have the same value as customary instruments in so far as evidence is concerned. Telegrams shall have the same value if the originals thereof deposited with their sending office were signed by their senders. Until the contrary is proven, telegram messages shall be deemed identical to their originals.

2. If the original telegram message is missing, the telegram message shall be disregarded except for guidance only."

Diya Money Payable in Dubai will be the Same for Male or Female Victims

DUBAI COURT OF CASSATION JUDGMENT NO. 19/94
DATED 14 MAY 1994

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that *diya* money (blood money) payable for causing death to another through negligence will be the same for male and female victims.

CLAIM
An action was brought by the Dubai Prosecutor's office against a Pakistani national (the "Defendant") accused of driving a motor vehicle in a negligent and reckless manner in violation of the Dubai Traffic Act of 1967.

COURT OF FIRST INSTANCE
On the 12 December 1993, the Dubai Criminal Court sentenced the accused to a term of imprisonment for 3 months and further ordered him to pay *diya* (blood money) of Dhs. 150,000. The Defendant appealed this decision to the Dubai Court of Appeal with a plea to amend that part of the judgment relating to *diya* as well as reducing the jail sentence to the payment of a fine only.

COURT OF APPEAL
The Dubai Court of Appeal dismissed the Defendant's appeal and upheld the judgment of the Court of First Instance. The Defendant appealed further to the Dubai Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation the Defendant argued that the deceased victim was a female and according to Islamic *Shari'a* principles, *diya* money payable for a female is half that payable for a man. Furthermore, the defendant argued that Article 1 of the UAE Criminal Code of 1987 (the Penal Code)[1] states that *diya*

[1] Article 1 of the Penal Code provides (where relevant) as follows;
"The provisions of Islamic *Shari'a* shall apply to crimes liable to the punishments provided for by the Divine Ordinance, or to the payment of compensation or blood money, while crimes liable to castigation and chastisement and the corresponding penalties shall be determined according to the provisions of this law and other penal laws."

money should be paid out in accordance with *Shari'a* principles. All the schools in *Shari'a* jurisprudence support the principle of *diya* for a woman being half of that for a man.

The Court of Cassation held that Article 1 of the Penal Code makes reference to the 'deceased' without distinguishing between male or female. There is no evidence before the Court to indicate that the framers of this legislation meant one particular gender and not another. Therefore it is not, the Court held, acceptable by law to limit the meaning of this Article to a male and not to a female, or otherwise.

The Court further held that there is no contradiction whatsoever between their interpretation of the law and Article 1 of the UAE Penal Code as the legislators had only meant to codify the principles of *Shari'a* in a law which is fully accepted by the Islamic Schools.

Accordingly, the Defendant's appeal was dismissed and the judgment of the lower Court upheld.

The Ruler's Prior Consent must be Obtained to File an Action Against the Government of Dubai

DUBAI COURT OF CASSATION JUDGMENT NO. 32/94
DATED 26 JUNE 1994

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that in order for an action to be filed against a Government Department, the Ruler's consent or approval must be obtained. Failing to do so will result in the action being dismissed. This requirement is established in an instruction issued by the Ruler of Dubai dated 4 July 1992.

CLAIM
An action was filed with the Dubai Civil Court by an insurance company (the "Plaintiff") by way of counterclaim against an individual resident in Dubai and the local Government-owned airline (the "Defendants") claiming payment of Dhs. 501,000, plus interest and costs. The Plaintiff claimed that it had provided insurance coverage for spare vehicle parts and other accessories which were to be exported from Dubai Airport to Bombay by the insured pursuant to an air waybill. The goods were never shipped (though were received for shipment by the airline) and were considered a total loss according to a surveyor's report.

The insured filed an action against the Plaintiff to recover the value of the goods. The Plaintiff joined the airline to these proceedings and filed a counterclaim seeking an indemnity from the Defendant airline for any amount which may be judged against it in the action filed by the insured.

COURT OF FIRST INSTANCE
The Court of First Instance dismissed the action against the Defendant airline. However, judgment was delivered in favour of the insured against the insurance company for the amount of Dhs. 501,000. The Plaintiff appealed to the Court of Appeal.

COURT OF APPEAL
The Court of Appeal dismissed the Plaintiff's appeal and upheld the judgment of the Court of First Instance. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued the following;

(1) Firstly, that the lower Courts had dismissed the Plaintiff's action on the grounds that it had not obtained leave to commence the action against the Government owned airline from the Ruler of Dubai. However, according to Decree No. 2 of 1985, the airline was established as an independent legal entity. Article 1, Section D of the same Decree gives the airline the right to sue and be sued. Accordingly, the Plaintiff argued, there was no requirement upon it to obtain special leave.

(2) Secondly, the Plaintiff argued that the lower Courts had ignored key provisions of the insurance policy. It was evident that the goods considered a total loss were damaged at the warehouse before being loaded onto an airplane. The insurance policy issued by the Plaintiff was only intended to cover the goods once they had been placed on the airplane. Further, the damages were not caused by the transport as covered in the policy.

(3) Thirdly, the Plaintiff argued that the insured had shown 'bad faith' contrary to Article 246[1] of the UAE Civil Code (the "Code").

The Court of Cassation held that the law to be applied to these circumstances is the law which was in force at the time the subject matter of this litigation arose. In addition, all orders given by the Ruler in the form of laws, decrees or instructions are to be considered as consistent and to be read together.

By an instruction issued by the Ruler on 4 July 1992, it was stated that no action shall be filed in the Court against the Ruler of Dubai, or the Government, unless certain procedures are followed. The party wishing to file an action must file with the Legal Advisor to the Ruler of Dubai a written description of the action. Within thirty days of the receipt of this document, the Legal Advisor shall provide the Ruler with his summary. The filing party will be notified, in due course, with the Ruler's decision on the matter. As an exception, there is no instruction requiring the prior consent of the Ruler to proceed with arbitration under any written agreements signed with the Ruler or the Government. Finally, the term "Government of Dubai" shall include any governmental department or entity or other Government organization.

Having made reference to this instruction, the Court held that, except where parties have agreed to refer their dispute to arbitration, no action should be filed against the Dubai Government or any of its departments unless prior approval to do so is obtained from the Ruler. This is a matter of public policy which will apply to all cases whether they were a main action or a recourse action.

---

[1] Article 246 of the Code provides (where relevant) as follows;

"1. A contract shall be performed in accordance with its provisions and in a way which conforms to the requirements of good faith.

2. A contract shall not only bind a contracting party to the contents thereof, but it shall also extend to all its requirements according to law, usage and the nature of the transaction."

The Court held that it was evident that the airline which was joined to these proceedings was an entity owned by the Dubai Government and therefore the instruction herein referred to, applied to it. The action filed by the Plaintiff should, therefore, be dismissed because the correct procedure was not followed.

The Court of Cassation further held that the lower Courts have full authority and discretion to deal with the facts and assess the merits of the case without any supervision from the Court of Cassation.

Regarding the Plaintiff's argument that the policy was not intended to cover the goods prior to their shipment by air, the Court held that it was evident that the policy would apply from the time the Defendant airline received delivery of the goods at the airport until discharge at their final destination in Bombay, India. The goods were therefore covered under the policy at the time of the loss.

Finally, the Court of Cassation held with regard to the claim of bad faith, that the Plaintiff had failed to properly set out in detail their legal grounds and arguments and therefore this ground of appeal would not be admissible.

Accordingly, the Plaintiff's appeal was dismissed and the judgment delivered by the Court of First Instance was upheld.

Service of a Summons by Publication in an English Language Newspaper Only will be Insufficient

DUBAI COURT OF CASSATION JUDGMENT NO. 160/94
DATED 20 NOVEMBER 1994

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that a judgment will be null and void if service of the summons is effected by publication in an English language newspaper alone. It is a basic requirement of Article 6 of the UAE Law of Civil Procedure (the "CPL") that for service by publication to be proper it must be effected in an Arabic newspaper.

CLAIM
An individual (the "Plaintiff") brought an action in the Dubai Courts against two Defendants claiming Dhs. 70,000. A vehicle owned by the first Defendant had collided with the Plaintiff's vehicle causing considerable damage. The Plaintiff's vehicle was a total loss. The first Defendant was found guilty in a parallel criminal action which was filed against him. The second Defendant had guaranteed the liability of the first Defendant in these proceedings.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance awarded the Plaintiff an amount of Dhs. 43,500. The second Defendant appealed this decision to the Dubai Court of Appeal.

COURT OF APPEAL
The Dubai Court of Appeal cancelled the judgment against the second Defendant on the grounds that he had not been properly served with the summons. The Plaintiff appealed against this judgment to the Dubai Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation, the Plaintiff argued that the Court of Appeal had accepted an appeal filed after the appeal period had lapsed. The Court of Appeal had accepted the appeal on the ground that, the second Defendant, being the appellant in the appeal, was summoned to the Court of First Instance by publication in an English newspaper only. The lower Court had held that, as

the summons was not published in an Arabic newspaper, the appeal period did not run *vis-à-vis* the second Defendant.

However, the Plaintiff argued, publication in the English language newspaper had been ordered by the Court in view of the fact that the second Defendant was an expatriate and therefore service of the summons should be made in a language that he could understand. Furthermore, the Plaintiff argued, the second Defendant had been summoned several times to attend Court but had failed to attend.

Finally, the Plaintiff argued that if the Court found that service of the summons was not effected, they should not dismiss the action. Instead the matter should have been referred back to the Court of First Instance to proceed with the case.

The Court of Cassation held that according to sub-section 6 of Article 8 of the CPL,[1] service must be effected on the person. However, if the Court ascertains the fact that the person has no known address, service may, alternatively, be effected by publication in two widely read newspapers in Arabic and, if necessary, English. The date of publication will be the date of service. This means that publication must be made in an Arabic newspaper and in some circumstances, a foreign newspaper also. This is in consideration to those people who may not understand Arabic. It will not be enough, the Court held, to effect service by way of publication in an English newspaper only. Publication in an Arabic newspaper is a must, without which a subsequent judgment will be rendered null and void.

The Court further held that the Plaintiff could not argue that the Defendant was aware of the proceedings because this will not exempt the Plaintiff from their obligation to effect service of the summons on the Defendant according to the procedures set out in law. Therefore, time would not run *vis-à-vis* the second Defendant and they had the right to appeal against the judgment at any time, because they were not properly served.

Finally, the Court also held that the Court of Appeal need not have referred the matter back to the Court of First Instance. The Court shall only determine that the judgment delivered in the case is null and void and leave the matter to the parties to proceed with the same action at the Court of First Instance.

Accordingly, the Plaintiff's appeal was dismissed and the judgment delivered by the Court of Appeal was upheld.

---

[1] Article 8 (6) of the CPL provides (where relevant) as follows;
"If the Court finds that the person to be notified has no known address or place of work, notification may be given by publication in a large circulation Arabic language daily newspaper published in the country and in another foreign language newspaper if necessary. The date of publication will be deemed to be the date of notification."

Parties Domiciled in Another Emirate may Not Arbitrarily Choose Dubai Courts to Adjudicate Their Dispute

DUBAI COURT OF CASSATION JUDGMENT NO. 134/94
DATED 24 DECEMBER 1994

SUMMARY
In an action filed before the Courts in Dubai, the Court of Cassation held that in accordance with Article 104 of the UAE Constitution, the Dubai Courts are independent from other Federal Courts in the country. It is therefore open to the Dubai Courts to determine by their own rules whether or not they have jurisdiction to hear a case. Any Articles to the contrary in the UAE Law of Civil Procedure, in particular those concerning domestic jurisdiction between the various Emirates, will not bind the Dubai Courts.

CLAIM
A bank (the "Plaintiff") brought an action in the Dubai Courts for payment of an amount of Dhs. 252,236.61 plus interest against two customers (the "Defendants") alleging that the Defendants had been granted bank facilities in the amount claimed which they had refused to repay. All parties were resident in the Emirate of Sharjah. However, the facility agreement provided for the jurisdiction of the Dubai Courts.

COURT OF FIRST INSTANCE
The Court of First Instance ruled that the Dubai Courts were not competent to hear the dispute. The Plaintiff appealed this decision to the Court of Appeal.

COURT OF APPEAL
The Court of Appeal upheld the judgment delivered by the Court of First Instance. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation the Plaintiff argued that the ruling of the lower Courts dismissing the claim for want of jurisdiction had, *inter alia*, ignored the fact that the two parties had agreed to the jurisdiction of the Dubai Courts in the facility agreement. The Federal Law of Civil Procedure, Law No. 11 of 1992

(the "CPL"), stipulates in Article 1[1] that it should apply in all Courts of the State and whatever is contradictory to the CPL should be disregarded, whether by Federal or Emirate Courts. Articles 25[2] and 26[3] of the CPL, indicate that disputes not expressly reserved to the Federal Courts, such as the present dispute, may be heard in Emirate Courts while Article 31(5)[4] makes it permissible to expressly agree to refer a dispute to a particular court.

In addition, the Plaintiff argued that the constitutional independence of the Dubai Courts, provided by Article 104[5] of the UAE Constitution, applies only to international conflicts of jurisdiction and does not preclude parties from agreeing on the jurisdiction of certain domestic courts to hear their dispute.

The Court of Cassation held that Article 104 of the UAE Constitution provides that the Courts in the Emirate of Dubai constitute an authority independent from the Federal Courts. The jurisdiction of Dubai Courts in light of this particular Article will include all disputes in the Emirate with the exception of Federal disputes of a "special" nature as determined in Article 102[6] of the UAE

---

1 Article 1 of the CPL provides (where relevant) as follows;
"The laws in civil procedure apply to matters which have not previously been tried and to proceedings prior to the date the law takes effect. Exceptions are:
a. laws amending jurisdiction where the date of taking effect is after the close of argument in an action.
b. laws amending time limits where a period begins prior to the date of taking effect.
c. laws regulating appeals with regard to provisions promulgated prior to the date of taking effect, where such laws cancel or establish channels of appeal.
2. Any procedure held to be valid under applicable law shall remain valid unless otherwise stipulated.
3. Any new time limits for allowing or preventing actions or other procedural time limits shall apply only from the date on which the law introducing them takes effect."

2 Article 25 of the CPL provides (where relevant) as follows;
"The Federal Court of First Instance in the capital is competent to hear all civil, commercial and administrative disputes arising between the State and individuals whether the State is plaintiff or defendant. If need be, the Court may decide to pass judgment in any of the capitals of the United Arab Emirates."

3 Article 26 of the CPL provides (where relevant) as follows;
"Notwithstanding the provisions of the preceding Article, the Courts of First Instance are competent to hear all disputes arising between individuals."

4 Article 31(5) of the CPL provides (where relevant) as follows;
" In circumstances other than those stipulated in Article 32 and Articles 34 to 39, it may be agreed that a particular Court will have competence to hear a dispute. In this event, competence lies with this Court or the Court in the jurisdiction of which the defendant has an address, place of residence or place of work."

5 Article 104 of the UAE Constitution provides (where relevant) as follows;
" The local judicial authorities in each Emirate shall have jurisdiction in all judicial matters not assigned to the Union judicature in accordance with this Constitution."

6 Article 102 of the UAE Constitution provides (where relevant) as follows;
"The Union shall have one or more Union Primary Tribunals which shall sit in the permanent capital of the Union or in the capitals of some of the Emirates, in order to exercise the judicial powers within the sphere of their jurisdiction in the following cases:
1. Civil, commercial and administrative disputes between the Union and individuals whether the Union is plaintiff or defendant.
2. Crimes committed within the boundaries of the permanent capital of the Union, with the exception of such matters as are reserved for the Union Supreme Court under Article 99 of this Constitution.
3. Personal status cases, civil and commercial cases and other cases between individuals which shall arise in the permanent capital of the Union."

Constitution. Such Courts should abide by the limits of their jurisdiction and not negatively or positively disregard the same. They should neither relinquish jurisdiction nor usurp the jurisdiction of another State court.

There is nothing in the wording of the CPL which impairs the independent judiciary in the Emirate of Dubai. The Dubai Courts will abide by the provisions of the CPL in so far as they help to determine whether or not they are competent to hear a particular dispute. The applicability of Article 31(5) of the CPL, under which parties can agree beforehand the jurisdiction of a specified Court, will not however apply when the Dubai courts do not have jurisdiction over the dispute according to their own rules.

The Court of Cassation held that the parties to this dispute were all resident in the Emirate of Sharjah and all transactions relevant to this particular claim took place in the same Emirate. The ruling of the lower Courts, therefore, that the dispute should be tried in Sharjah was correct and in accordance with the jurisdictional rules of the Dubai Courts.

Accordingly, the Plaintiff's appeal was dismissed. They were also obliged to pay court costs and had their security deposit confiscated.

A Claim for Blood Money may Include a Claim for Compensatory Damages

DUBAI COURT OF CASSATION JUDGMENT NO. 276/16
DATED 12 FEBRUARY 1995

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation reversed an earlier decision by holding that the joinder of blood money and compensatory damages is legally possible.

CLAIM
The parents of a traffic accident victim (the "Plaintiffs") sued the driver of the car and his insurance company (the "Defendants") requesting that the Court order the Defendants, jointly, to pay Dhs. 70,000 as blood money (*diya*) for the death of the victim and Dhs. 500,000 as damages for the financial and moral losses sustained by them as a result of this fatality.

COURT OF FIRST INSTANCE
The Court of First Instance rejected the Plaintiff's claim on limitation grounds. The Plaintiffs appealed.

COURT OF APPEAL
The Dubai Court of Appeal ordered the Defendants, jointly, to pay the *diya* but rejected the Plaintiff's claim for compensatory damages. The Plaintiffs appealed further to the Dubai Court of Cassation.

COURT OF CASSATION
The Court of Cassation held that blood money is a penalty paid to the heirs of a deceased victim and cannot be extinguished unless paid or the Defendant is acquitted. On the other hand, the purpose of compensatory damages is to indemnify a victim or his heirs for damages resulting from a certain act; moreover financial or moral damages must be proved. There is no reason why they cannot be joined together in one claim.

In this particular case, the cause of action giving rise to the request for damages and blood money, was a car accident which occurred on 23 July 1984. The Court noted that this date precede the date upon which Federal Law No. 5 of

1984 regarding Civil Transactions came into force and any Articles contained therein limiting the Plaintiff's claim would not apply.

The Court held that the principles of Islamic Law should be applied to this case. Islamic Law requires, before the payment of blood money, the establishment of the act, the damages which resulted from the act and the causal relationship between the two. Moreover, the debt should be paid from the offender's money or from his family's money according to the circumstances.

Compensation, the Court held, is to indemnify a party for the damages sustained and the occurrence of the damage must be proved, subject to the judge's discretion.

Therefore, a party who is granted a judgment for the payment of blood money is not prohibited from requesting also, the payment of compensation for those damages suffered as a result of the crime .

Accordingly, the Dubai Court of Cassation reversed the decision of the Court of Appeal and allowed the Plaintiff's claim for *diya* and compensatory damages.

A Prosecutor's Decision Not to Prosecute is Not Binding on a Civil Court in Determining Civil Liability for Wrongful Acts

DUBAI COURT OF CASSATION JUDGMENT NO. 288/94
DATED 18 FEBRUARY 1995

SUMMARY

In an action filed before the Dubai Courts, the Court of Cassation held that a decision by the prosecutor's office not to bring a criminal action is not binding on the Civil Court, which is free to make its own determination of the issues surrounding a case.

CLAIM

An insurance company (the "Plaintiff") filed a claim by subrogation against the driver of a crane, the owner of the crane and the insurance company insuring the crane (the "Defendants"). The Plaintiff claimed that the first Defendant was driving a crane when it struck and totally destroyed a motor vehicle which the Plaintiff's company had insured. The Plaintiff requested that the Court order the Defendants to pay an amount of Dhs. 34,325, plus legal costs and interest for the damage to the vehicle.

COURT OF FIRST INSTANCE

The action was dismissed by the Dubai Court of First Instance on the grounds that the prosecutor's office had closed the criminal proceedings which had been filed against the first Defendant on there being no evidence before the Prosecutor to show that he had been at fault. The Court held that the decision to close the criminal proceedings was binding on the Civil Court. The Plaintiff appealed.

COURT OF APPEAL

The judgment of the Court of First Instance was upheld by the Court of Appeal. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that the lower Courts were incorrect in assuming that a decision by the prosecutor's office would be binding on a Civil Court. The liability to provide compensation, once proven,

should continue irrespective of the decision reached in an associated criminal proceeding.

The Plaintiff further argued that the second Defendant was liable to compensate the Plaintiff under Article 316[1] of the UAE Civil Code (the "Code"), on the grounds that the crane was in the possession of the second Defendant and they should have supervised its use. This liability would also be applicable to the third Defendant in accordance with Articles 1026[2] and 1030[3] of the Code.

The Dubai Court of Cassation held that a decision by the prosecutor's office not to refer a matter to the criminal courts is not binding on the Civil Court. The lower Courts did not in fact state otherwise. Instead, the Court of First Instance and Court of Appeal had found there to be no fault on the part of the first Defendant given that the damage that occurred was the result of the crane striking a buried pipeline which none of the parties was previously aware of. The prosecutor's decision was only referred to by the lower Courts as being part of the evidence used to support the no-fault finding.

The Court held further that the Plaintiff had no basis for asserting the liability of the first and second Defendants under Article 316 of the Code since the damage was the result of an unavoidable accident.

Accordingly, the Dubai Court of Cassation upheld the judgment delivered by the Court of First Instance and dismissed the Plaintiff's appeal.

---

1 Article 316 of the Code provides (where relevant) as follows;
"Any person who has things under his control which require special care in order to prevent their causing damage, or mechanical equipment, shall be liable for any harm done by such things or equipment, save to the extent that damage could not have been averted. The above is without prejudice to any special provisions laid down in this regard."

2 Article 1026 of the Code provides (where relevant) as follows;
"(1) Insurance is a contract whereby the assured and the insurer cooperate in facing the insured risks or events, and whereby the assured pays to the insurer a specific sum or periodic instalments, and if the risk or the event set out in the contract materializes, the insurer pays to the assured or the other person stipulated as the beneficiary a sum of money or a regular income or any other pecuniary right."

3 Article 1030 of the Code provides (where relevant) as follows;
"It shall be permissible for the insurer to take the place of the assured in respect of any indemnity paid to him for loss, in bringing the claim of the assured against the person who caused the loss out of which the liability of the insurer arose, unless the person who caused the loss was an ascendant or descendant of the assured, or his spouse, or somebody living in one household with him, or a person for whose acts the assured is responsible."

Publication in a Newspaper is a Valid Alternate Means of Effecting Service when a Defendant cannot be Located

DUBAI COURT OF CASSATION JUDGMENT NO. 250/96
DATED 1 FEBRUARY 1997

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that effecting service on a Defendant by publication in a newspaper will be a valid alternative if the Plaintiff has previously followed all legal means to effect service, without result.

CLAIM
An action was filed by an individual resident in Dubai (the "Plaintiff") against a trading establishment where he had previously been employed (the "Defendant") requesting that the Court order the Defendant to pay an amount of Dhs. 106,465.00 plus costs and expenses. The Plaintiff worked as an electrical engineer for the Defendant for a period of 27 months at a salary of Dhs. 6,500 plus living and transport allowances per month. The Plaintiff claimed that, despite repeated requests, he had not received his remuneration for the last seventeen months of his employment.

COURT OF FIRST INSTANCE
The Court of First Instance delivered judgment for the Plaintiff against the Defendant in the amount of Dhs. 70,265.50 plus costs and expenses. The Defendant was also ordered to pay the Plaintiff's repatriation costs. The Plaintiff appealed to the Court of Appeal and requested that he be awarded a transportation allowance and compensation for unreasonable dismissal as the Court of First Instance had failed to take these items into account.

COURT OF APPEAL
The Court of Appeal delivered a judgment in favour of the Plaintiff after amending the amount awarded to Dhs. 104,965, plus repatriation costs and ordered the Defendant to bear all costs and expenses. The Defendant appealed to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Defendant made an urgent request to the Court to stay the execution of the Court of Appeal's judgment until its appeal was heard. The Defendant argued that the judgment of the lower Court should be declared null and void as the summons to appear, which had allegedly been served on it, had been effected by publication in the local newspaper. It was, the Defendant argued, the responsibility of the Plaintiff to have investigated the actual whereabouts of the Defendant before resorting to this means of service. The Defendant argued that effecting service of a summons by publication is unusual and should only be resorted to after the Plaintiff had exercised due diligence in a thorough search for the Defendant.

In its decision the Court of Cassation referred to Sections (4)[1] and (5)[2] of Article 8 of the UAE Law of Civil Procedure (the "CPL"). The Court held that these two Sections establish that if a bailiff, having responsibility to serve a summons, was not able to personally serve the party who was supposed to be served, the summons may be given to any person who may be able to receive it on behalf of the defendant who was the intended original recipient. If the latter refuses to receive the summons or if the person receiving the summons is not fit to do so, the bailiff must put this matter to a Judge or Chief Justice of the Court for an order allowing service either by announcing it on a public notice-board kept for this purpose at the Court or by posting-up the summons at the Defendant's place of residence or, alternatively, by publication in a widely read UAE newspaper. If service is effected by such means it will be held to be valid and effective.

In this particular case, the Court found that an attempt was made to serve the summons at the Defendant's last known address. The watchman at this location advised the bailiff that the Defendant had vacated the premises to an unknown location. The Court held that the Plaintiff had followed the means to effect service provided by the law and the Defendant's argument that the Plaintiff should have done more to locate its whereabouts was insufficient to overturn the validity of the service and the subsequent judgments.

Accordingly, the Court of Cassation dismissed the Defendant's appeal and upheld the judgment which had been delivered by the Court of Appeal.

---

1 Section (4) of Article 8 of the CPL provides (where relevant) as follows;
"If none of the persons listed in the preceding paragraphs were present at the time of serving the notice or present but abstained from receiving the same or it was realized that such person was incapacitated; the notifier should specify the same on the original notice and its copy and shall report the matter to the Judge of Circuit Head concerned, as the case may be, for his order to put a copy of the notice on the notice board and on the door of the place of residence of the person intended for service, or the door of his last place of residence, or publish the notice in a daily newspaper of high circulation issued in Arabic in the UAE."

2 Section (5) of Article 8 of the CPL provides (where relevant) as follows:
"If the person intended for service failed to state his chosen address in cases stipulated by law or his statement to that effect was incomplete or incorrect and had further failed to notify his litigant that he had removed from his chosen address, notice may be served on him in the manner set-out in the previous paragraph."

In Order to Secure an Attachment Order Against a Defendant's Assets the Debt must be Due and Payable

DUBAI COURT OF CASSATION JUDGMENT NO. 326/96
DATED 22 FEBRUARY 1997

SUMMARY
In an action filed before the Courts in Dubai, the Court of Cassation held that while attachment proceedings do not deal with the merits of a case, it must be evident to the judge, on a preliminary review, that the subject matter of the dispute is due and payable in order to satisfy the pre-conditions set out in Article 252 of the UAE Law of Civil Procedure for the granting of an attachment order against a defendant's assets.

CLAIM
A local company (the "Plaintiff") applied to the Court for an attachment order against another Dubai based company (the "Defendant") requesting the Court to order the Dubai Water & Electricity Department to stop any outstanding payments to the Defendant and hold the monies until a further order was delivered by the Court in the main action between the parties.

The Plaintiff claimed that it had contracted with the Defendant to market goods and materials for an agreed commission which was now due and payable. The Court ordered the attachment in favour of the Plaintiff. The Defendant objected to these attachment proceedings.

COURT OF FIRST INSTANCE
The Court of First Instance dismissed the Defendant's objection and upheld the attachment order in favour of the Plaintiff. The Defendant appealed to the Court of Appeal.

COURT OF APPEAL
Following the submissions and arguments of both parties, the Court of Appeal lifted the attachment and dismissed the attachment proceedings which had been filed by the Plaintiff. The Plaintiff appealed this judgment to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued that the Court of Appeal was wrong in its decision to rely on correspondence between the parties to conclude that the Plaintiff's services to market the Defendant's goods had been effectively terminated and that there was no commission payable and, therefore, the granting of an attachment order could not be justified. It should have been evident, they argued, that even after the termination of the Plaintiff's services the latter reserved their right to claim the commission payable for the work carried out on the Defendant's behalf.

Furthermore, the Plaintiff argued that in order to obtain an attachment they were not required to provide the Court with evidence to substantiate their claim in full as it should be enough to show the Court that there is a genuine claim and, in all probability, an amount is due, without having to review the merits of the case in great detail.

The Court of Cassation held that one of the basic pre-conditions to obtaining an attachment order is proving that the amount of the claim is due and payable. While the presiding judge is not bound to examine the merits of the case in great detail, it nonetheless must be clear to him by a review of the documents placed before him that the amount claimed is genuinely due and payable.

In this particular case, it was evident that the Plaintiff's services had been terminated. This termination had been acknowledged by the Plaintiff and, therefore, the debt claimed was not due and payable. None of the applicable conditions for granting an attachment order listed in Article 252 of the UAE. Law of Civil Procedure (the "CPL")[1] had been satisfied.

Accordingly, the Court dismissed the Plaintiff's appeal and upheld the judgment delivered by the Dubai Court of Appeal in this matter.

---

[1] Article 252 of the CPL provides (where relevant) as follows;
"Without prejudice to the provisions of any other law, the creditor may request the examining court, or the summary judge as the case may be, to levy a preventive attachment on his adversary's movables in any of the following cases:

1. Cases in which he fears to lose security for his right as in the following cases:
   (a) If the debtor did not have a permanent residence in the State.
   (b) Should the creditor fear his debtor may abscond, smuggle or conceal his monies.
   (c) If the collateral for the debt is threatened to be lost.
2. Where he is a lessor of property with a claim against the tenant on movables, fruits and crops on the rented realty as security for his legally decided lien. A property lessor may take this step also if the movables, fruits and crops were moved without his knowledge unless thirty days had lapsed after the movement thereof or there has been left enough monies to guarantee his decided lien.
3. If the creditor was holding an official or a normal unconditional note of a due debt.
4. If, from the papers enclosed with the request for attachment, the judge establishes the presence of a serious claim on the part of the plaintiff against the defendant.
5. In all cases, the court may, whenever it deems necessary before responding to any request for attachment, ask for any information, evidences or affidavits."

Security for Costs must be Filed by a Plaintiff Seeking a Court Order to Impound a Defendant's Passport

DUBAI COURT OF CASSATION JUDGMENT NO. 33/96
DATED 11 MAY 1997

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that according to Article 329 of the UAE Civil Procedure Law, a Plaintiff must file security for costs if they are seeking an order impounding a Defendant's passport. This prerequisite cannot be waived even in those situations where the Plaintiff already possesses a final judgment against the Defendant.

CLAIM

An international bank (the "Plaintiff") obtained a judgment in its favour against an individual domiciled in the United Arab Emirates (the "Defendant"). Following the judgment, the Plaintiff made an application to the Court to impound the Defendant's passport and thus restrict him from travelling until such time as he paid the full amount awarded the Plaintiff in the latter's successful action. An order was granted in favour of the Plaintiff against the Defendant impounding the latter's passport as requested.

The Defendant objected to this court order and argued that the Plaintiff, according to Article 329 of the UAE Civil Procedure Law (the "CPL"),[1] should

[1] Article 329 of the CPL provides (where relevant) as follows;

"1. The creditor, even prior to the substantive action, may apply to the judge concerned or the head of division as the case may be for an order to be issued to prevent the debtor travelling and for a provisional assessment of the debt if for no specific amount. The relevant order shall be issued upon an application by the party concerned to the judge concerned or the head of division as the case may be if there are significant reasons to believe that the debtor may flee, the following being provided:

a. The right must be known, due for fulfilment, and unconditional.
b. The right being claimed must be for not less than one thousand Dirhams unless a monetary fine or a prescribed outlay.
c. The claim to the right must rely on written evidence, or if it is apparent from the documents accompanying the application that there is a serious claim.
d. The creditor must provide an undertaking acceptable to the Court to the effect that he guarantees any loss or damage attaching to the debtor through him being prevented from travelling, if it becomes evident that the creditor is not right in his claim.

2. Before issuing the order, the judge may make a brief investigation if he is not satisfied with the supporting documentation to the application.
3. If he issues a travel prevention order, the judge may order that the debtor's passport be deposited with the Court cashier and that the prevention order be circulated to all points of exit from the State.
4. The person against whom the order is made may complain against the order through the procedures laid down for complaints against orders on petitions."

have filed a bank guarantee as security for obtaining an order to impound his passport. Since the Plaintiff had failed to file a guarantee, the Defendant argued that the order issued should be lifted.

Court of First Instance

The Court of First Instance cancelled the attachment proceedings and ordered the release of the Defendant's passport on the ground that the Plaintiff should have filed a bank guarantee. The Plaintiff appealed to the Dubai Court of Appeal.

Court of Appeal

The Court of Appeal dismissed the Plaintiff's appeal and upheld the judgment delivered by the Court of First Instance. The Plaintiff appealed further to the Court of Cassation.

Court of Cassation

Before the Dubai Court of Cassation the Plaintiff argued that it was not required to provide the Court with a bank guarantee or security for obtaining an order to impound the Defendant's passport. As there was already a final judgment delivered in favour of the Plaintiff, it should be evident to the Court that the Defendant is indebted to the Plaintiff. Bank guarantees, the Plaintiff argued, should only be required if the application for attachment was made before an action has commenced.

The Court of Cassation held that Article 329 of the CPL is general in scope and there are no exceptions. A bank guarantee must be filed as security for any damages or loss that the Defendant may suffer as a result of the imposition of the attachment order. It is also one of the pre-conditions upon which an order for attachment against a person's passport, effectively restricting him from travelling, can be granted. Since the Plaintiff had failed to file a bank guarantee as security, the lower Court was correct to cancel the attachment order and dismiss the Plaintiff's appeal.

Accordingly, the Court of Cassation dismissed the Plaintiff's appeal and upheld the judgment of the Court of Appeal releasing the Defendant's passport even though the latter had failed to satisfy payment of the earlier judgment delivered on behalf of the Plaintiff.

Maritime/Transport Cases

Table of Contents
Maritime/Transport Cases

The Owner of a Vessel must Specifically Provide for Tonnage Limitation in the Charterparty for such a Limitation of Liability to Apply

ABU DHABI COURT OF CASSATION APPEAL NO. 765/91
DATED 25 NOVEMBER 1991

SUMMARY

In a shipping dispute filed before the Abu Dhabi Court, the Court of Cassation held that the tonnage limitation specified in Articles 138 and 141 of the the UAE Maritime Code (Law No. 26 of 1981), will only apply in favour of a vessel's owner if the parties have mutually agreed on the right of such limitation at the time when they entered into the charterparty in question. The Court also held that the UAE Civil Code provisions regarding the exclusion of time-bar limitations apply to commercial as well as civil transactions and the owner of the vessel is liable for the master's fault or negligence, *vis-à-vis* the charterer, in a time charterparty agreement.

CLAIM

An action was brought before the Abu Dhabi Court by a company (the "Plaintiff") claiming an amount of Dhs. 356,797 on the grounds that it contracted with barge owners (the "Defendant") to transport a trailer, which was loaded with cement, to an offshore island. The trailer fell into the sea when it was being discharged and was damaged. The loss was allegedly caused by the negligence and fault of the barge's master, who had failed to moor the barge to the shore and had given an incorrect signal to the trailer's driver.

COURT OF FIRST INSTANCE

The Abu Dhabi Court of First Instance delivered judgment in favour of the Plaintiff for the full amount claimed, plus costs. The Defendant appealed.

COURT OF APPEAL

The Abu Dhabi Court of Appeal awarded the Plaintiffs an amount of Dhs. 437,864 plus costs and expenses and dismissed the Defendant's appeal. The Defendants appealed further to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Defendants argued the following;

(1) Firstly, that the Court of Appeal had held that investigations by the Criminal Prosecutor will be sufficient to interrupt any time-bar limitations. The Defendant argued that this is not correct.

(2) Secondly, that the Court of Appeal judgment had not applied Articles 138[1] and 141[2] of the UAE Maritime Code with regard to the tonnage limitation of the barge. The Court of Appeal held that such provisions should have been incorporated in the charterparty of the barge even though such incorporation is not required by law.

(3) Thirdly, that the judgment was contradictory regarding the amount awarded. The Court had referred in the judgment to an amount of Dhs.

---

[1] Article 138 of the Maritime Code provides (where relevant) as follows;

"1. The owner of the vessel may limit his liability of whatever kind to the extent set out in Article 141, in connection with obligations arising out of the following causes;

(a) Death or injury of any person on board the vessel for purposes of carriage, and likewise loss or damage to any property on board the vessel.

(b) Death or injury of any other person on land or at sea, loss or damage to any property or infringement of any right if the damage arises out of the fault of any person for whom the owner is responsible whether such person is on board the vessel or not, provided that the fault is connected with the navigation or management of the vessel, the loading, carriage or discharge of goods, or embarkation, carriage or disembarkation of passengers.

(c) Any obligation imposed by law in connection with the raising of a wreck, refloating, raising or breaking up of a sunken, stranded or abandoned vessel, including everything that is on board it and any obligation arising out of damage caused by the vessel to port installations, docks and navigation lanes.

2. The owner of the vessel shall have the right to limit his liability for the obligations referred to in the preceding subsection even if his liability arises out of guarding the vessel without proof of fault on his part or on the part of persons for whom he is responsible. Likewise the owner may rely on his limit of liability for such obligations as against the State but such reliance on limitation of liability shall not be taken to be an acknowledgement of liability.

3. If as a result of limitation of liability compensation due for death or injury is less than compensation payable under Sharia law the person entitled shall have the right to claim the whole sum in accordance with the provisions of the laws of punishments and criminal procedures."

[2] Article 141 of the Maritime Code provides (where relevant) as follows;

" 1. Limitation of the owner's liability shall be in the manner and to the extent as follows;

(a) In the amount of 250 Dirhams for each ton of the vessel's tonnage if material damage only results from the incident.

(b) In the amount of 500 Dirhams for each ton of the vessel's tonnage if bodily injury only results from the incident.

(c) In the amount of 750 Dirhams for each ton of the vessel's tonnage if material damage and bodily injuries result from the incident. Of the said sum, 500 Dirhams per ton shall be appropriated to compensation for bodily injuries, and 250 Dirhams per ton shall be appropriated to compensation for material damage, and if the sum appropriated to bodily injury is insufficient to satisfy the liability in full the balance of that liability shall participate with the debts in respect of material damage in the sums appropriated to compensation for the last mentioned damage.

2. If before distribution of the sums attributable to compensation the owner satisfies any of the debts mentioned in Article 138, he shall be permitted to take the place of the creditor in the distribution to the extent of the sum which he has paid.

3. It shall be permissible for the Court temporarily to retain part of the sums attributable to compensation in order to satisfy debts in respect of which the beneficiaries have not made claims."

437,864 whereas the amount actually awarded in the summary of the judgment was Dhs. 237,864.

(4) Fourthly, that the Court of Appeal was wrong in determining that the Defendant was responsible for the damage when the Plaintiff was the charterer and had the management responsibility to supervise the operation of discharge.

(5) Finally, the Defendant argued that the lower Courts should have applied the expert's reports filed with the Court on responsibility for the loss since the report filed by the Plaintiffs did not agree with these.

The Abu Dhabi Court of Cassation held that a time-bar can be interrupted by operation of law. For instance, since an employer is responsible for the acts of an employee, any time-bar applicable to an employee will also serve to benefit the employer, with regard to the same act and subject matter. Furthermore, it is within the purview of the lower Court to answer the question of whether or not a time-bar has ceased to run since this matter relates to the merits of the case, falling within the lower Court's jurisdiction.

The Court held that Article 481[3] of the UAE Civil Code ("The Civil Code"), which applies to commercial as well as civil transactions, states that a time-bar will be interrupted whenever a justified reason is provided for not having filed the case within the allowed time frame. It follows that the time during which criminal investigations took place in this matter will not be counted in calculating the time bar period.

This is supported by the fact that Article 483[4] of the Civil Code further states that an admission of liability, express or implied, will stop the time-bar from running and so will legal proceedings such as attachments, executions, filing before a wrong court and dismissal for non-jurisdiction. Article 484[5] of the Civil Code states that investigations by the Prosecutor's Office will also be considered a good reason to interrupt the time-bar.

With regard to the tonnage limitation argued by the Defendant in this appeal, the Court of Cassation held that it must apply the parties' agreement with regard to their obligations and duties and may not amend or vary their agreement, save in matters relating to public order. As Article 138 of the Maritime Code starts with the word "may", the owner of the vessel must specif-

---

3 Article 481 of the Civil Code provides (where relevant) as follows;
" (1) The running of time for prescription shall be suspended if there is a lawful excuse whereby the claim for the cause of action could not be made.
(2) The period during which that excuse subsisted shall not be taken into account in the prescription period."

4 Article 483 of the Civil Code provides (where relevant) as follows;
"An admission by an obligor of a right, whether express, or by implication, shall interrupt the time laid down for prescription."

5 Article 484 of the Civil Code provides (where relevant) as follows;
"The prescription period shall be interrupted upon a judicial claim being made or by any judicial proceeding being taken by an obligee to enforce his right."

ically state such a limitation of liability in the charterparty so that the other party to the contract will be aware of this. Accordingly, the meaning of this Article is to give an option to the owner. The previous judgments delivered in this case applied the agreement of the parties and found no specific agreement limiting liability.

The Court of Cassation also referred to the discrepancy between the amount of damages awarded in the body of the judgment and that written into the judgment summary. It would appear, the Court held, that this was a typographical as opposed to a material error which can be amended by the Court of Cassation without having serious implications on the judgment delivered in these proceedings.

With regard to the question of the expert's reports, the lower Court had based its decision on a survey report issued from Lloyds which clearly stated that, under normal procedure, the barge should have been moored to the shore before discharging the trailer. This report was filed as evidence by the Plaintiffs and the Court followed its recommendations in determining the case on its merits.

Finally, the charter of the vessel in this case was a time charter and therefore the possession of the vessel and the management of the same remained in the hands of the owner and not the charterer. Therefore, the Court held that any negligence or fault by the master will be the owner's responsibility and not the charterers.

Accordingly, the Court of Cassation dismissed the appeal filed by the Defendant and upheld the judgment delivered by the Court of Appeal on this matter.

The Owner of a Ship may be Liable for Damaged Goods even if the Carrier of the Goods is Found not Liable under UAE Maritime Law

ABU DHABI COURT OF CASSATION JUDGMENT NO. 180/18
DATED 12 NOVEMBER 1996

SUMMARY

In an action filed before the Courts in Abu Dhabi, the Court of Cassation held that the owner of a ship may be liable for damaged goods even if the Carrier of the goods was found not liable under UAE Maritime Law.

CLAIM

An action was filed in Abu Dhabi Court by a national insurance company, (the "Plaintiff"), against the owners of a vessel (the "Defendants"). The Plaintiff requested that the Court order the Defendants to reimburse them in the amount of Dhs. 2,250,690.90 for goods which were insured by the Plaintiff but never received at their destination due to a marine accident. The Plaintiff had paid their insured consignee and obtained a subrogation letter to bring this action against the owner and the carrier.

COURT OF FIRST INSTANCE

The Abu Dhabi Court of First Instance dismissed the action. The Plaintiff appealed to the Abu Dhabi Court of Appeal.

COURT OF APPEAL

The Abu Dhabi Court of Appeal reversed the judgment of the lower Court and ordered the Defendants to pay to the Plaintiff the full amount claimed, plus costs. The Defendants appealed to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

The Court of Cassation held that it is evident, from a reading of Articles 135,[1] 137[2] and 275[3] of the 1981 Maritime Law ("The Law"), that the legislators have

[1] Article 135 of the Law provides (where relevant) as follows;
"The Carrier is the person who uses the vessel on his own account in his capacity as owner or charterer thereof. The owner shall be deemed to be the Carrier until the contrary is shown."
Note 2 and 3: See next page.

come to the conclusion that the carrier of goods may be different from the owner. The carrier would have invested in the vessel, but under Article 275, is not responsible for its navigation or management. They would, therefore, not be liable for any errors, mistakes or negligence of the crew onboard. The owner, however, would be. In the present case, the carrier was separate from the ship owner.

In this case, it was evident from the Court- appointed expert's reports filed with the Court that the ship's master did not maintain up to date maps and drawings, made errors in navigation and was travelling during the night under conditions of bad visibility when a collision with a fishing vessel occurred. The insured goods were damaged and lost at sea as a result.

---

2 Article 137 of the Law provides (where relevant) as follows;
"(1) The owner of the vessel shall be responsible at civil law for errors of the master, crew, pilot and any other person in the service of the vessel committed by them during the performance of or by reason of their duties. The owner shall have a right of recourse against the person at fault.
(2) Likewise the owner shall be responsible for the obligations of the master arising out of dealings effected by him and contracts entered into by him within the limits of his lawful powers."

3 Article 275 of the Law provides (where relevant) as follows;
"1. The carrier shall be responsible for loss or damage sustained by the goods during the period from the time he takes delivery of the goods at the port of loading to the time he delivers the same to the person having the right to them at the port of discharge unless it is proved that the said damage or destruction arose out of one of the following causes;
- Unseaworthiness of the ship, but on condition that the carrier proves that he discharged the obligations set out in Article 272;
- Errors in navigation or in the management of the vessel on the part of the captain, crew, pilots, or other maritime workers;
- Fire, unless the same occurred through the act or default of the carrier;
- Perils of the sea or other navigable waters, or dangers or accidents thereof;
- Acts of God;
- Perils of War;
- Acts of public enemies;
- Any detention or constraint by a power, State or people or judicial arrest;
- Health quarantine restrictions;
- Work strikes, stoppages or any other obstacles which may prevent work wholly or partially;
- Civil unrest and commotions;
- Any act or omission on the part of the shipper or owner of the goods or his agent or representative;
- Shortfall in bulk or weight or any other shortfall arising out of a latent defect or from the particular nature of the goods or any defect inherent therein;.
- Insufficiency of packaging;
- Insufficiency or imperfection of distinguishing marks for the goods;
- Rescue or attempted rescue of persons or property at sea;.
- Latent defects not discoverable by ordinary examination;
- Any deviation from course in the process of rescuing or attempting to rescue persons or property at sea or any other deviation for reasonable cause;.
- Any other cause which does not arise out of the default of the carrier or those working under him or his representative. The burden of proof shall be upon the person alleging such cause to show that no default of such persons was instrumental in causing the loss or damage.

2. It shall be permissible for the shipper in the circumstances set out above to prove that the loss or damage arose out of the default of the carrier or the default of those working under him in a manner unconnected with the navigation or management of the vessel."

The Court of Cassation held in this case that even though the carrier is not liable under Article 275 of the Law (by virtue of the defence of errors of navigation), the owners of the vessel, by virtue of their responsibility for the negligence of their employees, will still be liable for the loss of cargo under Article 137 of the Law which specifically distinguishes between the liabilities of a carrier and an owner.

Accordingly, the Court of Cassation upheld the judgment delivered by the Court of Appeal and dismised the appeal filed by the Defendants.

A Second Carrier's Liability will be Determined under the Principles of Tort

DUBAI COURT OF CASSATION JUDGMENT NO. 290/90
DATED 3 AUGUST 1991

SUMMARY

In an action brought before the Dubai Courts, the Dubai Court of Cassation held that in a case where there are two carriers, (one carrier who issued the bill of lading and the second who contracted with the first carrier and delivered the goods at the discharge port), the second carrier's liability would not be based on the contractual relationship covered by the bill of lading, but it will instead be based on tort. The second carrier would be liable for any default or negligence that had been committed by him during his carriage of the consignment. The second carrier will have no contractual relationship with the consignee since he has not been a party to the bill of lading issued by the first carrier. Accordingly, the shipper or the consignee must show that the second carrier had committed a tort.

CLAIM

An action was brought before the Dubai Courts by an insurance company ("Plaintiffs") against a carrier ("Defendants") claiming that the Defendants had shipped a cargo of trousers from Hong Kong to Dubai to be delivered to a Dubai-based company. At the discharge port the goods were found to be damaged. The claim was paid by the Plaintiffs who obtained a subrogation letter from the consignees.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance held that the Plaintiffs had no right to bring these proceedings since they had no title to the goods.

COURT OF APPEAL

The Plaintiffs appealed to the Court of Appeal. The Court cancelled the judgment delivered by the lower court and ordered the Defendants to pay the full amount claimed of Dhs. 20,662.20 plus Court fees and expenses.

COURT OF CASSATION

The Defendants appealed further to Dubai Court of Cassation arguing that the Court of Appeal had refused to follow guidelines set out by the Court of Cassation in previous cases and requested the Court of Cassation to determine the case.

The Court of Cassation referred the matter back to the Court of Appeal to be determined in accordance with the guidelines set out by the Court of Cassation which appear in the above summary.

Delivery made at the Port's Warehouse and Not to the Consignee is Not Good Delivery by a Carrier of Goods

DUBAI COURT OF CASSATION JUDGMENT NO. 318/92
DATED 23 JANUARY 1993

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that the discharge of goods at a port's warehouse does not amount to delivery of the goods to the consignee. "Delivery" means the actual delivery of the goods into the hands of or the possession of the consignee. The Court further held that the consignee need not give notice to the carrier advising the latter of damage to or shortlanding of the goods unless it had taken actual delivery of the goods into its possession. The relevant date under Article 281 of the UAE Maritime Code[1] is not the date of arrival of the vessel or that of the discharge of the goods but the date on which the goods were actually delivered to the consignee.

CLAIM

A local insurance company (the "Plaintiff") brought an action against the owners and charterers of a vessel (the "Defendants") claiming an amount of Dhs. 513,955, plus interest and costs. The Plaintiff claimed that one of its clients had insured the goods consigned on board the Defendants' vessel. The goods were shipped to Dubai from a foreign port and were discovered upon discharge to be damaged to the extent claimed in these proceedings. The Plaintiff had paid the value of the damage to its insured and filed this action by right of subrogation.

1 Article 281 of the Maritime Code provides (where relevant) as follows;

" (1) In the event that part of the goods is lost or damaged the person taking delivery of the same must give written notice to the carrier or his representative in the port of discharge before or during delivery of the destruction or loss of the goods failing which it will be presumed that they have been delivered to him in the condition set out in the bill of lading until evidence to the contrary is forthcoming, but if the loss or damage are not apparent it shall be permissible to provide the said notification within a period of three days following delivery of the goods. Public holidays shall not be calculated in the said period.

(2) The submission of notice shall not be necessary if the goods have been inspected at the time of delivery in the presence of the carrier or his representative and the person taking delivery of the goods."

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment in favour of the Plaintiff. The Defendants appealed to the Dubai Court of Appeal.

COURT OF APPEAL

The Court of Appeal dismissed the action and cancelled the judgment delivered by the Court of First Instance. The Plaintiff appealed this decision to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff disputed the Court of Appeal's finding that the Defendants were not liable for the damage to the goods on the grounds that the consignees had not informed the Defendants of their claim at the time of taking delivery of the goods. The lower Court, the Plaintiff argued, had come to this conclusion because the consignees' request to survey the goods had been made after the lapse of one month from the date the goods were discharged at their destination port when in fact the goods were surveyed while still at the port and before being delivered to the consignees.

The Court of Cassation held that according to Article 281 of the UAE Maritime Code, the consignee or his agents should, on coming to know of the damages or shortlanding of the goods at the port of discharge, inform the carrier or his agent in writing of the damage particulars and the resulting claim. This should be done at the time of delivery or immediately thereafter when the damages are apparent. If the damages are not apparent, notice must be given within three days of the date of delivery of the goods. If the consignee or its agent fails to give such notice in circumstances where he ought to have done so, in the form and within the period specified by Article 281, it will be presumed that he received the goods in a fit condition, as stated on the Bill of Lading, unless proven otherwise. However, the Court also held that notice is not necessary if the goods had been surveyed at the time of delivery by the carrier's representative or his agents.

The Court held that the term "delivery" refers to the actual delivery of the goods in question. For a party to have taken delivery at the port of discharge, he ought to have had full possession of the goods with an opportunity to inspect and examine their quantity and condition. The goods would not be considered to have been delivered if the carrier had only discharged the goods at the port and had the same stored at a port facility, which would be for the account of the carrier. Further, if storage at the port facility had been for the account of the carrier, notice must be given to the manager of the stores so that he is aware that the goods were damaged.

Regarding the finding of the lower Court that a request to inspect the goods was only made one month after the vessel had berthed, the Court of Cassation

held that the dates of arrival or discharge are irrelevant and the material date is the date of actual delivery to the consignee. The Court of Appeal ought to have considered whether or not the consignee in this case had actually taken delivery of the goods before giving notice.

Accordingly, the Court of Cassation set aside the judgment of the Court of Appeal and referred the matter back for a decision based on the guidelines set out herein.

Because an Oil Rig is Not a Vessel it will Not Fall under the Legal Ambit of the Maritime Code

DUBAI COURT OF CASSATION JUDGMENT NO. 331/92
DATED 20 FEBRUARY 1993

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that an oil rig is not a vessel and therefore the Maritime Code (Law No. 26 of 1981) will not apply to it. The Court also held that since the two parties to the action had no domicile or place of business in Dubai and as the disputed transaction was not executed or enforced in Dubai, the Dubai Court would have no jurisdiction to hear the dispute.

CLAIM

An Indian bank (the "Plaintiff") filed an action before the Dubai Court against an Indian company (the "Defendant") whose oil rig the Plaintiff had financed and over which it had a mortgage. The rig was being repaired in Dubai and was already attached in connection with other court proceedings filed against the Defendant for repair costs and other debts. The Plaintiff joined the plaintiffs in the other actions in attaching the rig and proceeded against the Defendant claiming an amount of Dhs. 28,133,112 plus legal costs. The Plaintiff also requested the Court to confirm its attachment and mortgage over the rig.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance dismissed the Plaintiff's action on the grounds that the Dubai Court lacked jurisdiction because the parties were both domiciled in India and the subject matter of the proceedings had no connection whatsoever with Dubai. The Plaintiff appealed.

COURT OF APPEAL

The Court of Appeal upheld the Plaintiff's appeal and upheld the judgment which had been delivered by the Court of First Instance. The Plaintiffs appealed further.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that the lower Court had dismissed the action because an oil rig is not a vessel and, therefore, the Maritime Code could not apply. However, an expert's report filed in these proceedings confirmed that an oil rig is a vessel and is considered so in several jurisdictions. Moreover, the parties to this action had never disputed that an oil rig is a vessel.

The Court of Cassation held that according to Article 122[1] of the UAE Maritime Code, the Court where the attachment has been ordered, shall also have jurisdiction over the merits of a case as well, even if the vessel did not have UAE nationality. The Court further held that such jurisdiction shall also apply if the Defendant is domiciled at a place of business or has a branch within the jurisdiction of the Court, or where the attachment application was executed in full or in part in Dubai or if it has been agreed between the parties that the same be executed in Dubai. The Court shall also have jurisdiction if the maritime debt is incurred in Dubai or the Plaintiff has a place of business in Dubai or if the debt was secured by a mortgage on the attached vessel. However, for the Court to have jurisdiction in the latter case, the vessel must be considered a vessel within the meaning of Article 11 of the Maritime Code.[2] It must, according to this Article, be floating and able to sail under its own power, irrespective of its tonnage, power, the way it is built or its purpose. Accordingly, it is important for the Court, before determining whether or not it has jurisdiction, to determine the legal issue as to whether or not the rig is a vessel. The Court held that it was entitled to deal with this argument on its own motion, irrespective of whether or not it had been raised by either of the parties.

It was evident, the Court held, that the rig had no propellor, could not sail on its own and had to be towed out to sea. Therefore, it was not a vessel within the definition of Article 11 of the Maritime Code. Furthermore, the Court of

---

1 Article 122 of the Maritime Code provides (where relevant) as follows;
" The civil court within the area of which the arrest is effected shall have jurisdiction to adjudicate upon the subject matter of the claim in the following circumstances, even if the vessel does not have the nationality of the State, in addition to those circumstances set out in the procedural laws in force in the State:
(a) If the claimant has a usual place of residence or head office in the State.
(b) If the maritime debt arose in the State.
(c) If the maritime debt arose during a voyage during which the arrest was effected on the vessel.
(d) If the maritime debt arose out of a collision or assistance over which the Court has jurisdiction.
(e) If the debt is secured by a maritime mortgage over the arrested vessel."

2 Article 11 of the Maritime Code provides (where relevant) as follows;
" 1. A vessel shall mean any structure normally operating, or made for the purpose of operating, in navigation by sea, without regard to its power, tonnage, or the purpose for which it sails.
2. In applying the provisions of the Law, hovercraft used for commercial or non-commercial purposes shall be deemed to be ships.
3. All the appurtenances of the ship necessary for the operation thereof shall be deemed to be part of the ship and of the same nature."

Appeal was correct to dismiss the Plaintiff's action on the ground of non-jurisdiction. These findings will not change, even if the rig was registered with a Ship Registrar or classified as a vessel for certain other legal or administrative purposes such as obtaining registration or determining nationality.

Accordingly, the Plaintiff's appeal was dismissed and the judgment of the Court of Appeal in this matter was upheld.

A Customs Authority Certificate that Goods were Received in Fit Condition will be Conclusive Evidence Against Claims Otherwise

DUBAI COURT OF CASSATION JUDGMENT NO. 73/93
DATED 22 MAY 1993

SUMMARY

In an action filed before the Dubai Courts, the Dubai Court of Cassation held that a maritime carrier will not be held responsible for cargo damage if documents issued by the Customs Authority state that shipped goods were delivered in full and in good condition. The description on the Customs certificate will be considered as conclusive evidence against all parties who allege otherwise.

The Court further held that it is a consignee's obligation to examine a container on delivery and to check the contents before taking delivery.

CLAIM

An action was filed by an insurance company (the "Plaintiff") against the owner of a vessel (the "Defendant") claiming an amount of Dhs. 13,541.70 plus interest for damage to a consignment of ready-made garments which were shipped from Shanghai to Dubai on a vessel owned by the Defendant. The goods were covered by a bill of lading issued by the Defendants. When the shipment was discharged at Port Rashid, Dubai, they were found to be damaged. The Plaintiff's claim was by way of subrogation as they had compensated the insured party for the damaged goods.

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment in favour of the Plaintiff for the full amount claimed. The Defendant appealed.

COURT OF APPEAL

The Dubai Court of Appeal upheld the judgment of the Court of First Instance. The Defendant appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Defendant argued that the lower Courts had ignored a certificate issued by the Customs Authority showing that the goods had been delivered in good condition and that the consignee had received the

goods without any reservation or protest. The Defendant further argued that the certificate issued by the Customs Authority is an official document and as such should be considered as conclusive evidence exonerating the Defendant of any responsibility for the damaged goods.

The Dubai Court of Cassation held that a Carrier's liability will end when the goods are delivered to the consignee or his agent in good condition. Further, an official document which has been prepared by an individual in an official capacity will be considered conclusive evidence against concerned parties. Therefore, all information detailed in official documents will be conclusive unless forged.

In this case, it was evident on the certificate issued by the Customs Authority that the consignee had received the goods discharged by the vessel without any reservation. This fact would constitute evidence that the goods were received in the same condition as that described on the bill of lading. It was not open to the Plaintiff to argue that the goods were stored inside the container and that they had received the container "as it was". The consignee had not been prevented by the carrier or any other party from examining the container or its contents in greater detail, nor did they attempt to challenge, at the time of delivery, the information stated on the Customs certificate.

Since the earlier judgments delivered in these proceedings had ignored the official and conclusive nature of the document issued by the Customs Authority to the effect that the goods were delivered in good condition, the Court of Cassation reversed the decision of the Court of Appeal and dismissed the action filed against the Defendant.

The Party who Issued the Bill of Lading will be Responsible for Damage to Goods on a Vessel

DUBAI COURT OF CASSATION JUDGMENT NO. 30/94
DATED 4 JUNE 1994

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that the party who signed and issued a bill of lading will be responsible for any damage caused to the goods shipped. This party will not necessarily be the owner of the vessel. Furthermore, if the owner of the vessel did not sign the bill of lading, he will not be liable for the damaged goods.

CLAIM

A local establishment (the "Plaintiff") brought an action against the owner and charterer of a ship (the "Defendants") claiming an amount of Dhs. 137,367 plus interest and legal fees. The Plaintiff claimed that it had contracted with the second Defendant (the Charterer) to carry a cargo of mangoes from Bombay, India to Dubai on a vessel owned by the first Defendant. When the cargo was discharged in Dubai it was discovered that the fruit had been damaged during transit. The Plaintiff, therefore, claimed for the value of the damaged goods.

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment in favour of the Plaintiff and ordered the Defendants, jointly and severally, to pay an amount of Dhs. 106,559 plus interest at the rate of 9 percent. The first Defendant appealed against this judgment to the Dubai Court of Appeal.

COURT OF APPEAL

The Court of Appeal dismissed the first Defendant's appeal and upheld the decision delivered by the Court of First Instance on the matter. The first Defendant appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the first Defendant argued that it was not responsible, despite being the owner of the vessel, for goods shipped on board since the bill of lading in question had been signed by the second Defendant's

agent. Accordingly, the first Defendant argued that the charterer and not the owner was the carrier.

The Court of Cassation held that according to UAE maritime jurisprudence, the carrier (whether it be the ship owner or charterer) is the party who undertakes to carry goods to a certain destination for consideration. In the absence of any other contract of carriage, the bill of lading will constitute evidence of the same and will specify the elements of the carrier's liability. The bill of lading, therefore, will govern the relationship between the shipper and the carrier and it will be the reference and the basis on which each of them will determine their obligations and liabilities.

The Court held that if the bill of lading is issued by the charterer and signed by him or his representative without making any reference to the fact that it was signed on behalf of the owner or as an agent for the owner, and in the absence of any reference to the name of the owner on the bill of lading, the charterer will be considered the carrier and be responsible for damages to the cargo carried under the bill of lading. In this case, it was evident to the Court that the bill of lading contained the name of the charterer and was signed by the charterer's agent as carrier. There was no reference to the owner's name or any person signing on behalf of the owner. Therefore, the charterer should be liable for any damage to the goods carried under the bill of lading.

Accordingly, the first Defendant's appeal was upheld and the judgment against it dismissed.

The Dubai Court of Cassation Clarifies the Rules for the Time-Bar of a Maritime Claim

DUBAI COURT OF CASSATION JUDGMENT NO. 99/94
DATED 9 JULY 1994

SUMMARY

In an action filed before the Dubai Courts, the Dubai Court of Cassation held that the time-bar of an action was not contradictory to the Islamic *Shari'a* and that the *Shari'a* recognizes the time-bar of Court actions. Mere correspondence between the parties does not constitute grounds for suspending the time-bar period. Time-bar periods may only be suspended if the claim was acknowledged or admitted by the Defendants or by an action filed before the Court or any other judicial proceedings taken by the creditor against the debtor.

CLAIM

An action was brought before the Dubai Courts by an insurance company ("Plaintiffs") against a shipping company ("Defendants"). The Plaintiffs claimed an amount of Dhs. 64,906 plus interest and legal costs for damaged goods which were shipped on a vessel owned by the Defendants. The damage was discovered upon the delivery of the goods at Dubai Port. After assessing the damage and compensating the insured, the Plaintiffs filed a claim against the Defendants by subrogation.

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment in favour of the Plaintiffs for the full amount claimed plus legal costs.

COURT OF APPEAL

The Defendants appealed to Dubai Court of Appeal arguing that the matter should have been considered time-barred by the Court of First Instance under Article 287 of the 1981 UAE Maritime Code ("The Code")[1] because the action

[1] Article 287 of the UAE Maritime Code provides (where relevant) as follows:
"The following claims shall not be heard if opposed and in the absence of lawful excuse.
(a) Claims arising out of a marine contract of affreightment after the expiry of a period of one year from the date of delivery of the goods or from the date on which the goods should have been delivered."

was filed one year after the date on which the goods had been delivered. The Court cancelled the judgment and dismissed the action on the grounds that the claim was time-barred.

COURT OF CASSATION

The Plaintiffs appealed to Dubai Court of Cassation and argued the following:

1. The Appeal Court justified its dismissal of the action on the grounds that the case was time-barred under Article 287 of the Code because the goods were delivered on 28 March 1992 and the claim was filed on 28 March 1993. This judgment is contradictory to the *Shari'a* which does not recognize the barring of actions due to time lapse.
2. If the time-bar provision of the Code was to apply despite the rejection of such provisions by the *Shari'a*, Article 11 of the UAE Law of Civil Procedure ("CPL")[2] requires that the applicable time periods should be measured as beginning on the day following the delivery of the goods, not the day on which the actual delivery was made. Therefore, the time-bar should be calculated as beginning on 29 March 1992, rather than 28 March 1992.
3. The time-bar period should have been suspended during the period in which the parties exchanged correspondence and negotiated the matter before the action was filed.

The Court of Cassation held that while *Shari'a* principles do not recognize the barring of a right or claim due to the lapse of time, the *Shari'a* did not preclude the time-bar of a Court action after the lapse of the appropriate period if no proceedings have been brought by the claimant within the time period and the claimant has no excuse for failing to assert the claim. Accordingly, Article 287 of the Code, which provided for the time-bar of actions not filed within one year of the date of delivery of the goods or the date on which the delivery should have taken place, was not contradictory to the Islamic *Shari'a*.

The Court of Cassation further held that the legislative intent of Article 287 of the Code was to include the date of delivery in calculating the applicable time period used to determine whether an action is time-barred. Since the consignee in this case could have asserted the claim on the date of delivery, the delivery date should be included in the applicable time period. Article 11 of the CPL is not applicable in this case given that the cause of action was strictly governed by the Code.

Accordingly, the Court upheld the judgment of the Court of Appeal on the basis that the claim was time-barred due to the fact that no action was filed within one year of the delivery of the goods.

---

[2] Article 11 of the Law of Civil Procedure provides (where relevant) as follows:
"If the law stipulates a time limit of days, months or years for an appearance or procedure, the day of notification or the event initiating the period from a legal point of view shall not be counted and the period shall end with the finish of official business hours on the last day of the period."

A Bank Guarantee Filed as Security for the Release of an Arrested Ship must be for the Actual Damages and Not an Excessive, Unproven Amount

DUBAI COURT OF CASSATION JUDGMENT NO. 135/94
DATED 12 NOVEMBER 1994

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that the value of a bank guarantee required from the owners of a vessel must correspond with the value of a claim filed by the Plaintiff according to the evidence and documentation submitted to the Court.

CLAIM
A local company (the "Plaintiff") obtained an order from the Dubai Court to arrest a vessel belonging to the Defendant. The Plaintiff claimed compensation for damage caused to one of its vessels by the Defendant's vessel in the amount of Dhs. 4,000,000. The Defendant filed a bank guarantee for Dhs. 4,000,000 and released the vessel. The Defendant then objected to the Court order and requested that the Court accept a bank guarantee in the reduced amount of Dhs. 300,000.

COURT OF FIRST INSTANCE
The Defendant's objection was dismissed by the Court of First Instance. The Defendant appealed to the Dubai Court of Appeal.

COURT OF APPEAL
The Court of Appeal reduced the bank guarantee to Dhs. 1,000,000. The Defendant appealed further to the Dubai Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation, the Defendant argued that the Plaintiff had not filed any evidence to substantiate its excessive claim. In fact, the maximum amount filed in Court as evidence for the claim was Dhs. 188,000, representing the cost of repairing the damaged vessel plus Dhs. 95,812 for loss of earnings. These two amounts totalled Dhs. 283,812 which is considerably lower than the Dhs. 1,000,000 specified by the Court of Appeal.

The Court of Cassation held that a bank guarantee is filed by the owners of a vessel to secure the claim of a Plaintiff and to enable the vessel to leave. The security, therefore, should be for the actual claim and not for an amount in excess. In this action, the Plaintiff claimed damages without specifying an amount. It was evident from the survey report that the repairs to the Plaintiff's vessel cost Dhs. 188,000 with a corresponding income loss of Dhs. 95,812. Accordingly, the guarantee should be for these amounts and no more. It is not open to the Court to hold that there may have been additional repairs or losses when no evidence of the same had been filed before the Court.

Accordingly, the Court of Cassation allowed the Defendant's appeal and referred the matter back to the Court of Appeal to determine according to the guidelines set out herein.

P&I Club has No Authority to Represent the Carrier or to Grant a Time Extension on its Behalf

DUBAI COURT OF CASSATION JUDGMENT NO. 22/94
DATED 19 NOVEMBER 1994

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that as a charterer had issued the relevant bill of lading, it and not the vessel's owner would be deemed to be the carrier. The Court also held that it is not possible to reduce the statutory one-year time limit regarding the filing of actions, however it is possible for the parties to agree to an extension of the same. This extension can only be granted by the carrier or a party authorized by the carrier. Furthermore, unless there is evidence that the carrier's P&I Club represents the carrier, the Club will not automatically have the authority to grant an extension of time, especially when the carrier subsequently denies such authority.

CLAIM
An international shipping line (the "Plaintiff") brought an action in the Dubai Courts against two local companies (the "Defendants") claiming an amount of Dhs. 4,495,750. The Plaintiff obtained an arrest order against a vessel owned by the first Defendant. This order was lifted after the P&I Club of the first Defendant provided the Plaintiff with a letter of undertaking.

The Plaintiff claimed that it had shipped several containers on a barge travelling between Dubai and Bander Abbas, Iran which was towed by a vessel owned by the first Defendant. Both the barge and the tow were chartered to the second Defendant. The Plaintiff's containers were never discharged at Bander Abbas and the Plaintiff claimed that they had been lost at sea.

Before the Court of First Instance the second Defendant argued that any action against it should be time-barred. The first Defendant also denied liability on grounds that it had demise chartered to barge and tow to the second Defendant and the second Defendant had issued the relevant bill of lading. The Court agreed with both defences and dismissed the action against both Defendants. The Plaintiff appealed to the Dubai Court of Appeal.

COURT OF APPEAL

The Court of Appeal dismissed the Plaintiff's appeal and upheld the judgment delivered by the Court of First Instance. The Plaintiff appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that the lower Courts were wrong to dismiss the action against the first Defendant on the ground that the vessel had been chartered to the second Defendant who had control over the vessel's management and who had issued the bill of lading. There was no evidence before the Court that the second Defendant did indeed have control over the management of the vessel. Furthermore, the UAE Maritime Code placed responsibility squarely on the shoulders of the owners of the vessel for the actions of the master and crew which, the Plaintiff alleged, were responsible for the loss in this case.

Secondly, the Plaintiff argued that the action could not have been time-barred as the first Defendant's P&I Club had granted an extension of time in a letter filed with the Court and dated 13 March 1992. The P& I Club appeared to have authority to act on behalf of the first Defendant and to grant an extension of time on its behalf. This apparent authority was never challenged by the second Defendant in these proceedings.

The Court of Cassation held that the carrier is any person, whether owner or charterer, who contracts to transport goods for the account of another by sea from one port to another for a fee. In the absence of any other contract of carriage, the bill of lading will be evidence of the same, according to Article 257 of the UAE Maritime Code (the "Code").[1] The bill of lading will determine the contractual relationship between the parties. In a dispute, the Court will make reference to the terms and conditions agreed upon in the bill of lading to determine the rights and obligations of either of the parties. If the bill of lading was issued by the charterer, or its agent, without reference to the owner, the charterer and not the owner will be responsible for complying with the conditions contained therein.

---

[1] Article 257 of the Maritime Code provides, where relevant, as follows;
"1. The contract of maritime transport shall be evidenced by a bill of lading and the carrier or his representative must issue a bill of lading upon the request of the shipper.
2. The bill of lading must state the following matters;
(a) The name and address of the carrier, the shipper and the consignee;
(b) Particulars of the goods delivered to the carrier and the date of delivery thereof;
(c) Port of loading and port of arrival;
(d) Name and nationality of the vessel;
(e) The amount of the freight and the manner of calculation thereof;
(f) The place and date of issue of the bill;
(g) The number of copies of the bill which have been made;
(h) The signature of the master and the shipper."

In the present case it was evident, the Court held, that the bill of lading was issued by the second Defendant without reference to the fact that the second Defendant was also the charterer of the vessel. There was also no reference to the charterparty in the bill of lading. Accordingly, the second Defendant and not the first Defendant was the carrier. The lower Court was therefore correct in dismissing the action filed against the first Defendant on the ground that it had not issued the bill of lading.

Regarding the time-bar defence, the Court of Cassation held that it is not possible to reduce the one year time-bar period specified in the Maritime Code. However, it is possible to extend a period provided that the extension of the period is authorized by the carrier or its representative. The determination of whether or not a party who has granted such an extension represents the carrier is an evidentiary matter which must be proved before the Court. The fact that the carrier is a member of a P&I Club does not automatically entitle the latter to give an extension of time on behalf of the carrier. The carrier in this case denied that the P&I Club was ever given the authority to grant an extension and challenged the Club's letter of 13 March 1992. In addition, the Plaintiff failed to file the P&I Club's Rules as proof of any such authorization. The Court held, therefore, that the mere fact that the carrier was a member of the P&I Club did not mean that the latter had the authority to represent its interests or to grant an extension to the statutory time-bar.

Accordingly, the Plaintiff's appeal was dismissed and the judgments of the lower Courts were upheld.

Time-Bar is Suspended in Maritime Cases if the Carrier Admits Liability in Correspondence with the Consignee

DUBAI COURT OF CASSATION JUDGMENT NO. 94/95
DATED 31 DECEMBER 1995

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that according to Section A of Article 287 of the 1981 UAE Maritime Code[1] ("the Code"), any correspondence between a carrier and a consignee was not valid to interrupt the time-bar contained in this Article. However, if the correspondence contained an admission of liability to compensate the consignee, such an admission would stop the time from running.

CLAIM
An action was brought before the Dubai Courts by a local insurance company ("Plaintiffs") against the owner and charterer of a vessel ("Defendants") arising by subrogation from the consignee of the cargo in question. The Plaintiffs requested the Court to order the Defendants to pay an amount of Dhs. 77,346 plus legal costs and interest. The Plaintiffs claimed that this amount had been paid to the insured consignee to cover the value of the goods that were found damaged on board the vessel at the time of their delivery at Jebel Ali Port.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance held that this case had been filed after one year from the date of delivery of the goods and, as a result, was time-barred. Accordingly, the Court would not hear the action.

COURT OF APPEAL
The Plaintiffs then appealed to the Dubai Court of Appeal. The Court upheld the judgment delivered by the Court of First Instance.

---

[1] Article 287 of the Code provides (where relevant) as follows:
"The following claims shall not be heard if opposed and in the absence of lawful excuse:
(a) Claims arising out of a marine contract of affreightment after the expiry of a period of one year from the date of delivery of the goods or from the date on which the goods should have been delivered."

COURT OF CASSATION

The Plaintiffs appealed further to the Dubai Court of Cassation. They argued that the Court had ignored the correspondence that had pased between the Plaintiffs and the Defendants regarding the damaged goods. The Court held that mere correspondence between the parties was not considered valid to stop the time from running according to Section A of Article 287 of the Code.

However, in the correspondence, there was an admission of liability by the agent of the Defendants whereby they had offered to settle the claim for less than the value of the damages. This admission would stop the time from running. Therefore, the defendants could not argue that the case was time-barred by virtue of the fact that the action was not brought before the Court within one year from the date of the delivery of the goods.

The Defendant's agent had first offered the amount of Dhs. 37,260 in full and final settlement. The consignee had refused this offer in their belief that the Defendants were fully liable to compensate the consignee for the full amount of the value of the damaged goods. The settlement offer was then increased by the Defendant's agent to Dhs. 46,575.

Accordingly, the Court of Cassation overturned the decisions of the lower Courts and referred the matter back to the Court of Appeal for a determination on the merits.

A Carrier's Liability for Goods Damaged in Transit will be Presumed even if the Bill of Lading is Marked "Shipper's Stow and Count"

DUBAI COURT OF CASSATION JUDGMENT NO. 275/96
DATED 5 JANUARY 1997

SUMMARY

In an action filed before the Dubai Courts, the Court of Cassation held that a maritime carrier will be responsible for the condition of goods within a container from the time the container is delivered to it at the port of shipment to the time the container is delivered to the consignee at the port of discharge unless the carrier is able to prove that the damages could be attributed to one of the conditions listed under Article 275 of the UAE Maritime Code. The burden of proof rests with the carrier even if the bill of lading was marked with the words "shipper's stow and count".

CLAIM

An action was filed by an insurance company (the "Plaintiff"), under subrogation, against the owners of a vessel (the "Defendant") claiming an amount of Dhs. 81,320 plus legal costs and interest. The Plaintiff claimed that by a bill of lading issued by the Defendant, goods were shipped from Istanbul, Turkey to Dubai. The container was sealed by seal No. 18441. When the container was received in Dubai on 24 June 1994 the consignee noted that the applicable bill of lading had changed and that the container was now covered under another bill of lading without the permission of the shipper or the consignee. Such bill of lading was endorsed "shipper's stow and count".

It was also evident at this time that the original seal had been broken and another seal, No. 173040, had been placed on the container. The Plaintiff also alleged that when the container was opened, a number of cartons were damaged and some were lost. Damages were in the amount of Dhs. 81,320 (US $22,098) as claimed.

COURT OF FIRST INSTANCE

The Court of First Instance delivered a judgment against the Defendant and ordered it to pay the full amount claimed and the legal costs, plus interest at 9% *per annum* from the date on which the judgment became final. The Defendant appealed.

COURT OF APPEAL

The Court of Appeal dismissed the Defendant's appeal and the judgment of the Court of First Instance was upheld. The Defendant appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Defendant argued that that the damage to the goods was attributable to the stowage and packing of the same in the container which is the responsibility of the shipper and not the Defendant, as carrier. The Defendant also argued that the change of seal had taken place after the container was delivered. The Expert report filed in Court was inconclusive and raised several questions with regard to the place where the goods were handled and the actual time when the container had been opened.

The Court of Cassation held that according to Article 275 of the UAE Maritime Code (the "Code"),[1] the carrier is responsible for damage to goods occurring during the period from the time the container is delivered to the carrier at the port of shipment to the time the container is delivered to the con-

1 Article 275 of the Code provides (where relevant) as follows;

"1. The carrier shall be responsible for loss or damage sustained by the goods during the period from the time he takes delivery of the goods at the port of loading to the time he delivers the same to the person having the right to them at the port of discharge unless it is proved that the said damage or destruction arose out of one of the following causes;

- Unseaworthiness of the ship, but on condition that the carrier proves that he discharged the obligations set out in Article 272;
- Errors in navigation or in the management of the vessel on the part of the captain, crew, pilots, or other maritime workers;
- Fire, unless the same occurred through the act or default of the carrier;
- Perils of the sea or other navigable waters, or dangers or accidents thereof;
- Acts of God;
- Perils of War;
- Acts of public enemies;
- Any detention or constraint by a power, State or people or judicial arrest;
- Health quarantine restrictions;
- Work strikes, stoppages or any other obstacles which may prevent work wholly or partially;
- Civil unrest and commotions;
- Any act or omission on the part of the shipper or owner of the goods or his agent or representative;
- Shortfall in bulk or weight or any other shortfall arising out of a latent defect or from the particular nature of the goods or any defect inherent therein;.
- Insufficiency of packaging;
- Insufficiency or imperfection of distinguishing marks for the goods;
- Rescue or attempted rescue of persons or property at sea;.
- Latent defects not discoverable by ordinary examination;
- Any deviation from course in the process of rescuing or attempting to rescue persons or property at sea or any other deviation for reasonable cause;.
- Any other cause which does not arise out of the default of the carrier or those working under him or his representative. The burden of proof shall be upon the person alleging such cause to show that no default of such persons was instrumental in causing the loss or damage.

2. It shall be permissible for the shipper in the circumstances set out above to prove that the loss or damage arose out of the default of the carrier or the default of those working under him in a manner unconnected with the navigation or management of the vessel."

signee at the port of discharge. There is a presumption of liability on the carrier's part and the burden of proof is on the carrier to prove that the damage took place for any of the reasons listed under Article 275.

In this particular case, the Court of Cassation held that the lower Courts had relied on the findings contained in the Expert report and both parties were represented at the time that the Expert conducted his investigation. The Court considered that this report was reasonable and its findings accurate.

The Court further held that, according to the facts of this case, the seal had been changed at a time when the container was in the Defendant's custody and it will, therefore, be held responsible for the damages. It is of no use to the Defendant to argue that the bill of lading was marked with the reservation "-shipper's stow and count" as the goods in the container had been short-landed and damaged and this was properly attributed to the Defendant.

Accordingly, the Court of Cassation dismissed the appeal and upheld the judgment delivered by the Court of Appeal on this matter.

A Carrier may be Personally Liable for Damaged Goods even if the Bill of Lading was Issued on a Shipping Line's Letterhead

DUBAI COURT OF CASSATION JUDGMENT NO. 305/96
DATED 2 FEBRUARY 1997

SUMMARY
In an action filed before the Courts in Dubai, the Court of Cassation held that where a bill of lading was issued by a shipping line on their letterhead, it must first be determined if the bill of lading has been signed by the line as agent for the ship owners or in their personal capacity. If the shipping line has signed on behalf of the ship owners, the liability for damaged goods falls on the owners as Carrier and not the shipping line who have signed the bill of lading.

The Court also held that while it is true that it is not possible to impose liability on an agent for the acts of his principal, the agent can be sued if the Plaintiff is claiming that the agent was negligent in his personal capacity. It is theoretically possible, therefore, for an action to be filed both against an agent in his personal capacity and the Carrier under a bill of lading.

CLAIM
An action was filed in Dubai Court by a local trading company, (the "Plaintiff"), against four Defendants; a shipping line who had issued the relevant bills of lading, the owner of the first carrying vessel, the owner of the second carrying vessel and the shipping agent for the shipping line. The Plaintiff requested the Court to order the Defendants jointly to pay them a certain amount of plus costs and expenses, for damage to cargo carried under the bills of lading.

The two vessels owners, the second and third Defendants, had consecutively carried spare parts from Hamburg to Dubai where they were to be discharged and delivered to the consignee, the Plaintiff in these proceedings. However, the Defendants failed to deliver the goods as they were damaged in a warehouse fire while in the custody of the fourth defendant, the shipping agent.

The Plaintiff further argued that the fourth Defendant, being the operating agent of the container terminal where the goods were located when they were destroyed, should be found personally liable for the damages claimed.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance dismissed the action on the ground that the case had been filed by a party who had no title to sue in these proceedings. The

Court further held that the second, third and fourth Defendants were not a party to the original transaction and should therefore, not be joined to these proceedings. The Plaintiff appealed to the Dubai Court of Appeal.

COURT OF APPEAL

The Court of Appeal held that the Plaintiff did have a title to sue in these proceedings. Nevertheless, the Court dismissed the case against all four Defendants. The Plaintiff appealed.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued, firstly, that the shipping line (who issued the bills of lading) should be liable for all obligations pursuant to the bills of lading.

Secondly, that the lower Courts had held that the Plaintiff had no right to bring this action against the owners of the two vessels on the grounds that the bills of lading were not issued by them although, the Plaintiff argued, it is evident that the bills of lading were issued on their behalf and they are parties to them.

Thirdly, the Plaintiff argued that the shipping agent, the fourth Defendant, should also be found liable, in view of the fact that it had not taken the care required to adequately protect the Plaintiff's goods by placing them in their warehouse adjacent to dangerous flammables. The fourth Defendant, therefore, should be found personally liable for negligence.

The Court of Cassation held that the Court of Appeal was wrong to dismiss the action against the second and third Defendants, the ship owners of the two vessels. Even though the bills of lading were issued by the first Defendant shipping line on its letterhead, the Court should investigate whether they have signed on behalf of one or other of the ship owners as agent or in their personal capacity.

If the shipping line has signed the bills of lading on behalf of one or other of the ship owners, the liability falls on the latter party and not the issuing shipping line since they have signed it as an agent for the Carrier. It is important for the Court to investigate who actually was the Carrier. It was evident to the Court from the bills of lading in this case that, although they had been issued by the first Defendant in their own name, they had been signed as an agent for the Carrier which must be one or other of the two ship owners.

The Court of Cassation further held that while it is true that it is not possible to impose liability on the agent for the defaults of his ship owner principal, the agent can be sued if the Plaintiff is claiming for negligence in the agent's personal capacity.

Accordingly, the Court of Cassation cancelled the judgment of the lower Court and referred the matter back to the Court of Appeal for a redetermination as to who is the Carrier consistent with the guidelines set out by the Court.

A Road Transport Carrier will be Liable for Damaged Cargo even if the Cargo was Covered under a Through Bill of Lading

DUBAI COURT OF CASSATION JUDGMENT NO. 59/97
DATED 24 MAY 1997

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that a road transport company would be liable for damage caused to a shipment which was being transported by road even though the cargo was covered under a through bill of lading issued by a previous maritime carrier.

CLAIM
An action was filed by an insurance company (the "Plaintiff") against another insurance company and a transport company (the "Defendants") claiming an amount of Dhs. 118,814.75. The Plaintiff was claiming under subrogation from one of its insured who had contracted with a maritime carrier to transport a shipment of glass to the Plaintiff's insured. The glass was to be transported by sea to Jebel Ali, by the maritime carrier, after which it would be offloaded and transported by road to Dubai by the second Defendant. While the goods were *en route* to Dubai by road, the vehicle carrying the glass overturned and the entire shipment was damaged. The vehicle which caused the damage was owned by the second Defendant and insured by the first Defendant in this case.

COURT OF FIRST INSTANCE
The Court of First Instance dismissed the Plaintiff's action. The Plaintiff appealed this judgment to the Court of Appeal.

COURT OF APPEAL
The Court of Appeal cancelled the judgment of the lower Court and ordered the second Defendant to pay an amount of Dhs. 109,304.39 plus costs to the Plaintiff. The action against the first Defendant was dismissed. The second Defendant appealed to the Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation the second Defendant argued that the goods were covered under a through bill of lading issued by the maritime carrier and,

therefore, the maritime carrier should be liable for the damage and not the second Defendant.

The Court of Cassation held that, according to Articles 135[1] and 256[2] of the UAE Maritime Code (the "Maritime Code") and Article 272[3] of the UAE Commercial Transactions Law (the "CTL"), if the carriage was by sea from one port to another, the shipment would be considered a carriage of goods by sea, whereas if the goods were carried on land, the shipment is properly classified as land transport.

Further, the Court held that according to Articles 273,[4] 275[5] and 286[6] of the CTL, the land transport contract was a contract which could be finalized by offer and acceptance and was not required to be in writing. Therefore, if the land transport company had accepted the goods for transport on land to be delivered on behalf of a shipper or a consignee, nothing of a more formal nature is required to uphold the contract.

The Court held that the lower Courts had determined that the contract agreed upon was for land and not sea transport and that the damage which precipitated this action occurred whilst the goods were being transported over-

---

1 Article 135 of the Maritime Code provides (where relevant) as follows;
" The operator is the person who uses the vessel on his own account in his capacity as owner or charterer thereof. The owner shall be deemed to be the operator until the contrary is shown."

2 Article 256 of the Maritime Code provides (where relevant) as follows;
" 1. A contract of maritime transport is a contract whereby the carrier undertakes to carry goods from one port to another in consideration of freight which the shipper is obliged to pay.
2. The provisions of this part shall apply as from the time the carrier or his representative takes delivery of the goods until such time as they are delivered to the consignee."

3 Article 272 of the CTL provides (where relevant) as follows;
" The contract of carriage is a contract under which the carrier undertakes to carry a person or thing from one place to another through his own means against a fare."

4 Article 273 of the CTL provides (where relevant) as follows;
" Except for maritime carriage, the rules provided for in this part shall be applied to all kinds of transport regardless of the carrier's mode subject to the terms provided for in the laws pertaining to certain kinds of transport and the rules of international transport agreements prevailing in the country."

5 Article 275 of the CTL provides (where relevant) as follows;
" (1) The contract of carriage and the commission agency contract of carriage shall be effected if the positive offer concurs with the acceptance unless the two parties agree to delay the contract up to the time of delivery and the proof of contract can be made by all means of evidence.
(2) The receipt by the carrier of the thing, the subject of carriage, shall be considered an acceptance of the offer given by the sender.
(3) Boarding of the passenger on the means of transport shall be considered an acceptance of the offer issued by the carrier unless it is established that the passenger has no intention to conclude the transport contract."

6 Article 286 of the CTL provides (where relevant) as follows;
" (1) The consignee shall not be entitled to the rights arising from the transport contract nor shall he bear the liabilities arising therefrom unless he accepts such rights and liabilities explicitly or implicitly.
(2) The receipt by the consignee of the shipping document or the thing, subject of the transport, or the claim to receive it or issuing instructions in respect thereof, shall be considered an implied acceptance by him of the rights and liabilities resulting from the transport contract."

land. The carrier who owned the trucks (the second Defendant) was liable for the damage. Even if there was a bill of lading covering the goods by sea this would not exempt the land transport company from liability as they had contracted to carry the goods to Dubai in their own vehicles.

Accordingly, the Court of Cassation dismissed the Defendant's appeal and upheld the judgment delivered by the Court of Appeal.

A Road Transport Carrier's Responsibility to Deliver Cargo in Good Condition does Not Require the Carrier to be Familiar with Technical Requirements Unique to Special Items

DUBAI COURT OF CASSATION JUDGMENT NO. 290/96
DATED 24 MAY 1997

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that, as a general rule, a road transport carrier will be responsible for taking reasonable care of cargo and delivering the same in good condition. However, the carrier will not be expected to have technical knowledge of any specialized requirements of the cargo, unless specifically agreed otherwise.

CLAIM

An action was filed by a shipping company (the "Plaintiff") against a road transport company in Dubai (the "Defendant") requesting that the Court order the Defendant to pay the Plaintiff an amount of Dhs. 128,190 plus legal costs and interest. The Plaintiff claimed to have delivered to the Defendant a reefer containing frozen meat for transport from Dubai to Qatar. When the reefer was opened in Qatar the meat was found to be unfit for human consumption. The Plaintiff, therefore, claimed the replacement value of the meat.

COURT OF FIRST INSTANCE

The Court of First Instance delivered a judgment in favour of the Plaintiff and ordered the Defendant to pay an amount of Dhs. 100,104 plus legal costs and interest. The Defendants appealed to the Dubai Court of Appeal.

COURT OF APPEAL

The Court of Appeal reversed the judgment of the lower Court, dismissed the action and ordered the Plaintiff to bear costs and expenses. The Plaintiff appealed to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued that the Defendant was liable for the damage to the meat stored inside the reefer as the latter had been delivered to the Defendant in good condition and came complete with a cooling generator. In view of the frozen nature of the goods, it was, the Plaintiff

argued, the Defendant's responsibility to see that they remained in a frozen state until delivered in Qatar.

The Court of Appeal had determined that the Defendants were under no obligation to check the temperature of the cargo as they had only been asked to transport the reefer from Dubai to Qatar but not to bear any additional responsibility or liability. The Plaintiff argued that it was evident from the documents and correspondence before the Court that the Defendant had received the reefer without any reservations regarding its condition or the goods therein. It was also evident to the Plaintiff that the goods were damaged because the generator had stopped and the Defendant should have responded to this technical malfunction by having it repaired or notifying appropriate technical personnel before proceeding with the transport to Qatar.

In its decision, the Court of Cassation relied upon Section 2 of Article 288 of the UAE Commercial Transactions Law (the "CTL),[1] Article 290 of the CTL,[2] Section 2 of Article 291 of the CTL,[3] Article 293 of the CTL,[4] Section 1 of Article 304 of the CTL[5] and Article 308 of the CTL.[6]

The Court held that all of the above Articles prove that a carrier by road is responsible for carrying the goods in a proper condition and delivering the same to the consignee in the same satisfactory state as he received them. However, this general rule does not apply to the transport of equipment or goods which require special care. Furthermore, the Court held that the carrier

---

1 Section 2 of Article 288 of the CTL provides (where relevant) as follows;
" The consignor shall be liable for damage arising from defective wrapping, packing or packaging. The carrier shall be liable for such damage if he accepts transportation knowing of the defect. The carrier shall be deemed to be aware of the defect if visible or such as would not remain unseen by an ordinary carrier."

2 Article 290 of the CTL provides (where relevant) as follows;
" The taking in receipt by the carrier of objects for transportation without reservation indicates that he has received them in good condition and in conformity with the details entered in the waybill. If he claims to the contrary, he shall have to prove it."

3 Section 2 of Article 291 of the CTL provides (where relevant) as follows;
" If the consignor requests that shipment be by a particular type of transport, the carrier shall not be liable for damage resulting from using that kind of transport."

4 Article 293 of the CTL provides (where relevant) as follows;
" (1) The carrier shall guarantee the safety of the object during execution of the transportation contract.
(2) If the safeguarding of the object *en route* calls for it to be re-wrapped or the packaging to be repaired, increased or reduced, or such other necessary measures, the carrier must do so and pay the requisite costs unless otherwise agreed. However, the carrier shall not be obliged to take non-customary measures such as the feeding or watering of animals, the provision of medical services or the like, or the watering of plants, unless otherwise agreed."

5 Section 1 of Article 304 of the CTL provides (where relevant) as follows;
" A carrier shall be answerable from the time he takes receipt of an object to be transported for its total or partial loss or damage or delay in delivery."

6 Article 308 of the CTL provides (where relevant) as follows;
" The carrier can only deny liability for the loss or damage to the object or delay in its delivery by proving *force majeure*, intrinsic defect in the transported object, fault of consignor or consignee, or administrative act."

can always discharge its liability if it can prove that the damage was caused by *force majeure* or an Act of God, or because of the unique nature of the goods shipped or because of fault on the part of the shipper or consignee.

In this case the Court of Appeal had determined that it was the Plaintiff's responsibility to ensure that the reefer was in good condition and operating properly for the shipment of the goods. The Plaintiff should, therefore, have taken all precautions to ensure that the goods were shipped and delivered in acceptable condition.

The Court of Cassation had found, as a matter of fact, that the goods were already stored inside the reefer when it was delivered to the Defendant who had been asked to transport it without any discussion of additional liability or responsibility.

The Court held that the Defendant, or its driver, who carried the goods by truck to Qatar is not required by law to possess special technical knowledge or experience regarding the maintenance of the required temperature in the reefer or in repairing generators should one break down. This knowledge is over and above that which is normally required for the transport of goods by road, unless specifically agreed otherwise by the parties to the transaction.

Accordingly, the Court of Cassation dismissed the Plaintiff's appeal and upheld the judgment delivered by the Court of Appeal.

Banking Cases

Table of Contents
Banking Cases

A Bank will be Liable for Damages if it does Not Verify the Authenticity of an Authorizing Signature on an Account Application

ABU DHABI COURT OF CASSATION JUDGMENT NO. 225/17
DATED 11 FEBRUARY 1996

SUMMARY

In an action filed before the Abu Dhabi Courts, the Court held that a bank which had accepted a forged application to open an account in the name of a sole proprietor of a business establishment was liable for damages caused by the bank's failure to verify the signature of the owner of the trade licence of that establishment and to obtain his signature directly.

CLAIM

An individual businessman, (the "Plaintiff"), brought an action against two Defendants; a local bank in the UAE (the "first Defendant"), and an individual who was a former employee of the Plaintiff (the "second Defendant"), requesting that the Court order them jointly and severally to pay an amount of Dhs. 200,000 plus costs and expenses.

The Plaintiff had issued a Power of Attorney by way of letter to the second Defendant (a "POA"), authorizing him to conduct various business affairs he had pending with the local government authority relating to the operation of a commercial establishment. The second Defendant forged the Plaintiff's signature by photocopying the authority and adding an additional authority authorizing him to sign documents, applications and cheques. The second Defendant then used this amended authority to open a bank account with the first Defendant in the name of the establishment owned by the Plaintiff.

A cheque book was issued by the first Defendant and the second Defendant purchased goods in the amount of Dhs. 75,000 and issued a number of cheques to different local traders from the cheque book issued by the first Defendant. All the cheques were dishonoured as there were not sufficient funds in the account to cover them. Court actions were filed by the beneficiaries of the dishonoured cheques against both the Plaintiff's establishment and the signatory, the second Defendant.

The Plaintiff also pursued a criminal action against the second Defendant for forging the documents and opening the bank account without proper authorization. As it was proven by the CID (Criminal Investigation Division) laboratory

that all the authorizing signatures were forged, the case was referred to a criminal prosecutor.

An employee of the first Defendant confirmed that the Plaintiff had never attended the bank despite the fact that, in normal circumstances, his attendance should have been required to verify the signature on the application submitted by the second Defendant. In this case, however, it was never requested.

The Plaintiff claimed that the negligent actions of the first Defendant caused him damages and loss of reputation, affecting both his name and his business which he was subsequently forced to close down.

Court of First Instance

Before the Court of First Instance, the first Defendant argued that that it could not have noticed the forgery in the POA as it appeared genuine. Also, the account had been opened after all the required documents had been filed in accordance with normal banking regulations.

The Court, however, delivered judgment against both the first and second Defendants ordering them to pay the Plaintiff an amount of Dhs. 50,000 by way of damages. The Plaintiff and the first Defendant both appealed this ruling.

Court of Appeal

The Abu Dhabi Court of Appeal dismissed both appeals and upheld the judgment of the Court of First Instance. Both parties appealed to the Abu Dhabi Court of Cassation.

Court of Cassation

Before the Court of Cassation, the first Defendant argued that there should be no liability on it whatsoever *vis-à-vis* the Plaintiff as it had relied on documents provided to it by the second Defendant who was an employee of the Plaintiff in this proceeding. The first Defendant had forwarded the documents to the Plaintiff's office, where the second Defendant worked, for signature and they were returned back to it in the customary fashion. It is normal for banks to carry out transactions in this fashion.

Furthermore, the first Defendant argued, there was no evidence that the Plaintiff had suffered damages over and above those which were the subject of criminal proceedings filed by the beneficiaries of the cheques against the second Defendant. Transactions on the account in question were carried out for two months only, with regard to three dishonoured cheques.

The Court of Cassation held that a bank will be liable to compensate its customers for damages which the latter may suffer as a result of the bank's fault or negligence. This is a part of the professional responsibility owed by banks to their customers in the carrying out of banking activities. They will not be

released from this liability unless they can prove that the damages were committed by the plaintiff customer and not themselves.

It was confirmed by an employee of the first Defendant that, normally, the owner of a business will be required to attend the bank in person to sign authorizing documents rather than sending them with an employee for signature. The first Defendant in these proceedings did not verify the signature of the owner of the trade licence, nor did it request the Plaintiff to attend before an officer of the first Defendant to sign the relevant application.

It was also evident to the Court from the documents placed before it that the signature on the POA did not match with the signature of the holder of the trade licence. The first Defendant was therefore wrong to issue a cheque book to be signed by the second Defendant without first obtaining the authority from the Plaintiff, the owner of the licence, to do so.

The Court noted that a number of criminal proceedings had been filed against the Plaintiff's company and the second Defendant signatory of the cheques and it was likely to become known in the marketplace that the payment of cheques to local traders was being dishonoured. This would, undoubtedly, affect the reputation of the Plaintiff as a businessman and had, in fact, resulted in the closing down of the establishment he operated. The Court of Cassation held that there had been negligence on the part of the first Defendant for accepting forged documents without proper verification and it would, therefore, be held liable to the Plaintiff for damages suffered as a result.

Accordingly, the appeal by the first Defendant was dismissed and the judgment delivered by the Court of First Instance was upheld.

Guarantee of a Banking Transaction is a Commercial and Not a Civil Matter

ABU DHABI COURT OF CASSATION JUDGMENT NO. 140/18
DATED 19 NOVEMBER 1996

SUMMARY

In an action heard before the Abi Dhabi Court, the Court of Cassation held that filling in a blank signed guarantee is not forgery and a bank is entitled to do so in accordance with the instructions of a customer. The Court further held that guaranteeing a banking transaction is a commercial and not a civil matter and will therefore not be subject to the time bar provisions of the UAE Civil Code.

CLAIM

An action was filed before the Sharjah Court by a local bank (the "Plaintiff") against a trading establishment, the proprietor of the establishment and a guarantor (the "Defendants") who had guaranteed a loan of Dhs. 1,108,046 granted to the first two Defendants by the Plaintiff. The Plaintiff claimed that the Defendants were jointly and severally indebted to it in the amount of the loan.

COURT OF FIRST INSTANCE

The Sharjah Court of First Instance ordered the three Defendants, jointly and severally, to pay the bank the full amount claimed. The Defendants appealed to the Sharjah Court of Appeal.

COURT OF APPEAL

The Sharjah Court of Appeal upheld the judgment of the lower Court and dismissed the Defendant's appeal. The Defendants appealed further to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

Before the Abu Dhabi Court of Cassation the Defendants argued the following;

(1) Firstly, that one of the judges who heard the case at the Court of First Instance was later promoted to sit on the bench at the Court of Appeal. It is prohibited for a judge who dealt with a case at the First Instance to be a party to a decision emanating from a later Appeal Court.

(2) Secondly, the Defendants challenged as a forgery the guarantee filed by the Plaintiff and supposedly signed by the third Defendant. The third Defendant admitted signing a blank guarantee and application to open an account, however, the Plaintiff apparently filled in the details which specified him as guarantor of the loan to the first and second Defendants, when in fact, it was never his intention to do so.
(3) Thirdly, the third Defendant argued that even if the guarantee was deemed by the Court to be valid and acceptable, the Plaintiff's action should have been time-barred as they had not claimed repayment until lapse of the six month period provided in Article 1092 of the UAE Civil Code.[1]
(4) Finally, the Defendants argued that a Court-appointed expert should have been allowed to recalculate the interest owed at a simple rate from the date upon which the Defendants' account became dormant. The Court should have referred this matter back to the expert after the Court of Appeal's determination.

In response to the four arguments raised by the Defendants, the Abu Dhabi Court of Cassation held that when a judge does not give an opinion or is not a party to a judgment given at the Court of First Instance, there is nothing in law to prohibit him from sitting on the bench when the case is being dealt with at the Court of Appeal. The judge to whom the Defendants referred was only a party to the case at the Court of First Instance when the matter was referred to an expert to calculate the interest and the amount for which the Defendants were indebted to the Plaintiff. He was then transferred to the Court of Appeal and had no further dealing with the case or the judgment which was subsequently delivered by the Court of First Instance.

The Court of Cassation further held that the Plaintiff is not liable for committing forgery if the Plaintiff filled in on the signed blank guarantee the information and the details of the debt guaranteed. It was evident from the facts that the third Defendant had signed a blank document willingly and without any pressure and that the Plaintiff was entitled to fill in the requisite details. If, however, the Plaintiff had filled in information or details beyond the instructions or the agreement with the third Defendant, they would have committed a breach of trust and not forgery. Therefore, the Court held that there is no ground for a forgery claim.

Regarding the third Defendant's argument concerning the time bar provisions of the UAE Civil Code, the Court of Cassation held that it has been established by the Abu Dhabi Court of Cassation that Article 1092 of the Civil Code

[1] Article 1092 of the Civil Code provides (where relevant) as follows;
"If a debt is due, the creditor must claim it within six months from the date on which it fell due, otherwise the surety shall be deemed to have been discharged."

does not apply to commercial transactions. If there is a guarantee guaranteeing commercial debt, the guarantee will be considered as commercial and not civil. A banking transaction is a commercial dealing and any guarantee granted to the Plaintiff for a loan will be considered a commercial guarantee and will not be subject to the six month time bar.

Finally, the Court dismissed the Defendant's application to have the matter submitted to the expert for a recalculation on the ground that the Court of Cassation has the discretion to assess the matter based on the facts and arguments submitted by all parties and, in this particular case, there appeared to be no grounds to refer the matter back to the expert. Furthermore, the expert had completed his work and the Court was satisfied with his findings on the matter.

Accordingly, the Defendants' appeal was dismissed and the Defendants who had appealed against the judgment of the Court of Appeal were ordered to bear costs and expenses.

Compound Interest Charged by a Bank is Illegal and Contrary to Islamic *Shari'a* Principles

ABU DHABI COURT OF CASSATION JUDGMENT NO. 26/18
DATED 31 DECEMBER 1996

SUMMARY

In an action filed before the Abu Dhabi Court, the Court of Cassation held that compound interest charged by a bank is contrary to Islamic *Shari'a* principles and since the latter form the basis of law in the United Arab Emirates, such a practice will be illegal. All transactions which include the calculation of compound interest will be held to be null and void.

CLAIM

A local bank in Abu Dhabi (the "Plaintiff") brought an action against a local company and its proprietor (the "Defendants") requesting that the Court order them to pay an amount of Dhs. 18,416,382. The Defendants filed a counterclaim against the Plaintiff requesting that the Court order it to pay the Defendants an amount of Dhs. 124,000, to discharge mortgages held by the Plaintiff over the Defendants' property and to repay any deposits of the Defendants which had been placed with the Plaintiff.

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment in favour of the Plaintiff ordering the Defendants to pay to the Plaintiff an amount of Dhs. 12,354,769.70 plus costs and interest at the rate of 9 percent until the date of final payment. The Court also ordered the Plaintiff to pay the Defendant an amount of Dhs. 5,523,366 pursuant to the counterclaim. The Plaintiff and the Defendants appealed this judgment to the Abu Dhabi Court of Appeal.

COURT OF APPEAL

The Abu Dhabi Court of Appeal dismissed the Plaintiff's appeal. With regard to the appeal to the counterclaim filed by the Defendants, the Court of Appeal reduced the amount awarded to the Plaintiffs to Dhs. 8,265,263.13 plus simple interest at the rate of 9 percent calculated on the said amount provided that it does not exceed the original debt which was granted by the Plaintiff to the Defendant(being Dhs. 35,050,366.31). The Plaintiff and the Defendants appealed this judgment to the Abu Dhabi Court of Cassation.

FIRST COURT OF CASSATION APPEAL

The Court of Cassation dismissed the appeal filed by the Defendants. Regarding the appeal filed by the Plaintiff, the Court cancelled the previous judgment and referred the matter back to the Court of Appeal to revise the judgment by deducting payment of the interest already paid by the Defendants before calculating the principal as the Court had made a mistake in the calculation of the net amount payable to the Plaintiff.

The Court of Appeal reconsidered the case, dismissed the appeal and upheld the judgment delivered by the Court of First Instance. The Defendants once again appealed against this judgment to the Court of Cassation.

SECOND COURT OF CASSATION APPEAL

Before the Abu Dhabi Court of Cassation the Defendants argued that the judgment of the lower Courts had violated UAE law and Islamic principles of *Shari'a*. The Defendants admitted their liability to the Plaintiff for an amount of Dhs. 8,265,263.13 which was awarded by the Court of Appeal. However, the Court of Cassation had cancelled the judgment and referred the matter back to the Court of Appeal to recalculate the interest and to deduct the interest payments made by the Defendants before calculating the principal. The Defendants argued that the Court of Appeal should have reconsidered the amount payable and recalculated the interest according to the guidelines established by the Court of Cassation in the first judgment delivered in this matter.

The Defendants argued further that the Court had ignored their request to set off the amount payable to them on their counterclaim against the amount payable to the Plaintiff. Additionally, the Defendants argued that the Court of Appeal's judgment violated Islamic principles of *Shari'a* and the UAE Constitution which establishes the Islamic *Shari'a* as a major source of legislation within the country, by allowing interest to be calculated on the amount owing.

The Abu Dhabi Court of Cassation held that the Court of Appeal should not have violated the guidelines set out by the Court of Cassation in its initial judgment. The Court of Appeal has full power and jurisdiction to reconsider the merits of a case. However it may not, in any reconsideration it undertakes, violate legal principles established by the Court of Cassation in a previous judgment.

The Court of Cassation further held that Article 7 of the UAE Constitution,[1] Article 27 of the UAE Civil Code[2] and Article 1 of the Judicial Authority Law

[1] Article 7 of the Constitution provides (where relevant) as follows;
"Islam is the official religion of the Union. The Islamic Sharia shall be a main source of legislation in the Union. The official language of the Union is Arabic."

[2] Article 27 of the Civil Code provides (where relevant) as follows;
"It shall not be permissible to apply the provisions of a law specified by the preceding Articles if such provisions are contrary to Islamic Sharia, public order or morals in the State of the United Arab Emirates."

(Law No. 3 of 1983)[3] hold Islamic principles of *Shari'a* to be a major source of law within the country. It is not, the Court held, admissible to apply law in the UAE which violates these principles. The charging of compound interest in banking transactions is one such area which runs counter to Islamic principles and will not be allowed.

The Court of Cassation also held that it was evident from the expert report filed that if interest was calculated on a simple basis, then the Defendants in this proceeding would become creditors to the Plaintiff rather than debtors. The Court of Appeal ignored this fact, notwithstanding the Defendant's request to set off their claim against the Plaintiff as against the Plaintiff's claim.

Accordingly, the Court of Cassation cancelled the judgments previously delivered on this matter and referred the case back to the Court of Appeal to be dealt with according to the guidelines and principles established herein.

[3] The Judicial Authority Law provides (where relevant) as follows;
"Justice is the basis of judgments and judges act independently in the performance of their duties, subject to no supervision save that of the principles of the Islamic Sharia, applicable laws and their conscience. No person may have in-fluence on the independence of the judiciary nor may any person seek to interfere in matters of justice."

The Signatory of a Cheque shall be Liable for Stopping its Payment by Whatever Means

DUBAI COURT OF CASSATION JUDGMENT NO. 27/92
DATED 17 JANUARY 1993

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that the drawer of a cheque will be prosecuted for dishonouring its payment if it is returned for want of sufficient funds or if the drawer had stopped payment of the cheque or had signed the same in a manner which prevented payment. For the crime to be complete it is adequate to prove the issue of the cheque with an intention to prevent its payment.

CLAIM

The Dubai Prosecutor's Office brought an action against an individual residing in Dubai (the "Defendant") before the Criminal Court on the grounds that the Defendant had issued a cheque in the amount of Dhs. 40,000 which had been returned by the bank on the due date by reason of insufficient funds in the Defendant's account. The Prosecutor alleged that the Defendant had intended to defraud the beneficiary of the cheque, in contravention of Article 401 of the UAE Penal Code No. 3 of 1987 (the "Penal Code").[1]

COURT OF FIRST INSTANCE

The Dubai Criminal Court delivered a judgment against the Defendant and ordered a prison sentence of three weeks duration. The Defendant appealed to the Dubai Court of Appeal.

---

[1] Article 401 of the Penal Code provides (where relevant) as follows;
"There shall be punishable by confinement or fine any individual who, in bad faith draws a cheque which does not have a provision which could be withdrawn or which has a provision less than the amount of the cheque or who, in bad faith, after issuing a cheque, withdraws all or part of the provision and renders the balance insufficient to settle the amount of the cheque or, in bad faith, orders the drawee not to pay the value of the cheque or, in bad faith, draws or signs a cheque in such a manner as to prevent it from being paid.
There shall also be liable to the same punishment any person who shows or delivers to another a cheque payable to bearer, with full knowledge that it does not have a provision which could be withdrawn or which has a provision less than the amount of the cheque."

COURT OF APPEAL

The Court of Appeal acquitted the Defendant after finding that he had committed no crime. The Prosecutor appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Prosecutor argued that the Defendant had intentionally drawn the cheque with two dates so as to prevent payment and defraud the beneficiary. The Prosecutor further argued that the Defendant had no intention of ever honouring the cheque's payment.

The Court of Cassation held, in accordance with Article 401 of the 1987 UAE Penal Code (the "Penal Code"), that not only the person who defaults in the payment of a cheque but also those who draw cheques in a manner preventing their payment shall be prosecuted. It was noted in this particular case that the Defendant had no intention of honouring payment of the cheque but sought to prevent its payment by signing it in a fraudulent manner.

The Court of Appeal had found the Defendant innocent on the grounds that the "cheque" in question did not have the formal requirements of such a document. The Court did not consider whether the elements of a crime were present (i.e. that the Defendant had signed the cheque in a form preventing its payment). The Court of Cassation held, therefore, that the judgment of the Court of Appeal should be over-ruled and referred the matter back to be determined in accordance with the guidelines established herein.

It cannot be Assumed that the Date an Action is Filed Against a Bank by an Account Holder is the Date on which the Account was Closed

DUBAI COURT OF CASSATION JUDGMENT NO. 60/93
DATED 27 JUNE 1993

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that the date on which an action is filed by an account holder against a bank should not be considered as the date on which the account was closed. The Court held that the account will be considered closed only when the account holder or the bank directly or implicitly indicate that they wish to close the account. Filing an action before the Court does not amount to the required indication.

CLAIM

A local establishment together with its proprietor (the "Plaintiffs") brought an action against a Dubai bank (the "Defendant") requesting that the Court recalculate the net balance owing to the Defendant by the Plaintiff and to appoint an expert to investigate the Plaintiffs' account, including the Statements of Account issued by the Defendant, and to recalculate the interest accumulated on deposits made with the Defendant and further, to ascertain and advise the Court as to whether the Defendant's activities were in conformity with banking rules and practice.

The Defendant filed a counterclaim requesting that the Court order the Plaintiffs, jointly and severally, to pay an amount of Dhs. 2,117,337 plus interest, at the rate of 18 percent, from the date the action was filed until final judgment.

COURT OF FIRST INSTANCE

The Court of First Instance dismissed the Plaintiffs' action and ordered the Plaintiffs to bear costs and expenses. In the counterclaim, the Plaintiffs were ordered to pay the Defendant an amount of Dhs. 2,065,623 plus costs and interest at the rate of 9 percent. All parties appealed to the Dubai Court of Appeal.

COURT OF APPEAL

Both appeals were joined together by the Court of Appeal. The Court ordered the second Plaintiff to pay the Defendant an amount of Dhs. 2,048,705 plus costs and interest at the rate of 9 percent. The Court also dismissed the appeal filed by the Plaintiffs in the main action and ordered them to bear costs. All parties appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiffs argued that the lower Court was wrong in ordering them to bear costs and expenses. The Court should have ordered the Defendant, having lost its appeal, to bear the costs and expenses. By not doing so, the Plaintiffs argued that the Court of Appeal violated Article 133 Section 2 of the UAE Law of Civil Procedure (the "CPL")[1] and Article 104 of the UAE Civil Code (the "Code").[2]

The Defendant argued that the expert's reports filed in these proceedings were incomplete. The expert had calculated the rate of interest applicable to certain transactions at rates lower than those which had been agreed to by the parties.

Secondly, the Defendant argued that the Court had been wrong to refer the matter back to the experts requesting a recalculation of simple interest for the period between 30 November 1989 to 3 February 1990, on the ground that the accounts had become dormant on the earlier date. The Court, in its judgment, had not dealt with the issue as to why it considered the account dormant on 30 November 1989. The Plaintiffs had filed their main action on 3 November 1989. The Defendant argued that filing a court action should not, in and of itself, cause the account to be deemed automatically dormant. Accordingly, simple interest of 9 percent, which is applicable to dormant accounts, should not apply in this case as there was no evidence whatsoever to indicate that the parties intended that the account be considered dormant.

The Court of Cassation held that according to Article 134 of the CPL,[3] the Court may order the party who has succeeded in the case to bear Court fees and

---

1 Article 133 (Section 2) of the CPL provides, where relevant, as follows;
"The case expenses shall be awarded against the judgment debtor therein which includes advocate fees. If more than one judgment debtor are involved the expenses shall be equally split amongst them or in the percentage of interest of each of them in the case as estimated by the Court, but they shall not be instructed to meet such expenses jointly unless they were jointly committed in the subject judgment."

2 Article 104 of the Code provides, where relevant, as follows:
"The doing of what is permitted by law negates liability, and no person who lawfully exercises his rights shall be liable for any harm arising therefrom."

3 Article 134 of the CPL provides, where relevant, as follows;
"The Court may order all or part of the costs against the party in favour of whom judgment has been passed if he has caused unnecessary expense or kept his adversary in ignorance of important documents or their content."

expenses in whole or in part, if the judgment debtor has incurred expenses in the procedure which were not originally necessary. Article 135 of the same Law[4] further states that if any of the parties to the action lost part of their claim or relief in the proceedings, it may be ordered to bear part of the expenses according to the Court's assessment. The Court may also order one of the two parties in the action to pay the full Court fees. The judgment delivered in this case found that the Defendant had to bring this action to recover their debts and the Court's assessment was, therefore, that the Plaintiff to the main action (who was the Defendant in the counterclaim), should bear the costs and expenses, even at the appellate level, since they were not awarded judgment in their favour, and were ordered to pay the debt outstanding to the Defendant.

With regard to the appeal filed by the Defendant, the Court of Cassation held that the calculation of interest is a matter which can only be determined from the facts and documents exhibited by both parties to the action. Therefore, if the Court-appointed accountant had re-calculated interest and examined the Defendant's books, such practice will merely be a discharge of his duty as an expert. It is for the Court to request that the expert determine the method of calculating interest according to the agreement of the parties or to the usage and practice applicable in the UAE at the time of the transactions. The Court would then have to evaluate the evidence and facts including the expert reports which will constitute evidence. The Court may or may not accept recommendations made by an expert according to his own experience and reasoning. Decisions such as this are not open to review by the Court of Cassation as the lower Court bears the mandate of evaluating facts and evidence.

Regarding the argument as to whether the account was dormant on the date the action was filed, the Court held that the filing of an action does not by itself constitute good evidence that the account had become dormant. There must be a direct or implicit indication to show this. The mere fact that one of the parties brought an action does not indicate the same. It was evident from the facts of this case that the lower Court had instructed the expert to calculate simple interest at 9 percent from the date on which the action was filed, whereas in respect of the other cases filed, the expert had been instructed to calculate interest at a higher rate of 13.5 percent. The Court held that the judgment of the lower Court was wrong in this respect.

Accordingly, the Court of Cassation dismissed the Plaintiffs' appeal. With regard to the Defendant's appeal, judgment was cancelled in part and the matter referred back to the Court of Appeal for a re-evaluation according to the guidelines set out herein.

---

[4] Article 135 of the CPL provides, where relevant, as follows;
"If both the adversaries fail in certain of their requests, the Court may order each to pay his own costs or divide the costs between them as it sees fit. The Court may also make an order for one of them to pay all the costs."

A Cheque Drawer's Liability will Only be Discharged on Clearance and Payment of the Cheque

DUBAI COURT OF CASSATION JUDGMENT NO. 158/93
DATED 7 NOVEMBER 1993

SUMMARY

In an action before the Dubai Court, the Court of Cassation held that the act of handing over a cheque will not be considered settlement of the drawer's liabilities until such time as the cheque is actually cleared and paid in full.

CLAIM

A local exchange company (the "Plaintiff") brought an action against a local insurance company (the "Defendant") requesting that the Court order the Defendant to pay Dhs. 843,000 plus interest. The Plaintiff had been insured by the Defendant against theft for a one year period from 16 December 1988 to 15 December 1989. Between 10 April 1989 and 14 May 1989 an employee working for the Plaintiff had stolen the amount claimed in these proceedings from the firm's cash box.

COURT OF FIRST INSTANCE

The Plaintiff's action was dismissed by the Court of First Instance on the grounds that it was not able to produce a copy of the insurance policy. This judgment was upheld by the Court of Appeal and the Court of Cassation. The Plaintiff then brought a new action before the Court, such action succeeded but an appeal was filed by the Defendant to the Dubai Court of Appeal.

COURT OF APPEAL

The Court of Appeal reversed the First Instance Court's judgment and dismissed the claim. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that as it was now able to produce the previously missing insurance policy, judgment should be given in its favour. It argued further that the Defendant had purported to settle the claim in the form of a blank cheque but such cheque had not been presented to the Plaintiff.

The Court of Cassation held that an insured party cannot claim compensation from its insurer for the insured loss when the insured has already been paid the value of such loss. However, handing over a cheque for the value of the claim does not amount to the insured being paid the value of the claim, until such time as the cheque has actually been cleared and paid from the account of the drawer to the beneficiary.

In this case the Court of Appeal had dismissed the action on the grounds that the Defendant had drawn a blank cheque in favour of the Plaintiff which meant that the Plaintiff had been authorized to fill in the value of the cheque to recover the insured loss.

The Court of Appeal held that because the Plaintiff had failed to fill in the appropriate blanks on the cheque, it had therefore failed to recover its claim from the Defendant. With this judgment the Court of Appeal appeared to have considered the delivery of the cheque as settlement of the Defendant's outstanding liability. The Court of Cassation held that this is legally incorrect since delivery of a cheque, in and of itself, does not constitute settlement of a debt and is conditional on its clearance.

Accordingly, the Court of Cassation overruled the judgment delivered by the Court of Appeal and referred the matter back for a decision according to the guidelines set out herein. The Court also ordered that the Defendant pay court fees and expenses.

Claimant Seeking Recovery of the Value of a Cheque need Not Prove Consideration

DUBAI COURT OF CASSATION JUDGMENT NO. 163/93
DATED 7 NOVEMBER 1993

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that a cheque should be considered on its face-value and judgment for its value should be awarded in favour of the beneficiary against the drawer of the cheque, notwithstanding any arguments regarding whether or not there had been consideration for the cheque. The burden of proof rests with the party who claims that there was no consideration or that a cheque was drawn for an illegal object to prove such allegations, failing which judgment will be given for the value of the cheque in favour of its beneficiary if actually drawn on the drawer's account and signed by an authorized signatory.

CLAIM
A local exchange company (the "Plaintiff") brought an action against another company and its owner (the "Defendants") requesting that the Court order the Defendants, jointly and severally, to pay an amount of Dhs. 528,000 plus interest and court fees. The Plaintiff also requested that the Court confirm an attachment order which had been levied against the first Defendant.

As financial brokers, the Plaintiff regularly carried out exchange deals in the market. It had purchased 20 million Iranian Rials from the second Defendant for an amount of Dhs. 521,000. This money had been paid by the Plaintiff to the second Defendant who agreed to deliver the Iranian currency to its correspondent office in Iran. However, as the second Defendant was unable to deliver the Iranian currency, it returned the monies paid by the Plaintiff, together with expenses, by cheque via the first Defendant. The amount paid was Dhs. 528,000 and the cheque was drawn on a local UAE bank. The cheque was returned for want of sufficient funds in the second Defendant's account. The Plaintiff also obtained an order for attachment of the second Defendant's passport thereby preventing him from leaving the country.

COURT OF FIRST INSTANCE

The Court of First Instance ordered the Defendants to pay the full amount claimed plus interest at the rate of 9 percent computed from the date on which the action was filed until final payment. Both Defendants appealed to the Court of Appeal.

COURT OF APPEAL

The Court of Appeal upheld the judgment delivered by the Court of First Instance. The Defendants appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Defendants argued that the lower Courts had delivered judgment against the first Defendant on the grounds that the second Defendant had the authority to sign cheques drawn on the first Defendant's account, whereas the second Defendant had no such authority and further that he had not, in fact, actually signed the cheque at all. The Defendants alleged that it was the second Defendant's brother who owned the business and had the authority to sign the cheques. The Defendants argued, therefore, that the lower Courts were wrong to deliver judgment against the first Defendant as the person who owned the business and had cheque signing authority was not even a party to these proceedings.

The Defendants argued further that the cheque which had been drawn in the Plaintiff's favour was given without consideration, that the Defendants had received nothing in exchange for the value of the cheque and that the whole transaction was part of a conspiracy to defraud the Defendants.

The Court of Cassation first addressed the issue raised by the Defendants regarding lack of authority. There was evidence before the Court, in the form of a letter from the local bank upon which the cheque was drawn, that the cheque was drawn on the first Defendant's account and that it had been signed by a party authorized to do so. Therefore, the Court found the first Defendant liable irrespective of whether or not the signatory had been a party to these proceedings. On the consideration issue, the Court held that a cheque as a commercial instrument should be paid on presentation. Legally, once a cheque is drawn there is a presumption that it has value and is supported by consideration. Accordingly, the drawer of a cheque must pay its value to the beneficiary. Whoever argues otherwise, must adduce evidence in support of their claim.

On the subject of the conspiracy to defraud the Defendants, there was no evidence submitted to the Court to substantiate these allegations.

Accordingly, the Court of Cassation dismissed the Defendants' appeal and upheld the judgment of the Court of First Instance ordering the Defendants to pay the value of the cheque to the Plaintiff.

An Account Statement Sent by a Bank to its Customer is Not Conclusive Evidence regarding Monies Owing on a Loan and may be Challenged even after the Time Limit Specified in such Statement

DUBAI COURT OF CASSATION JUDGMENT NO. 34/94
DATED 18 JUNE 1994

SUMMARY
In an action filed before the Courts in Dubai, the Court of Cassation held that statements of account sent by a bank to its customer on a regular basis are not conclusive evidence of the outstanding balance in the account as it is highly possible that such statements may contain inaccuracies. The burden of proof falls on the customer to prove to the Court or the bank, as the case may be, that there is an error on the face of the statement.

Furthermore, the Court held that a bank statement of account may be challenged by a customer even after the lapse of the twenty-one day period generally specified in the statement.

CLAIM
An action was filed in Dubai Court by a bank (the "Plaintiff") requesting that the Court attach the end-of-service benefits of two Defendants who had been employed at Dubai Police Headquarters and to attach any amounts credited to accounts held by the Defendants with other banks, until final judgment.

The Plaintiff claimed that the first Defendant had obtained a loan in the amount of Dhs. 66,000 which he undertook to repay in monthly instalments of Dhs. 2,750. The second Defendant guaranteed payment of the loan.

A Dubai Court of First Instance judge, acting on the urgent precautionary attachment application filed by the Plaintiff, ordered the attachment of the Defendant's benefits and bank accounts. The Defendants objected to this order on the grounds that the Plaintiff's action was time barred as it had filed its main action eight days after the attachment order was granted, contrary as provided by the UAE Civil Procedure Law.

The Court of First Instance subsequently cancelled the attachment proceedings and the attachments were lifted. This decision was upheld by the Court of Appeal.

The Plaintiff then filed a new application with the Court of First Instance requesting the attachment of any payments payable to the Defendants by the Dubai Police Headquarters and their accounts with other banks. Another attachment order was granted.

The main action in these proceedings was filed shortly thereafter, by which the Plaintiff requested that the Court order the Defendants to pay Dhs. 61,067.41 plus interest at the rate of 18 percent from the date the amount claimed fell due until final judgment. The Plaintiff also requested that the Court confirm the second attachment order which had been granted in its favour.

Court of First Instance

The Dubai Court of First Instance delivered judgment in favour of the Plaintiff against the first Defendant, who was ordered to pay Dhs. 61,067.41 plus interest at 9 percent from the date the action was filed until final payment. The Court also confirmed the attachment order obtained against the same Defendant. However, the Court dismissed the action filed against the second Defendant. The Plaintiff and the first Defendant both appealed against this decision.

Court of Appeal

Having joined both appeals, the Dubai Court of Appeal delivered judgment against both Defendants and ordered them to pay Dhs. 61,067.41 jointly, plus interest at the rate of 9 percent. The Court again confirmed the attachment order against the Defendants. The first Defendant appealed to the Dubai Court of Cassation.

Court of Cassation

Before the Dubai Court of Cassation, the first Defendant argued that he had made payments totaling Dhs. 51,750 to the Plaintiff for repayment of the loan but the Plaintiff had not taken these into consideration. Further, he argued that the Plaintiff's statement of account which had been filed with the Court was not conclusive evidence as to the amount of the loan still outstanding.

The first Defendant also argued that even if he had received the statement of account and had not filed an objection within the twenty-one day period to do so mentioned on the statement, this period is not an enforceable time bar. The first Defendant had already challenged the accuracy of the Plaintiff's statement of account before the Court of Appeal and requested that the Court appoint an expert to report on the matter.

The Court of Cassation held that the statement of account which was sent by the Plaintiff on a regular basis to its customers is not conclusive evidence with regard to the determination of an outstanding balance. Therefore, sending such a statement does not amount to recognition by the customer of the accuracy of the account or the amount payable as shown on the statement. It is open to the customer, the first Defendant in this case, to challenge the accuracy of the statement of account and to show where the miscalculations arose. The burden of proof will normally fall on the customer.

In this case, it was evident to the Court that the first Defendant had requested that the Court of Appeal appoint an auditor to discount the amounts already paid towards the original loan. The lower Court had ignored this request and refused to appoint an expert despite the first Defendant's challenge regarding the accuracy of the statement of account. By doing so, the Court of Appeal had deprived the first Defendant of the opportunity to sustain his arguments.

Accordingly, the Court of Cassation cancelled the judgment against the first Defendant and referred the matter back to the Court of Appeal for a decision on the merits.

A Bank has No Right to Claim Against the Signatory of an Endorsed Dishonoured Cheque if the Cheque was Credited and Debited into the Account of its Customer

DUBAI COURT OF CASSATION JUDGMENT NO. 417/94
DATED 27 MAY 1995

SUMMARY
In an action filed before the Dubai Courts by a local bank, the Court of Cassation held that the bank had no right to claim from the signatories the value of cheques which had been endorsed to it by one of its customers, if the bank had already credited the cheques to the customer's account and, when they were returned for being dishonoured, had debited the same cheques from the customer's account to adjust the balance. While the bank retains the right to claim the amount from the customer, it loses the right to claim against the signatories under the cheques for which it had carried out credit and debit transactions on the account.

CLAIM
An action was filed by a local bank in Dubai (the "Plaintiff") against a local company and its four owners (the "Defendants") claiming Dhs. 247,210 plus legal costs and interest. The Plaintiff claimed that the second, third, fourth and fifth Defendants had issued cheques to another Dubai company who had, subsequently, endorsed the cheques to the Plaintiff. When the Plaintiff presented the cheques they were dishonoured for insufficient funds in the first Defendant's account. The Plaintiff, therefore, claimed for the recovery of the value of the cheques against all five Defendants.

COURT OF FIRST INSTANCE
The Court of First Instance appointed an expert to check the Plaintiff's records and advise the Court of the net amount outstanding. Judgment was delivered in favour of the Plaintiff. The Defendants appealed.

COURT OF APPEAL
The Dubai Court of Appeal accepted the appeal and dismissed the action on the grounds that the Plaintiff had received the value of the amount claimed by virtue of having credited the cheques into its customer's account, and when they were dishonoured, debiting the account. Accordingly, the judgment delivered by the Court of First Instance was cancelled. The Plaintiff appealed.

COURT OF CASSATION

Before the Dubai Court of Cassation the Plaintiff argued that because the cheques were endorsed to them, they had the right to claim their value from all the Defendants despite having carried out credit and debit transactions on the first Defendant's account. The first Defendant's account, they argued, was still in debit and the debit and credit transactions carried out did not alter this fact.

The Court of Cassation held that the Plaintiff had the right to credit the account with the deposited cheques and there was no restriction preventing it from also debiting the account when the cheques were dishonoured, because the original credit would be a provisional one, subject to the clearance of the cheques. Such transactions determine whether the account as a whole remains in credit or in debit.

However, the Court held that although the Plaintiff had the right to credit and debit and adjust the account to show the net balance outstanding in its favour, in doing so it would forfeit the right to claim under the commercial instrument (the cheques in this case) against the signatories of the cheques. The Plaintiff only has the right to claim from its customer but not from the signatories of the cheques and as a result the Plaintiff must return the cheques to the customer.

Accordingly, the Court of Cassation dismissed the action filed by the Plaintiff.

A Foreign Company will be Liable for Bank Facilities Obtained in the UAE by its Branch Manager

DUBAI COURT OF CASSATION JUDGMENT NO. 294/95
DATED 6 JULY 1995

SUMMARY

In an action filed before the Courts in Dubai, the Court of Cassation held that where the local branch manager of a foreign company has authority from the parent company to act on the branch's behalf in dealings with local banks, the parent company will be liable for bank facilities obtained by the branch's manager, notwithstanding the expiry of a limited power of attorney granted to such manager.

CLAIM

A foreign trading company with a branch in the Jebel Ali Free Zone (the "Plaintiff") brought an action against the branch office of an international bank established in Dubai (the "Defendant") requesting that the Court order the Defendant to pay the Plaintiff US $500,000 plus interest and costs. As the Plaintiff was domiciled outside the UAE it granted to the branch's manager a limited power of attorney in order to allow him to open a bank account in the Plaintiff's name. The manager opened a bank account with the Defendant and proceeded to obtain bank facilities which exceeded the powers granted to him in the power of attorney.

The Plaintiff claimed that the Defendant had granted the manager the facility with the knowledge that his powers were limited. In addition, the Plaintiff claimed that the Defendant enabled the Plaintiff's manager to sign cheques and withdraw payments from the account after the expiration of the power of attorney and the Plaintiff's trade licence with the Jebel Ali Free Zone.

The Plaintiff had lodged with the Defendant a bank guarantee issued from a Swiss bank in the amount of US $500,000. It was subsequently informed that the Defendant had cashed the guarantee to repay the unauthorized facilities which had been obtained by the branch manager. When the Plaintiff requested that the Defendant reimburse it the value of the bank guarantee, the Defendant refused.

COURT OF FIRST INSTANCE

The Plaintiff's action was dismissed by the Dubai Court of First Instance and it was ordered to bear all costs and expenses. The Plaintiff appealed.

COURT OF APPEAL

The Dubai Court of Appeal upheld the judgment delivered by the Court of First Instance and dismissed the Plaintiff's appeal. The Plaintiff appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued that the lower Courts had misunderstood a board resolution issued by the Plaintiff's Board of Directors on 1 April 1987. The Plaintiff argued that this resolution merely entitled the manager to open and operate a bank account, which would assist him in carrying out company business, but not to obtain either bank facilities or loans.

The Court of Cassation held that it was evident that the Defendant had relied on the board resolution issued by the Plaintiff's Board of Directors. This resolution appeared to authorize the manager to open and operate a bank account without limitation. Furthermore, there was no evidence before the Court to indicate that the Plaintiff had, prior to these proceedings, ever made the Defendant aware of the existence of the limited power of attorney, let alone its expiry.

Accordingly, the Court of Cassation dismissed the Plaintiff's appeal and upheld the judgment delivered by the Dubai Court of Appeal.

A Guarantor of a Debt in a Civil Transaction will Not be Liable to a Bank if the Bank Fails to Call on the Guarantee within 6 Months from the Date on which the Debt is Due

DUBAI COURT OF CASSATION JUDGMENT NO. 86/95
DATED 13 NOVEMBER 1995

SUMMARY

In an action filed before the Dubai Courts, the Dubai Court of Cassation held that if a guarantor guarantees a debt without consideration or other commercial benefit, the issuance of that guarantee will be considered to be a civil transaction and thus subject to the time-bar provisions of the UAE Civil Code.

CLAIM

An action was brought before the Court by a local bank (the "Plaintiffs"), against three Defendants, requesting that the Court order the Defendants to pay Dhs. 17,285,758 plus interest and legal costs. The Plaintiffs claimed that they had granted a loan to one of the Defendants which was, in turn, guaranteed by the two remaining Defendants.

COURT OF FIRST INSTANCE

The Court of First Instance ruled in favour of the Plaintiffs and ordered that the Defendants be jointly and severally liable for the payment of the full amount claimed.

COURT OF APPEAL

The Defendant debtor appealed to the Dubai Court of Appeal and joined the Defendant guarantors in the proceedings. The Court of Appeal dismissed the appeal and upheld the judgment delivered by the Court of First Instance.

COURT OF CASSATION

One of the Defendant guarantors appealed to the Court of Cassation arguing that the Plaintiffs had failed to call on the guarantee within six months from the date on which the debt was due. By virtue of the applicable provisions in Article 1092 of the 1986 UAE Civil Code[1] ("The Code") the guarantee would

[1] Article 1092 of the Code provides (where relevant) as follows :
"A guarantee expires within six months from the date on which the debt is due if the bank fails to call on the guarantee."

therefore have lapsed and the guarantors would no longer be liable to pay according to the terms of the original guarantee.

The Dubai Court of Cassation held that there was no evidence presented in this case to show that the guarantee granted by the appellants was provided for a commercial purpose. Such a transaction will therefore be considered civil and subject to the application of Article 1092 of the Code, even if the underlying loan amounted to a commercial arrangement between the bank and the debtor. As the Plaintiffs failed to call on the guarantee within six months from the date on which the debt was due, the guarantee had lapsed. Accordingly, the Court of Cassation reversed the judgments delivered by the lower Courts.

The Second Beneficiary of an Endorsed Cheque has the Right to Recover its Value irrespective of any Argument between the Drawer and the First Beneficiary

DUBAI COURT OF CASSATION JUDGMENT NO. 151/96
DATED 20 OCTOBER 1996

SUMMARY

In an action filed before the Dubai Courts, the Court of Cassation held that the beneficiary of an endorsed cheque has the right to recover its value, irrespective of any argument between the drawer of the cheque and the claiming beneficiary.

CLAIM

An action was filed in Dubai Court by a local bank (the "Plaintiff") against three Defendants, including the person who had drawn a cheque in favour of the first Defendant which was subsequently endorsed in favour of the bank by the same Defendant. The Plaintiff requested that the Court order the Defendants to pay them an amount of Dhs. 735,559, plus legal costs and interest, and uphold the attachment proceedings which had been ordered against the Defendants.

The Plaintiff claimed that it had granted the first Defendant a bank facility which had been requested and guaranteed by the second Defendant. In order to settle any outstanding liabilities, the third Defendant issued a cheque in favour of the Plaintiff drawn on the British Bank of the Middle East ("BBME"). BBME returned the cheque alleging that a stop payment had been placed on the cheque by the third Defendant. The first and second Defendants had also failed to pay any monies to Plaintiff. The Plaintiff applied for an attachment, whereby they obtained an order to impound the third Defendant's passport and to attach the first Defendant's assets.

Concurrently, the Plaintiff bank filed an additional application requesting that the court order the three Defendants to pay an amount of Dhs. 198,000 plus legal interest on the ground that this amount represented the value of the bank guarantee which had been issued by the second Defendant and was now being called.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance delivered judgment in favour of the Plaintiff against the second Defendant ordering him to pay an amount of Dhs. 795,900.12 plus legal interest a 9 percent and costs. Additionally, the Court

upheld the attachment proceedings and dismissed all other claims made by the Plaintiff. The Plaintiff appealed as did the second Defendant by way of a counter appeal.

COURT OF APPEAL

The Court of Appeal appointed an expert who filed his report before the Court. Subsequently, the Court of Appeal delivered judgment in favour of the Plaintiff against the first and second Defendants and ordered them to pay jointly and severally to the Plaintiff an amount of Dhs. 794,646 plus legal interest at 9 percent from the date the action was filed, until final judgment. The Court also upheld the attachment order granted in favour of the Plaintiff. The first and second Defendants, meanwhile, were ordered to pay the Plaintiff an amount of Dhs. 198,000, the value of the guarantee, together with legal costs. The Court, however, dismissed the Plaintiff's claim against the third Defendant.

The Plaintiff bank appealed further against this judgment to the Dubai Court of Cassation requesting that the third Defendant be ordered to pay the value of the cheque which had been dishonoured. The first Defendant also appealed against the judgment delivered against it by the Dubai Court of Appeal.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued that the lower courts should have awarded the bank the value of the cheque issued by the third Defendant which had been issued in favour of the first Defendant and had subsequently been endorsed in favour of the Plaintiff. It was this endorsement which, the Plaintiff argued, entitled it to recover the value of the cheque. The Plaintiff had sent the cheque for clearance but it was returned from BBME unpaid.

The Court of Cassation held that the endorsement of a cheque will transfer the title of the cheque from one person to another unless the endorsement specifies that it is for the purpose of recovery on behalf of the beneficiary of the cheque. In this case, the third Defendant had drawn a cheque in favour of the first Defendant which was then endorsed by the first Defendant in favour of the Plaintiff without any restrictions on the endorsement. This endorsement therefore transferred the title of the cheque in favour of the Plaintiff who became the second beneficiary.

The beneficiary of a cheque to whom the cheque has been endorsed to is a third party and is entitled to recover the value of the cheque whatever disputes there might be between the person who has drawn the cheque (the third Defendant in this case) and the first beneficiary (the first Defendant) who has endorsed the cheque to the second beneficiary (the Plaintiff).

The Court held that the value of the cheque has to be paid to the endorsee, irrespective of any argument originating from the relationship between the drawer and the cheque's first beneficiary.

Therefore, the Court of Appeal was wrong to dismiss the action filed by the Plaintiff against the third Defendant in respect of the cheque.

Accordingly, the Court of Cassation delivered judgment against the third Defendant to pay the full value of the cheque to the Plaintiff.

A Guarantee Given in Favour of a Bank will Not be Affected by a Statutory Time-Bar if the Parties Agree in the Guarantee that the Guarantee will be Extended until such Time as the Debt is Repaid in Full

DUBAI COURT OF CASSATION JUDGMENT NO. 65/97
DATED 13 APRIL 1997

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that strict adherence to the time-bar provisions contained in Article 1092 of the UAE Civil Code is not required as a matter of public policy and parties are free to agree to other arrangements. For instance, a guarantee given in favour of a bank will not be subject to a statutory time-bar of six months if the parties to the guarantee had agreed, in the guarantee itself, that the guarantee would remain in effect until such time as an outstanding debt had been repaid in full.

CLAIM

An action was filed by an international bank based in Dubai (the "Plaintiff") against three Defendants, whereby the Plaintiff requested that the Court order the Defendants, jointly and severally, to pay an amount of Dhs. 60,000 plus interest and legal costs. The Plaintiff claimed that the first Defendant had obtained a loan from it which was guaranteed by the second and third Defendants for an amount of Dhs. 34,000. The first Defendant had failed to repay the loan. The Plaintiff, therefore, brought this action to recover the loan plus interest and costs.

The second and third Defendants argued that the guarantee which they had given to the bank was time-barred as the action was brought after six months from the date on which the debt became due. The Plaintiff could not, they argued, call on a guarantee which had been time-barred according to Article 1092 of the UAE Civil Code (the "Code").[1]

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment against the three Defendants, jointly and severally, to pay the Plaintiff an amount of Dhs. 58,640.18 plus legal

[1] Article 1092 of the Code provides (where relevant) as follows;
"If a debt is due, the creditor must claim for it within six months from the date on which it fell due, otherwise the surety shall be deemed to have been discharged."

costs and interest. The second and third Defendants, as guarantors, appealed against this judgment to the Court of Appeal.

COURT OF APPEAL

The Court of Appeal upheld the judgment delivered by the Court of First Instance and dismissed the Defendants' appeal. They appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Defendants argued that the lower Court had failed to properly apply UAE law; specifically the time-bar provisions contained in Article 1092 of the Civil Code wherein it was specified that a guarantee will be time barred if the plaintiff failed to call for payment of the loan guaranteed within six months from the date on which it became due. The Defendants argued further that the Plaintiff had not brought this action until six years had passed and were also charging an excessive interest rate of 14 percent on the overdue payment.

The Court of Cassation held that strict adherence to the time-bar provisions contained in Article 1092 of the Code is not required as a matter of public policy as it is meant to protect personal interests as opposed to society's interest. Parties, the Court held, are free to contract outside of the operation of this Article and the effectiveness of a guarantee may be extended beyond six months.

In this particular case, it was evident from the guarantee signed on 12 July 1988 that the guarantors had agreed to pay the total indebtedness that was incurred by the first Defendant, plus interest, and that this indebtedness would continue until the debt was paid in full. The wording of the guarantee made it clear that the guarantors (the second and third Defendants) had agreed to extend the validity of their guarantee. Therefore, the Court held, it was not open to them to argue that the guarantee had been time-barred.

The Court of Cassation further held that the Court was free to assess the evidence and the facts in accordance with the documents and expert reports placed before it. The evidence in this case showed that the guarantee covered the principal amount plus interest at a rate which the parties had agreed. The amount claimed was confirmed by a Court appointed expert as being due. Therefore, judgment against the Defendants should not be for the principal amount alone but must also include the agreed interest.

Accordingly, the Court of Cassation dismissed the Defendants' appeal and upheld the judgment delivered by the Court of First Instance.

Insurance Cases

Table of Contents
Insurance Cases

ABU DHABI COURT OF CASSATION

DUBAI COURT OF CASSATION

An Insurance Company is Entitled to Limit its Liability as Long as the Insurance Policy does Not Contain a Clause which Contradicts Public Order

ABU DHABI COURT OF CASSATION JUDGMENT NO. 311/12
DATED 9 JUNE 1991

SUMMARY
In an action filed before the Abu Dhabi Court, the Court of Cassation held that an insurance company has the right to limit the extent of its liability provided that the insurance policy does not contain any clause which contradicts public order. Furthermore, exemption clauses must be clear and specific so as to inform the insured clearly of the cases of exemption and that he will not be entitled to claim should one of the exempted cases occur.

CLAIM
A car rental company (the "Plaintiff") rented a car for two months to an individual who was insured by a local insurance company (the "Defendants"). The insured had an accident and the car was badly damaged. The Plaintiff therefore filed an action against the two Defendants seeking a Court order for Dhs. 35,000, being the replacement value of the damaged vehicle.

COURT OF FIRST INSTANCE
The Abu Dhabi Court of First Instance ordered the Defendants, jointly and severally, to pay the Plaintiff the full amount claimed, provided that the wreckage of the car was delivered to the second Defendant. The second Defendant appealed to the Abu Dhabi Court of Appeal.

COURT OF APPEAL
The Abu Dhabi Court of Appeal upheld the decision of the lower Court. The second Defendant appealed further to the Abu Dhabi Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation, the Defendant insurance company argued that the insurance policy exempted it from liability in cases of illegal driving and that insurance companies have the right to include in their policies certain conditions to protect their interests in so far as these conditions accord with public order. The Public Prosecutor had accused the insured of driving carelessly.

The Court of Cassation held that a criminal judgment has binding force in front of civil courts when deciding the cause of an accident and liability arising therefrom. A civil court does not have to decide these issues again and is bound to accept conclusions reached by a criminal court. However, in this particular case, the police reports filed before the Court did not contain anything which indicated that the insured had been convicted for driving at a speed in excess of the legal limit. He was only convicted for driving carelessly and this was not one of the enumerated exemption cases listed in the policy. Therefore, the policy provision in question did not clearly and specifically exclude liability in the present exact circumstances.

Accordingly, the Defendants appeal was rejected and the decision of the earlier Courts upheld.

Damage to the Tyres and Wiring of a Vehicle will be Covered under a Motor Vehicle Insurance Policy

ABU DHABI COURT OF CASSATION JUDGMENT NO. 263/16
DATED 19 MARCH 1995

SUMMARY

In an action filed before the Abu Dhabi Court, the Court of Cassation held that an insurance company was liable to reimburse the insured for damage caused to the tyres and wiring of their vehicle despite the fact that there was an exclusion contained in the insurance policy. The exclusion applied only to damages caused by "wear and tear" and not specifically to the tyres and wiring of the vehicle.

CLAIM

An action was filed before the Abu Dhabi Court by the owner of a truck (the "Plaintiff") against an insurance company (the "Defendant") who provided coverage under a policy of insurance to the Plaintiff's vehicle. The vehicle was involved in an accident and the Plaintiff claimed an amount of Dhs. 21,670 from the Defendant to cover the necessary repairs. The Defendant refused to pay as it argued that damage to the tyres and wiring was not covered under the respective policy as the parties had agreed to exclude these particular items from coverage.

COURT OF FIRST INSTANCE

The Abu Dhabi Court of First Instance delivered judgment in favour of the Plaintiff and ordered the Defendant to pay Dhs. 1,500. The Plaintiff appealed to the Abu Dhabi Court of Appeal.

COURT OF APPEAL

The Court of Appeal increased the amount of damages awarded to the Plaintiff to the full amount claimed, plus costs. The Defendant appealed against this judgment to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Defendant argued that the type of damage claimed for had been specifically excluded from coverage under the policy.

Nevertheless, the Court of Cassation held that the Courts of First Instance and Appeal had full discretion to look into the contract in force between the parties and interpret the relevant terms therein. The lower Courts had held that the exclusion relied upon by the Defendant, must be read in conjunction with all the other terms and conditions of the policy. It was understood by the Courts that the damage to the wiring and tyres which was to be excluded from coverage was that created by "general wear and tear" to the vehicle. Therefore, any damage which did not fall into this latter category would remain covered by the policy.

Accordingly, the Court of Cassation held that the Courts of First Instance and Appeal had correctly interpreted the meaning of the insurance policy and the appeal filed by the Defendant should be dismissed, with the judgment of the Court of Appeal in the Plaintiff's favour, upheld.

The Arabic Text of a Motor Vehicle Insurance Policy and any Schedule thereto will Prevail over Amendments Written in another Language

ABU DHABI COURT OF CASSATION JUDGMENT NO. 2/18
DATED 16 APRIL 1996

SUMMARY

In an action filed before the Abu Dhabi Courts, the Court of Cassation held that according to Ministerial Decision No. 54 of 1987, as amended by Ministerial Decision No. 81 of 1987, any provisions of a motor vehicle insurance policy not written in the Arabic language will be null and void.

CLAIM

An individual (the "Plaintiff") brought an action against a local insurance company (the "Defendants") requesting that the Court order them to pay Dhs. 3 million for personal injuries suffered by the Plaintiff in a motor vehicle accident caused by an individual who was insured by the Defendants.

The Defendants wished to limit their liability to Dhs. 70,000 as they argued that this was the maximum amount agreed to between them and their assured and confirmed in a schedule signed by the Defendants which was written in English and attached as an addendum to the original policy.

COURT OF FIRST INSTANCE

The Abu Dhabi Court of First Instance delivered a judgment in favour of the Plaintiff and ordered the Defendants to pay them Dhs. 400,000.

COURT OF APPEAL

The Defendants appealed unsuccessfully to the Abu Dhabi Court of Appeal where the judgment of the lower court was upheld.

COURT OF CASSATION

The Defendants appealed further to the Abu Dhabi Court of Cassation where they argued that the parties had agreed to limit the maximum liability of the Defendants to Dhs. 70,000. The lower courts, in their opinion, had erred in not considering this signed addendum to be an integral part of the original policy.

The Court of Cassation held that it is the responsibility of the Court to interpret the meaning of the contract which sets out the terms and conditions

between the parties and the damages payable in connection therewith. Furthermore, the Court is bound by the provisions of Ministerial Decision No. 54 of 1987 as amended by Ministerial Decision No. 81 of 1987,[1] which declares any provisions of a motor vehicle insurance policy not written in the Arabic language to be null and void.

In this particular case, there was no question regarding the existence of full comprehensive insurance coverage or the validity of the same at the time the accident took place. Therefore, the Defendants' insurance company is liable to pay the Plaintiff for the damages incurred. The Court will ignore the schedule attached to the policy as it was drafted in English only. Additionally, it was not signed by the Plaintiff nor was there any evidence before the Court that the Plaintiff was aware of the amended terms and conditions that the Defendants were relying on in this appeal.

Accordingly, the Court of Cassation dismissed the appeal and upheld the judgment delivered by the Abu Dhabi Court of Appeal which awarded the Plaintiff Dhs. 400,000.

[1] Ministerial Decision No. 54 of 1987, as amended by Article 1 of Ministerial Decision No. 81 of 1987 provides (where relevant) as follows;
"Motor vehicle insurance policies shall be written in Arabic. An English translation can be attached. The size of letters shall be reasonable and written with a different colour to its background. The background of the policy shall be in white colour for insurance policies against loss, damage and civil responsibility and in yellow colour for insurance against civil responsibility."

An Insurance Company may Give Notice by Registered Mail of Amendments to Policy Terms

ABU DHABI COURT OF CASSATION JUDGMENT NO. 351/17
DATED 24 NOVEMBER 1996

SUMMARY

In an action filed before the Abu Dhabi Court, the Court of Cassation held that an insurance company is entitled to give 30 days notice by registered mail to an insured to amend the terms of an insurance policy. This shall be considered effective notification for the purpose of enforcing the amendments contained therein.

CLAIM

An action was filed by an individual insured in Abu Dhabi (the "Plaintiff") against an insurance company (the "Defendant") which provided insurance coverage for the Plaintiff's vehicle. This vehicle was burned beyond repair in a fire and the Plaintiff claimed reimbursement in the amount of Dhs. 65,000 from the Plaintiff. However, despite repeated requests, the Defendant refused to pay the value of the vehicle, arguing that it had informed the insured Plaintiff in writing by registered mail that the coverage provided was for civil (i.e. third party) liability only. The Plaintiff argued that he had never received such a notice and, as far as he understood, coverage of his vehicle included loss and damage.

While the case was proceeding, the finance company which financed the vehicle joined the Plaintiff in this action requesting that the Court order the Defendant to pay the value of the lost vehicle, as claimed.

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment against the Defendant ordering it to pay the first Plaintiff (the insured owner) an amount of Dhs. 8,462 and the second Plaintiff (the finance company) an amount of Dhs. 41,178. The Defendant appealed to the Abu Dhabi Court of Appeal.

COURT OF APPEAL

The Abu Dhabi Court of Appeal dismissed the appeal and upheld the judgment of the lower Court. The Defendant appealed further to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Defendant argued that the the lower Court had delivered judgment against it on the ground that Section (1) of the relevant insurance policy between the parties was not printed in bold letters and in a different colour as is required by Article 1028 of the UAE Law of Civil Transactions. Although it is admitted that the insurance policy is a contract and neither party may amend the terms and conditions thereof without the consent and agreement of the other party, however, the Defendant argued that, according to Article 8 of the general conditions of the insurance policy, both parties were entitled to amend the policy if agreed. This provision was written in bold red letters to distinguish the same from other terms and conditions in the policy. The fact that the insured Plaintiff did not respond to the Defendant's notification, sent by registered mail, of amendments to the policy should, the Defendant argued, be interpreted as tacit approval of amendments contained therein.

The Abu Dhabi Court of Cassation held that it was evident that the insurance policy was originally drafted to cover civil liability, loss and damage for the period from 20 July 1992 through to 20 September 1995. Section (1) was printed in black coloured ink followed by the exceptions to this section which were distinguishable as they were printed in red ink. Clause 8(a) stated that the Defendant could terminate the policy by written notice given to the insured 30 days prior to the termination date. Notice of such termination was to be forwarded by registered mail to the last known address of the insured party. Conversely, an insured could terminate the provisions contained in Section (1) of the policy by serving written notice on the insurance company by registered mail seven days prior to the termination date.

In this particular case, the Defendant had argued throughout the proceedings that it was not liable for the damage to the Plaintiff's vehicle because it had informed the Plaintiff by registered mail on 12 April 1993 that it was terminating Section (1) of the policy in accordance with Clause 8(a), as discussed above. The fire occurred on 21 May 1994. The Plaintiff had filed in Court evidence of the fact that the letter was forwarded by registered mail and that the Defendant had signed the receipt of the letter from the post office. By this means, the Plaintiff had received notice to alter the terms and conditions of the insurance policy from comprehensive coverage to third party coverage only.

The Court of Cassation held that the Plaintiff's acceptance of the registered letter constituted both effective notification, and more importantly, tacit agreement to the altered terms and conditions contained therein. The decision delivered by the Court of Appeal was, therefore, wrong. The Plaintiff had served notice according to the agreement between the parties and the Defendant should not be liable for coverage which had effectively been terminated by the date on which the accident occurred.

Accordingly, the Court of Cassation cancelled the earlier judgment delivered by the Court of Appeal and dismissed the action filed against the Defendant.

After a Fire an Insured Party will be Entitled to Recover the Lesser of the Actual Value of the Goods which were Destroyed or the Insured Value

ABU DHABI COURT OF CASSATION JUDGMENT NO. 68/17
DATED 10 DECEMBER 1996

SUMMARY

In an action filed before the Abu Dhabi Court, the Court of Cassation held that where insurance monies are being claimed for goods accidentally destroyed in a fire, the in-sured party is entitled to recover the lesser of the value of the goods or the insured value stipulated in the policy.

CLAIM

An action was filed by a trader in Abu Dhabi (the "Plaintiff") requesting that the Court order a foreign insurance company based in Abu Dhabi (the "Defendant") to pay it an amount of Dhs. 300,000 for damages which the Plaintiff claimed to have suffered after an accidental fire destroyed its foodstuff shop. The shop had been insured by the Defendant.

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment for the Plaintiff and ordered the Defendant to pay an amount of Dhs. 150,000. The Defendant appealed to the Court of Appeal.

COURT OF APPEAL

The Court of Appeal reduced the amount of damages awarded to Dhs. 69,490 only. This time it was the Plaintiff who appealed the decision to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff challenged the amount of damages awarded by the Court of Appeal and requested that the Court increase the damage award to Dhs. 142,500. This amount would include Dhs. 120,000 for destroyed stock plus Dhs. 22,500 for furniture in the shop which had also been destroyed in the fire. The Plaintiff argued that its damage estimates were corroborated by an expert report which had been filed with the Court.

The Court of Cassation held that the damages which the Plaintiff would be awarded would be the lesser of the actual value of the destroyed goods or the amount for which they were insured. Therefore, if the insured value of the goods was higher than their actual value, an insured party will not be able to claim for the higher amount.

In this particular case, there was no evidence before the Court to show that the value of the goods insured was actually less than their insured value. The Court, therefore, adopted the opinion which had been reached by the expert and awarded the Plaintiff an amount of Dhs. 142,500 plus costs and expenses, being the insured value of the goods.

Insurance Brokers have Neither a Right Nor an Obligation to Pay Claims or Otherwise Implement the Terms of an Insurance Policy on Behalf of Insurance Companies

DUBAI COURT OF CASSATION JUDGMENT NO. 365/94
DATED 6 MAY 1995

SUMMARY

In an action filed before the Dubai Courts, the Court of Cassation held that insurance brokers have no authority to compensate an insured or otherwise implement the terms of an insurance policy. In accordance with Law No. 9 of 1994, concerning insurance companies, a broker is obliged only to mediate between the insured and the relevant insurance company. The Court further held that an assignment of an insured's right to compensation to a broker will be invalid unless the insurance company has consented to such an assignment.

CLAIM

An insurance broker in Dubai (the "Plaintiff") filed an action against a local insurance company (the "Defendant") claiming an amount of Dhs. 500,000, plus legal costs and interest. The Plaintiff claimed that he had arranged a policy to insure a jewellery shop in Dubai against wrongful acts committed by shop employees. After one of the employees was found to have stolen money, the Plaintiff compensated the shop in accordance with the terms of the policy provided. The Plaintiff then obtained a letter from the shop-owner which provided that the rights of the shop under the policy had been assigned to the Plaintiff by subrogation. However, when the Plaintiff claimed the amount paid to the shop from the Defendant, the latter refused to pay.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance dismissed the action and ordered the Plaintiff to bear all costs and expenses. The Plaintiff appealed to the Dubai Court of Appeal.

COURT OF APPEAL

The Dubai Court of Appeal upheld the judgment of the Court of First Instance. The Plaintiff appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued that he had the right to represent the insurance company and to compensate the insured and that the lower Courts had improperly barred his right of subrogation.

The Dubai Court of Cassation held that the attempted assignment of rights in this matter was invalid under UAE law. Before an assignment will be deemed to be valid, all three parties, i.e. the transferor, the transferee and the creditor, must consent to the assignment. In this particular case, the insurance company did not consent. The purported assignment letter signed by the shop-owner was effectively a receipt from the shop for the amount received from the Plaintiff, but not an assignment of the shop's rights to the Plaintiff.

In addressing the issue of whether the Plaintiff was authorized to represent the Defendant, the Court of Cassation relied on Articles 30[1] and 35[2] of the UAE Insurance Law (the "Insurance Law"). The Court held that an insurance broker is authorized only to conclude insurance policies and to mediate between the insured and its respective insurance company. A broker, such as the Plaintiff, has no duty or power to execute or implement the obligations of an insurance company under a particular policy. There was no evidence before the Court that the Plaintiff had authority to act on behalf of the Defendant or to pay or settle the amounts claimed by the insured shop.

Accordingly, the Court of Cassation upheld the judgment of the Court of Appeal and dismissed the Plaintiff's appeal.

---

1 Article 30 of the Insurance Law provides (where relevant) as follows;
"The provisions of this Law state that any insurance agent is not entitled to mediate, display or sign a contract on behalf of a registered insurance company for salary bonus or commission. In application of the provisions of this law, sellers and advertisers employed by the insurance company will not be deemed to be agents."

2 Article 35 of the Insurance Law provides (where relevant) as follows;
"The insurance agent is not permitted to operate on behalf of the insurance company unless he obtains a power of attorney from the principal company."

An Insurance Company may Reject a Claim for Damaged Goods if their Insured has Failed to Advise them of Material Changes made to the Packing Conditions under which the Goods were Shipped

DUBAI COURT OF CASSATION JUDGMENT NO. 265/95
DATED 12 APRIL 1996

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that an insurance company has the right to reject a claim for compensation for goods damaged in transit if the insured failed to inform the insurance company of material changes made to the conditions under which the goods were packaged.

CLAIM
An action was filed by a local company in Dubai (the "Plaintiff") against an insurance company (the "Defendant") requesting that the Court order the Defendant to reimburse them in the amount of Dhs. 693,000 plus interest and legal costs, for goods which the Defendant had insured that were shipped by air from Riyadh, Saudi Arabia to Dubai. The Plaintiff had originally informed the Defendant that the shipment was to be distributed amongst twenty boxes, when in fact they were eventually shipped in two boxes only. Upon arrival in Dubai the whole shipment was found to be seriously damaged and was subsequently destroyed by the Authorities. The Plaintiff sought to recover their damages from the Defendant who refused to pay.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance delivered judgment in favour of the Plaintiff and ordered the Defendant to pay a re-assessed amount of Dhs. 532,200 plus legal costs and interest. The Defendant appealed.

COURT OF APPEAL
The Dubai Court of Appeal appointed an expert and, after a review of the expert's findings, delivered a judgment cancelling the decision of the lower Court and dismissing the Plaintiff's claim. The Plaintiff appealed to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that the Defendant did know at the time they issued the policy that the consignment had been reduced from twenty to two boxes. This detail was also amended and changed on the face of the bill of lading which had been signed and confirmed by the shipping agent in Riyadh. Furthermore, they argued that there was no express provision or right of cancellation in the insurance policy, should the insured party fail to inform the company of changes to the shipment or amendments made to a bill of lading.

The Court of Cassation referred to Articles 1032[1] and 1033[2] of the UAE Civil Code ("the Code") and held that the Plaintiff was required to provide the Defendant with all important and relevant information which would help them to properly assess the risk they were assuming. In this particular case the Plaintiff had not provided this information and by not doing so had violated the basic principle of good faith upon which an insurance policy is based. Since the Plaintiff had failed to properly inform the Defendant about the reduced number of boxes, the Defendant had the right to cancel the policy and refuse to accept liability for the payment of any subsequent damage.

The Court of Cassation held further that it was not sufficient for the Plaintiff to seek to rely on the bill of lading alone since their claim was not based on this document but was governed by the terms and conditions of the insurance policy.

Accordingly, the Plaintiff's appeal was dismissed and the judgment delivered by the Court of Appeal was upheld.

---

1 Article 1032 of the Code provides (where relevant) as follows;
"The assured shall be obliged as follows:
(a) to pay the sums agreed at the time stipulated in the contract;
(b) to declare, at the time the contract is made, all information knowledge of which is of concern to the insurer to estimate the risk he is assuming;
(c) to notify the insurer of any matters occurring during the period of the contract which lead to such risks being increased."

2 Article 1033 of the Code provides (where relevant) as follows;
"(1)If the assured acting in bad faith conceals any matter or provides incorrect information such as to lessen the degree of the risk insured against, or to vary the subject matter thereof, or if he fraudulently fails to discharge any obligation he had undertaken, the insurer may require that the contract be cancelled and he shall be entitled to keep any instalments which fell due prior to such requirement.
(2) If fraud or bad faith is disproved, then the insurer must, when he requires that the contract be cancelled, return to the assured the premiums he has paid, or return such part thereof in respect of which the insurer was not on risk."

An Insured will be Liable to Compensate an Insurance Company for any Amounts Paid if the Insured has Violated the Policy

DUBAI COURT OF CASSATION JUDGMENT NO. 51/96
DATED 9 JUNE 1996

SUMMARY

In an action filed before the Dubai Courts, the Court of Cassation held that an insured party will be liable to compensate an insurance company for any amounts for which the latter has been liable to a third party if the insured has violated the policy.

CLAIM

An action was filed in Dubai Court by a local insurance company (the "Plaintiffs") against a local establishment (the "Defendants"), which had been issued a comprehensive motor car insurance policy. The Defendants' vehicle was involved in a serious two car accident which resulted in the death of one person and substantial damage to both vehicles. The driver of the insured vehicle was found guilty and he was ordered to pay the *diya* "blood" money. The insurers paid out Dhs 150,000 to the family of the deceased in addition to the Dhs 14,490 replacement value of the second vehicle which was not salvageable. The total amount paid out was Dhs 164,490.

The Plaintiffs requested that the Court order the Defendants to reimburse them for the monies paid out as damages and *diya* plus legal costs and interest. The Plaintiffs argued that the Defendants had violated the terms of the insurance policy by not keeping the insured vehicle in proper driving condition. There was evidence from a previous decision of the Traffic Court that the driver of the insured vehicle had been driving recklessly at high speeds and with worn tyres before becoming involved in the accident.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance dismissed the action. The Plaintiffs appealed.

COURT OF APPEAL

The Dubai Court of Appeal cancelled the judgment of the lower court and ordered the Defendants to pay an amount of Dhs 164,490 plus legal costs and interest. The Defendants appealed.

COURT OF CASSATION

The Defendants requested that the Court of Cassation reverse the Court of Appeal's decision on the following grounds:

1. By virtue of Article 1034 of the UAE Civil Transactions Law, ("The Law") an insurance company is liable to pay for those damages which were insured against. The insurance company has no right to a recourse action against the insured following the payment of damages to the insured or a third party under the terms and conditions of the policy. The only time the insurer has a right to a recourse action is if the incident falls under the meaning of Section 11 of the policy. Section 11 of the policy provides that an insurance company may claim back the value of any monies paid as compensation if it is proved that the insurance contract has been made on the basis of false statements by the insured or if he has concealed relevant information which affects the acceptance of the insurance by the company.

   In this case, the driver of the insured vehicle was found guilty in the Traffic Court of driving recklessly at high speed and with worn out tyres. This set of facts does not fall within the purview of Section 11 and therefore the Plaintiffs have no legal right to claim back from the Defendants monies already paid out.
2. The judgment of the Court of Appeal was wrong in placing reliance on Section 3 of the policy providing that an insured party must take all necessary precautions to maintain the vehicle in good driving condition and the Plantiffs' corresponding argument that the Defendants had not done this.

The main cause of the accident, the Defendants argued, was reckless driving and not the worn out tyres. Furthermore, the vehicle was fully licensed which should confirm that it was in adequate driving condition.

The Dubai Court of Cassation held that according to Section 1 of the Unified Motor Vehicle Insurance Policy, which was enacted by Ministerial Decree No.54 of 1987, insurance companies are liable to pay insured parties, to the limit insured, for any amount for which they are found liable.

According to Section 2, the insurance company will be liable towards any licensed driver provided that the latter complies with the terms and conditions of the insurance policy.

Pursuant to Section 3 of the policy, the insured must take all precautions to keep the vehicle in good driving condition, while Section 10 confirms that it is important that the insured party comply with all the terms and conditions of the policy for it to be valid.

A reading of these four relevant sections of the policy shows that it is the responsibility of the insured to keep the vehicle in proper driving condition. Further, any liability that an insurance company may have to the insured or any third party is dependant on the aforementioned conditions being met. The Plaintiffs, therefore, have a right to claim back from the Defendants any amount for which they have been held liable under UAE law by reason of the Defendants' violation of the terms and conditions of the policy.

Finally, the Court of Cassation held that according to Article 50[1] of the UAE Evidence Law and Article 269[2] of the UAE Law of Criminal Procedure, a judgment delivered in a criminal case will be binding on all subsequent civil matters. In this particular case, one of the reasons why the accident occurred had already been determined by the Criminal Traffic Court to be the bad condition of the vehicle, specifically the worn tyres. This decision is binding on the Civil Court herein.

The Court of Cassation, therefore, dismissed the Defendants' appeal and ordered them to bear all costs and expenses.

---

1 Article 50 of the UAE Evidence Law provides (where relevant) as follows:
"The civil judge shall not be bound by penal verdicts except in incidents and facts settled by such penal verdicts whenever necessary."

2 Article 269 of the UAE Law of Criminal Procedure provides (where relevant) as follows:
"A conclusive penal judgment given on the merits of a penal action for innocence or conviction is considered to have conclusive effect and shall be adhered to by civil courts in actions that have not been conclusively decided concerning the occurence of the crime, its legal characterization and imputation to an offender. A judgment of innocence shall have such force whether it is made on the basis of negation of the charge or on inadequacy of the evidence. However, the judgment shall not have such force if it is made on the basis that the incident is not punishable by law."

Insurance Company is Not Liable to Pay if the Insured Party Fails to Disclose a Fact Material to Risk

DUBAI COURT OF CASSATION JUDGMENT NO. 60/96
DATED 9 JUNE 1996

SUMMARY

In an action filed before the Dubai Courts, the Court of Cassation held that the named beneficiaries under a life insurance policy are not entitled to payment as the insured party had failed to disclose the fact that he suffered from alcohol abuse.

Since the insured party had failed to provide his insurance company with the information required to properly assess the risk they would be assuming and had subsequently died while consuming alcohol, the insurance company is not liable to pay as the policy has effectively been cancelled by the application of Article 1033 (a) of the UAE Civil Code.

CLAIM

An action was brought before the Dubai Courts by twelve potential beneficiaries to a life insurance policy (the "Plaintiffs") against a local insurance company (the "Defendants") requesting that the court order the Defendants to pay an amount of US $ 260,000 or the equivalent in UAE Dirhams plus interest at the rate of 9 percent from the date the action was filed until final settlement. The Plaintiffs claimed that their deceased father had insured his life with the Defendants by an insurance policy dated 14 October 1990 for this amount. He died on 30 April 1991.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance ordered the Defendants to pay the Plaintiffs the amount claimed.

COURT OF APPEAL

The Defendants appealed to the Dubai Court of Appeal. The judgment delivered by the Court of First Instance was upheld and the appeal filed by the Defendants dismissed.

COURT OF CASSATION

The Defendants appealed to the Dubai Court of Cassation arguing that the previous judgment had violated UAE law and the Court was wrong to enforce the contract (i.e. the insurance policy) between the parties.

The Court held that it is established law that an insured party must provide the insurer with enough information to properly assess the risk they are assuming. In the case of life insurance, this is normally done by having the insured fill in a standard questionnaire which collects information about the overall health, age and any specific maladies peculiar to the insured.

The deceased had provided the Defendants with false information regarding the general state of his health when answering the questionnaire. He denied consuming alcohol yet died of liver failure a mere six months after the date the policy was established. Additionally, there was evidence before the Court that he had been suffering from a chronic liver disease, as a direct result of excessive alcohol consumption, before he signed the policy.

The Court held that it is incumbent upon the insured to provide the insurance company with all relevant information before the policy is issued. If the insured party should fail to provide the insurance company with the required information or, alternatively, provides information which increases the risk to the company, the latter may, pursuant to Article 1033 (a) of the UAE Civil Code ("The Code"),[1] cancel the policy. Accordingly, the Court dismissed the action filed by the Plaintiffs and ordered them to bear all costs and expenses.

[1] Article 1033 (a) of the Code provides (where relevant) as follows;
"If the assured acting in bad faith conceals any matter or provides incorrect information such as to increase the degree of the risk insured against, or to vary the subject matter thereof, or if he fraudulently fails to discharge any obligation he has undertaken, the insurer may require that the contract be cancelled, and he shall be entitled to keep any instalments which fell due prior to such requirement."

An Insurance Company must File an Action Against a Maritime Carrier within one Year to Avoid having the Case Time-Barred even if an Action between the Insurance Company and its Insured Party is Concurrently Taking Place

DUBAI COURT OF CASSATION JUDGMENT NO. 12/96
DATED 12 OCTOBER 1996

SUMMARY
In an action filed before the Dubai Courts by an insurance company against a maritime carrier requesting compensation by way of subrogation for goods damaged on board the vessel, the Court of Cassation held that the insurance company is, according to Article 287 of the UAE Maritime Code, obliged to bring such an action with-in one year from the date of delivery of the goods. The Courts will, under certain circumstances, allow for the temporary suspension of the stipulated time-bar period. However, it is not open to the insurance company to argue that the time-bar should be suspended until such time as another pending action between the insured party and the insurance company is resolved.

CLAIM
An action was filed in Dubai Civil Court by an insurance company (the "Plaintiffs") against the owners and charterers of a vessel (the "Defendants") requesting the Court to order them to pay an amount of Dhs. 48,078.15 representing the value of damaged goods discharged at Dubai in respect of which the Plaintiffs had compensated their insured (the consignees of the goods) under an insurance policy. The Plaintiff's claim was by way of subrogation.

The Defendants argued that the Plaintiffs' claim was time-barred by virtue of Article 287 of the UAE Maritime Code as their action was filed after one year from the date on which the damaged goods had been discharged and delivered to the consignees.

The Plaintiffs responded that they had not filed their action within one year, as required by the legislation, because their insured had filed an action against the Plaintiffs requiring payment under the insurance policy. They argued, therefore, that they could not have filed the case herein until such time as the action filed by their insured had been determined. Once judgment in the first case had been delivered in favour of the insured, the Plaintiffs promptly obtained a subrogation letter allowing them to initiate this action against the Carrier.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance dismissed the action on the grounds that the case was time-barred, in accordance with the Defendant's argument. The Plaintiffs appealed this decision.

COURT OF APPEAL

The Dubai Court of Appeal also dismissed the Plaintiffs' action on grounds identical to the decision of the lower Court. The Plaintiffs appealed to the Dubai Court of Cassation.

COURT OF CASSATION

The Dubai Court of Cassation confirmed that having compensated their insured for damaged goods, the Plaintiffs have rights by way of subrogation against the Carrier in a claim for damages. In these circumstances, the Plaintiffs will be claiming under the Bill of Lading, as would the consignees, and not under the policy of insurance. Accordingly, it is open to the Carrier to raise any defences or arguments that he may have against the Plaintiffs that he would have had as against the consignees of the goods. There is no difference as far as the contract of carriage is concerned as to whether the Plaintiffs are the insurance company or the consignees since both must rely on the Bill of Lading in actions filed against the Carrier.

Since the Plaintiffs were denying liability and responsibility in the action originally filed against them by the insured, they had the option of joining the Carrier or filing a counterclaim requesting an indemnity should judgment be delivered against them to protect their interests.

The Court of Cassation held that both Article 287[1] and Article 398[2] of the UAE Maritime Code can be applied to the facts before it. Any action filed by the Plaintiffs or the consignees must be brought within one year from the date of delivery of the goods.

The legislators have left it to the discretion of the Courts to determine on a case by case basis under which circumstances the time-bar period may be suspended. The fact that a case was already pending in the Courts by the insured against the Plaintiffs is not a valid reason for condoning a delay as there were alternative legal avenues open to the Plaintiffs, as mentioned above, to protect their interests, which they chose not to avail themselves of.

---

1 Article 287 of the UAE Maritime Code provides (where relevant) as follows;
"In the absence of a legitimate excuse no claims will be permitted in the following cases:
Claims arising from a contract of affreightment filed one year after the date of delivery of the cargo or the date on which delivery should have taken place."

2 Article 398 of the UAE Maritime Code provides (where relevant) as follows;
"The insurer is subrogated to his/her rights of the assured, up to the limits of the amount settled to the latter as indemnity for damage or loss covered under the insurance policy."

Accordingly, the Court of Cassation held that the action filed by the insured against the Plaintiffs cannot be relied upon to suspend the application of the time-bar in the action filed by the Plaintiffs against the Carrier. The Plaintiffs' appeal was, therefore, dismissed.

Insurance Companies must Reimburse Car Rental Companies when their Insured Vehicles are Not Returned

DUBAI COURT OF CASSATION JUDGMENT NO. 241/96
DATED 5 JANUARY 1997

SUMMARY
In an action filed before the Dubai Court by a car hire company claiming for the loss of a vehicle which was never returned by the individual who had originally hired the car, the Court of Cassation held that the comprehensive insurance policy used in the United Arab Emirates will cover theft, as well as loss or damage to a vehicle. The Court held that coverage for loss will include those instances where the vehicle is taken and not returned by a known individual.

CLAIM
An action was filed by a car rental company based in Dubai (the "Plaintiff") against an individual resident in Dubai and the insurance company who insured the Plaintiff's vehicle (the "Defendants") requesting that the Court order the Defendants, jointly and severally, to pay an amount of Dhs. 201,200. The Plaintiff claimed that the first Defendant had hired a four wheel drive vehicle at a cost of Dhs. 9000 per month. The vehicle was never returned to the Plaintiff.

The Plaintiff claimed that the vehicle's value was Dhs. 80,000 and an additional Dhs. 10,800 was owed as interest to a finance company. The higher total amount claimed, however, represented the value of the vehicle, plus the interest, plus the outstanding rental fees which the first Defendant had never paid. An expert was appointed by the Court to assess the true value of the stolen vehicle.

COURT OF FIRST INSTANCE
The Court of First Instance delivered judgment for the Plaintiff and ordered the two Defendants, jointly and severally, to reimburse the Plaintiff in the amount of Dhs. 60,000. The Court also ordered the first Defendant to pay the Plaintiff an additional Dhs. 30,000. Both Defendants appealed against this judgment to the Dubai Court of Appeal.

COURT OF APPEAL

The Court of Appeal upheld the judgment delivered by the Court of First Instance and dismissed the Defendants' appeals. The second Defendant appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the second Defendant argued that it was not liable to reimburse the Plaintiff since, in actual fact, the vehicle had not been stolen but was taken by a known individual. This was, the second Defendant argued, a case of breach of trust and breach of trust is not a risk which was covered by the policy in force.

The Court of Cassation held that according to the Comprehensive Insurance Policy issued for motor vehicles in the UAE and enacted by Ministerial Decision No. 54 of 1987, insurance companies are liable to compensate insured parties for loss or damage to all insured vehicles, including spare parts. It is true that the insurance coverage includes theft, but the policy also includes general coverage for all manner of loss and/or damage. The Court held that the Plaintiff was well within its rights to seek compensation for the loss to it of the vehicle according to the general coverage provisions and whether or not the loss of the vehicle in this case was strictly by "theft".

Accordingly, the Court of Cassation dismissed the second Defendant's appeal and upheld the judgment in the Plaintiff's favour delivered by the Court of Appeal.

A Car Manufacturer's Warranty does Not Cover Damage by the Car Dealer while the Vehicle is under Repair

DUBAI COURT OF CASSATION JUDGMENT NO. 30/97
DATED 14 JUNE 1997

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that where damage to a vehicle is not attributable to a manufacturing defect this damage is not covered under the manufacturer's warranty. The Court also held that an insurance company will not be liable to compensate an insured party for the expenses incurred by its insured or for the devaluation of its vehicle in cases where the insured has withheld approval to commence the required repairs.

CLAIM
A vehicle owner in Dubai (the "Plaintiff") filed an action against a car dealer and an insurance company (the "Defendants") requesting that the Court order the Defendants, jointly and severally, to pay the Plaintiff an amount of Dhs. 60,000 plus a monthly payment of Dhs. 3,000. In April 1992 the Plaintiff had purchased a four wheel drive vehicle from the first Defendant which was subsequently damaged in December 1992 when water penetrated the engine during a period of heavy rainfall. The Plaintiff had the vehicle towed to the first Defendant's workshop wherein he requested a replacement vehicle or alternatively, the reimbursement of its full value since it was still within the original warranty period. Mechanics employed by the first Defendant checked the engine when the vehicle was first brought to their attention. However, by not checking first to see that the engine was drained of all water, they damaged it. The Plaintiff refused to authorize the repairs necessitated by the latter incident and, consequently, the car remained with the first Defendant for a period of two years.

In addition, the Plaintiff claimed from the second Defendant, under a comprehensive insurance policy, the full value of the vehicle or compensation for its devaluation over the two year period plus reimbursement of transport expenses incurred by the non-availability of the Plaintiff's vehicle. The Plaintiff estimated these latter expenses to be in the order of Dhs. 3,000 per month.

COURT OF FIRST INSTANCE

The Court of First Instance referred the matter to an expert requesting the latter to assess the reasons for the damage to the car and, specifically, whether the damage was caused by driver's negligence or a manufacturer's defect. Upon receipt of the expert's report the Court ordered the first Defendant to pay the Plaintiff its claim of Dhs. 60,000 and rejected all claims against the second Defendant. Both the Plaintiff and the first Defendant appealed this decision to the Court of Appeal.

COURT OF APPEAL

The Dubai Court of Appeal consolidated the appeals which were heard together. The Court rejected the appeal filed on behalf of the Plaintiff and confirmed the judgment of the lower Court by refusing to attribute any responsibility to the second Defendant. However, the Court also reduced the amount awarded the Plaintiff to Dhs. 12,000 as the expert's report had estimated repairs to the engine caused by the first Defendant's mechanics at this amount. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that it had been clearly established that the first Defendant's employees had negligently attempted to repair the "flooded" vehicle, thereby accelerating its devaluation.

The lower Court had held that the damage to the car was a direct result of mistakes committed by the first Defendant's employees yet the Plaintiff bore the responsibility for not authorizing the necessary repairs. The Plaintiff argued that there was no evidence to this effect and that the lower Court's decision was contradictory on this point. The Plaintiff further criticized the lower Court for ignoring the technical findings contained in the expert's report and refusing to order compensation to the Plaintiff for transport expenses incurred, despite the Plaintiff producing invoices to support this latter claim.

The Court of Cassation held that it is the responsibility of the Court of First Instance to establish the relevant facts in accordance with the documentary evidence produced. The Court of Cassation will not interfere with a lower Court's decision in this regard as long as there is supporting evidence. There was considerable supporting evidence in this case.

The Court of Cassation further held that the judgment of the Court of First Instance clearly stated its reasoning in establishing the first Defendant's liability *vis-a-vis* the Plaintiff. It was undisputed that the damage which occurred was not due to a manufacturer's defect in the ordinary usage of the vehicle. Consequently, the damage would, the Court held, not be covered by the warranty.

It was clear to the Court from the expert's report that the most serious damage to the vehicle occurred when the first Defendant's employees attempted to turn on the engine before checking to see whether or not it still contained water. The repair cost for the damage caused by this was estimated by the expert at Dhs. 12,000, which was the amount awarded to the Plaintiff by the Court of Appeal. The Court of Cassation held that it considered this amount to be fair and reasonable. The Plaintiff had been responsible for the car sitting at the first Defendant's premises for two years since it had refused to have the vehicle repaired on the basis that a replacement vehicle or a reimbursement of the vehicle's full original value had been requested. Because of this the Court of Cassation held that the first Defendant was not liable to the Plaintiff for transport expenses incurred by leaving the car unrepaired.

Regarding the Plaintiff's claim against the second Defendant (the insurance company) the Court of Cassation relied on Clause 1 of the "Special Circumstances for Loss and Damage" addendum provided in Ministerial Decision No. 54 of 1984, which states that an insurance company will not be responsible for compensating an indirect loss incurred by an insured or for the loss of the value of the car or for any other damage which is suffered by the vehicle's technical or electrical equipment and devices. In this regard the Court of Cassation confirmed the judgment of the Court of Appeal in rejecting the claim against the second Defendant. The second Defendant was, therefore, not liable to compensate the Plaintiff for any loss.

Accordingly, the Court of Cassation dismissed the Plaintiff's appeal and upheld the judgment delivered by the Court of Appeal.

Arbitration Cases

Table of Contents
Arbitration Cases

An Arbitration Award will be Null and Void if Not Collectively Considered by the Arbitration Panel

ABU DHABI COURT OF CASSATION JUDGMENT NO. 121/14
DATED 27 DECEMBER 1992

SUMMARY
In an action filed before the Abu Dhabi Court, the Court of Cassation held that an arbitration award will be null and void if the record indicates that documents admitted into evidence were not accompanied by Arabic translations. The Court also held that the award would not be valid if the panel was not collectively involved in conducting the arbitration.

CLAIM
The UAE Ministry of Agriculture and Fisheries (the "Defendant") had entered into a contract with a company (the "Plaintiff") to carry out irrigation work on several farms. By the contract between the two parties, they had agreed to refer all disputes to arbitration. A dispute arose and three arbitrators were appointed, one of whom could not speak Arabic. The arbitrators gave an award ordering the Defendant to pay the Plaintiff an amount of Dhs. 4,307,805.00 with a further Dhs. 16,500 as arbitration costs. The Plaintiff filed the arbitration award in the Abu Dhabi Court and asked for it to be ratified. The Defendant filed an objection and resisted the ratification.

COURT OF FIRST INSTANCE
The Abu Dhabi Court of First Instance ratified the arbitration award and passed an executable judgment in favour of the Plaintiff. The Attorney General of the UAE Government filed an appeal directly to the Abu Dhabi Court of Cassation on the matter.

COURT OF CASSATION
Before the Court of Cassation, the Attorney General argued that while ratifying an award the Court should look to see whether the records of the procedure which was followed at the arbitration were signed by all the arbitrators. Should only one of several arbitrators sign the records without the others, this will prove that they did not collectively consider the award, or were not collectively involved in conducting the arbitration. This would render the arbitration null and void.

The Attorney General put forward several other arguments. One of the arbitrators did not speak Arabic and there was no evidence to show that the reasoning behind the award was translated and interpreted for him before being delivered. In addition, there was a dissenting opinion which was only filed two months after the award was delivered. It was therefore obvious that this dissenting opinion was not discussed between the arbitrators before the award was delivered. The award stated that the United Arab Emirates were the defendants to these proceedings when in fact the Ministry of Agriculture and Fisheries was the proper Defendant. Finally, the Attorney General argued that the arbitrators had admitted into evidence English documents which were not accompanied by an Arabic translation, as is required by law.

The Abu Dhabi Court of Cassation observed that it appreciated that frequently in arbitration the arbitrators were not trained lawyers or judges and that the technical rules of evidence and procedure were not binding upon them. Nevertheless, arbitrators are bound to follow the basic rules of fairplay and justice. The Court held that it was mandatory for all arbitrators to sit and consider the matter before it as a collective body. The exclusion of any one of the appointed arbitrators was inconsistent with the idea of appointing more than one arbitrator. It was therefore essential while ratifying an award for the Court to see whether there existed evidence to show that the arbitrators had considered and decided the matter jointly. Each arbitrator must express his opinion and the same must be evident on the face of the record.

The Court also held that no documents other than in Arabic shall be admissible unless accompanied by an Arabic translation. This principle is important because for an award to be ratified by the Court, the Court must be in a position to exercise its supervision over the arbitration award effectively. The Court must also, therefore understand and consider the documentation supporting the award. If the arbitrators had admitted an untranslated document then they would be held to have given an award on the basis of their personal knowledge which is not permissible in judicial proceedings or arbitration.

Accordingly, since there was doubt as to the collective deliberation the arbitration award should have received, and because the rules of justice and fair play were violated by not having all documents accompanied by Arabic translations, the award on the face of it was deemed to be contrary to UAE law. The matter was remanded back to the arbitrators to be considered *de novo.*

Arbitration Clauses in Commercial Agency Agreements are Null and Void

ABU DHABI COURT OF CASSATION JUDGMENT NO. 221/14
DATED 20 MARCH 1994

SUMMARY

In an action filed before the Court in Abu Dhabi, the Court of Cassation held that according to the UAE Commercial Agency Law No. 18 of 1981 (as amended by Law No. 14 of 1988)(the "CAL"), the jurisdiction to adjudicate any dispute between an agent and its principal lies with the UAE courts. This is a matter of public policy and it is, therefore, not open to the parties to such an agreement to agree otherwise.

CLAIM

A local Abu Dhabi company (the "Plaintiff") brought an action against an international company with a branch office located in Abu Dhabi (the "Defendant") requesting that the Court declare valid a distribution agreement which had been signed by the parties on 1 June 1988. The Plaintiff also requested that the Court order the Defendant to pay an amount of Dhs. 32 million for moral and material damages. The Plaintiff claimed that, under the provisions of the said agreement, it had been appointed the exclusive agent by the Defendant for the import and distribution of the latter's oil lubrication products within the United Arab Emirates. This agency agreement had been duly registered with the Ministry of Economy and Commerce. The Plaintiff claimed that it carried out its duties diligently, resulting in substantial profits for the Defendant. On 25 February 1989 the Plaintiff received a facsimile message informing it that the Defendant was terminating the agency agreement and that there remained a small unconfirmed outstanding amount between the parties. The Defendant argued that this case should be stayed on the ground that the original agency agreement contained a clause providing for arbitration.

COURT OF FIRST INSTANCE

The Court of First Instance held that the Court had no jurisdiction to hear the matter as arbitration had been agreed upon by the parties involved. The Plaintiff appealed to the Court of Appeal.

COURT OF APPEAL

The Court of Appeal dismissed the Plaintiff's appeal and upheld the judgment delivered by the Court of First Instance. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that to refer the matter to arbitration would be in violation of the CAL wherein it is provided that if an agency agreement has been entered into by two or more parties, the UAE courts would have jurisdiction to look into any dispute resulting from its execution and implementation and arising between the agents and the principal and that any agreement to the contrary would be invalid. Accordingly, the Plaintiff argued that the lower Court's ruling upholding the arbitration clause was in violation of the law and the issue should properly be considered as a matter of public policy.

In its decision the Court of Cassation relied upon Articles 3[1] and 6[2] of the CAL. The Court held that these Articles confirm that jurisdiction has been conferred upon the UAE Courts to adjudicate any dispute resulting from the implementation of an agency agreement between a principal and its agents and any agreement to the contrary would be considered null and void. Consequently, the Court of Cassation held that the arbitration clause in this case should be ignored and the dispute referred to the local Court for adjudication, especially in view of the fact that the agency had been properly registered.

Accordingly, the judgment delivered by the Court of Appeal was overturned and the matter referred back to the Court of Appeal for consideration.

---

1 Article 3 of the CAL provides (where relevant) as follows:
"Only a party registered with the Commercial Agent's Register maintained for this purpose by and with the Ministry of Economy and Commerce shall be authorized to practice commercial agency activities. Any other commercial agency not registered with the said register shall be deemed void and shall not constitute a legal entity for claims and no consideration will be given to any agency and no case heard with regard to an agency not registered in the Ministry of Economy & Commerce."

2 Article 6 of the CAL provides (where relevant) as follows;
"The commercial agency contract shall be deemed concluded for the mutual interest of the contracting parties. The State courts shall have jurisdiction to review any dispute arising from the execution thereof between the principal and the agent and no agreement contrary hereto shall be considered."

The Existence of an Arbitration Clause as a Defence must be Raised at the First Hearing at which a Defendant may File its Submissions with the Court

ABU DHABI COURT OF CASSATION JUDGMENT NO. 13/18
DATED 15 DECEMBER 1996

SUMMARY

In an action filed before the Courts in Abu Dhabi, the Court of Cassation upheld an arbitration clause contained in an insurance policy even though the Defendant insurance company had not raised the issue of arbitration on the first hearing of the case. The Court held that while Article 203 of the UAE Law of Civil Procedure provides that such a defence must be raised on the "first hearing"of the case, these words are meant to refer to the first opportunity both parties have to argue the merits of the case. Only at that time is the Defendant required to raise the existence of the arbitration clause as a possible defence.

CLAIM

A company in Abu Dhabi (the "Plaintiff") filed an action in the Abu Dhabi Courts against an insurance company (the "Defendant") requesting that the Court order the Defendant to pay it an amount of Dhs. 35,000. The Plaintiff had entered into a contract with the Defendant to issue a worker's compensation policy which would compensate the Plaintiff's employees in the amount of Dhs. 35,000 should they suffer serious injuries or permanent disability. One employee was injured while working. However, the Defendant refused to pay the claim submitted after this accident.

The Defendant challenged the jurisdiction of the Court on the ground that the contract between the parties contained an arbitration clause and, therefore, the matter should properly be referred to arbitration.

The Court of First Instance dismissed the case on the ground that the matter should proceed directly to arbitration. This decision was appealed to the Court of Appeal where the judgment was cancelled and the matter referred back to the Court of First Instance.

COURT OF FIRST INSTANCE

At the parties' second appearance before the Court of First Instance, judgment was delivered for the Plaintiffs and the Defendant was ordered to pay the full amount claimed plus legal costs. The Defendant again appealed.

COURT OF APPEAL

The Abu Dhabi Court of Appeal upheld the judgment of the Court of First Instance. The Defendant appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that the Court does have jurisdiction to hear the matter, in spite of the arbitration clause in the contract between the parties. It argued that, according to Article 203 (5)[1] of the UAE Civil Procedure Law (the "CPL"), the existence of the arbitration clause should have been raised on the first hearing of the case. Should the Defendant fail to raise its existence as a defence at this point, the Plaintiff argued, it should be precluded from doing so at a later stage.

The Court of Cassation held that what is meant by the words "first hearing of the case" is the first opportunity that both parties have to argue the case on its merits and have their arguments considered by the Court. When, it must be asked, has the Defendant had an opportunity to submit its defence without reference to the arbitration clause ?

In this particular case, the facts show that the case was adjourned on 29 September 1993 in order to allow for the filing of a translated copy of the insurance policy. On 10 October 1993 the translation was filed and at this hearing the Defendant raised the existence of the arbitration clause as a defence.

The 10 October hearing, for the purposes of Article 203 (5), should be considered as the first hearing of the case. Prior to this hearing the policy had not been filed and, therefore, it was not open to the the Defendant to argue the arbitration defence. This was also the first hearing since the Defendant had been served with the Plaintiff's documents.

Accordingly, the Abu Dhabi Court of Cassation cancelled the judgment delivered by the Court of Appeal and referred the matter to arbitration.

[1] Article 203 (5) of the CPL provides (where relevant) as follows;
"If litigants agree on arbitration in a dispute, no case may be lodged for such dispute before the courts. Nevertheless, if a party lodges a case without considering the arbitration clause and the other party does not object at the first hearing, the case may be heard and the arbitration clause shall be considered null and void."

Arbitrators need Not Follow Strict Procedural Rules while Conducting Arbitrations and Delivering Awards

ABU DHABI COURT OF CASSATION JUDGMENT NO. 433/17
DATED 26 FEBRUARY 1997

SUMMARY

In an action filed before the Abu Dhabi Court, the Court of Cassation held that in an arbitration the parties and arbitrators are not obliged to follow strict procedural rules regarding the production of evidence, witnesses and documents relevant to the matter under dispute. There is nothing in public policy or law which prohibits an arbitrator from establishing his own procedural rules and reviewing matters according thereto unhampered by the procedural guidelines normally applicable to court cases.

CLAIM

An international consultancy firm ("The Consultants") gave notice of arbitration to one of the Federal Government Ministries ("The Ministry") in Abu Dhabi, requesting payment of an amount which was due and payable to them for consultancy work which they had carried out for a building being constructed in Abu Dhabi for the Ministry. An arbitrator was appointed by the Ministry and an arbitration hearing was conducted. The arbitrator awarded the Consultants an award in an amount of Dhs. 562,664.44 as against the Ministry. The Consultants filed an application with the Abu Dhabi Court to ratify the award granted in their favour. The Ministry challenged the award claiming that the award should be held null and void on the ground that the arbitrator relied on evidence and documents which should never have been relied upon.

COURT OF FIRST INSTANCE

The Abu Dhabi Court of First Instance upheld the arbitration award and ratified the award in favour of the Consultants against the Ministry. The Ministry appealed further to the Abu Dhabi Court of Appeal.

COURT OF APPEAL

The Abu Dhabi Court of Appeal upheld the judgment delivered by the lower Court. The Ministry appealed further to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Ministry argued that the arbitrator had violated the UAE Law of Evidence and the terms and conditions of the contract between the parties since he had awarded a consultant's fee in respect of the time that the work was not in progress and the project was, in fact, suspended.

The Court of Cassation held that according to Articles 212[1] and 216[2] of the UAE Law of Civil Procedure (the "CPL"), arbitration is usually based on the parties' mutual agreement to refer a matter to arbitration. Therefore, arbitrators normally are under no obligation to follow the same procedural rules that are applicable to Court cases heard before judicial authorities. An arbitrator may follow his own procedure in conducting the arbitration, subject to matters of public policy.

The Court of Cassation further held that the legislator has set out in the CPL the conditions under which a party may request the invalidation of an arbitration award. None of these conditions were argued by the Ministry in this

---

1 Article 212 of the CPL provides (where relevant) as follows;

" (1) The arbitrator shall adjudicate unconstrained by the processes of legal proceedings, except as stated in this Chapter and in the procedures relating to calling upon the opposing parties, hearing the aspects of their cases and enabling them to present their documentation. The opposing parties may, however, agree to particular procedures for the arbitrator to follow.

(2) The arbitrator's judgment shall be in accordance with the legal rules, unless he is empowered to effect a composition in which case he shall not be constrained by these rules except insofar as they concern public order.

(3) The rules governing summary enforcement shall apply to the rulings of arbitrators.

(4) The ruling of the arbitrator must be given within the State of the United Arab Emirates, otherwise the rules prescribed for the rulings of arbitrators in issue in a foreign country shall be observed.

(5) A ruling by arbitrators shall be given on a majority vote and it must be recorded along with any dissenting view. In particular, it must include a copy of the arbitration agreement, a summary of the statements and exhibits of the opposing parties, the reasons and grounds for the ruling, its date and place of issue, and the signatures of the arbitrators. If one or more of the arbitrators refuses to sign the ruling, this is to be stated, but the ruling shall be valid if the majority of arbitrators have signed it.

(6) The ruling shall be written in Arabic unless the opposing parties agree otherwise, upon which, when being lodged, it must be accompanied by an official translation.

(7) The ruling shall be deemed to have been issued on the date it is signed by the arbitrators after it has been written."

2 Article 216 of the CPL provides (where relevant) as follows;

" (1) In the following instances, the opposing parties may apply for the annulment of an arbitrator's ruling when the Court is examining whether to validate it:

a. If given without a deed of arbitration or if based on an invalid deed, or if lapsed through prescription, or if the arbitrators have exceeded the limits of the deed.

b. If the ruling has been given by arbitrators not appointed according to the law, or if given by some of them without being so empowered in the absence of the others, or if given under a deed of arbitration in which the subject of the dispute is not stated, or if given by someone not competent to agree to arbitration or by an arbitrator who does not fulfil the legal requirements.

c. If there is something invalid in the ruling or in the procedures affecting the ruling.

(2) Acceptance of invalidity shall not be inhibited by the opposing party abandoning his right thereto before the arbitrator's ruling is issued."

case. The appointed arbitrator had the right to assess the facts and formulate procedure and there was nothing in his assessment or award, as put before the Court, which would serve to invalidate the same.

Accordingly, the Court of Cassation dismissed the Ministry's appeal and upheld the judgment delivered by the Court of First Instance ratifying the arbitration award.

The Dubai Court will Ratify a Foreign Arbitration Award to be Executed in the UAE

DUBAI COURT OF CASSATION JUDGMENT NO. 267/93
DATED 16 JANUARY 1994

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that, provided a foreign arbitration award complied with certain conditions, it would be enforceable in the UAE. However, the Court will enforce only the principal amount of the award and not the order for interest and costs contained therein.

CLAIM
An action was brought before the Dubai Court by the owners of a vessel ("Plaintiff") who claimed that they sold a vessel berthed at Sharjah Port pursuant to a sale agreement dated 30 June 1991 to the first Defendant for an amount of US $770,000. It was agreed in the sale agreement that the first Defendant would lodge ten percent of the purchase price as security. This would be deposited at a local bank account in Dubai in the name of the second Defendant. The first Defendant actually lodged the deposit but subsequently failed to comply with the terms of the sale agreement.

The matter was referred to arbitration in London on 27 April 1993. The three appointed arbitrators decided that the Plaintiff was entitled to withdraw the deposit together with 12 percent interest from 11 July 1991 until the date of payment. The arbitrators also ordered the First Defendant to bear all costs, including arbitration costs.

COURT OF FIRST INSTANCE
The Plaintiffs applied to the Dubai Court to enforce the arbitration award in Dubai. On 27 December 1994, the Court of First Instance delivered a judgment dismissing the Defendants' argument that the Dubai Court had no jurisdiction to enforce the award and gave an order to execute the same.

COURT OF APPEAL
The Defendants appealed to the Dubai Court of Appeal. The Court cancelled that part of the judgment delivered by the Court of First Instance which

ordered the Defendants to pay costs and interest in addition to the ratification of the arbitration award. In all other respects, the Court of Appeal upheld the judgment of the Court of First Instance.

COURT OF CASSATION

The Plaintiffs appealed further to the Dubai Court of Cassation. They argued that the Court of Appeal was wrong in failing to uphold that part of the Court of First Instance judgment regarding costs and interest. However, the Court of Cassation held that the UAE Courts had no jurisdiction to look into the merits of the case or deliver a further judgment with regard to costs or otherwise. The Court's role would be limited to enforcing the principal amount of the award and not interest and costs thereon.

The Court of Cassation further held that when ratifying the award, the UAE judge will not consider the merits of the case but only ensure that the arbitration was, according to UAE law, proper and executable. It must not contradict any previous judgment or public policy of the UAE and must be made pursuant to an agreement between the parties and be signed by the arbitrator. Additionally, both parties' arguments must have been given due consideration.

If these pre-conditions are satisfied, the Court will ratify the award without granting the Plaintiff any other request or remedies. In this particular case, the Court held that the arbitration award itself could be executed in the UAE, but not the element which dealt with the subject of interest and costs.

Arbitration Clauses are to be Enforced in Accordance with their Terms

DUBAI COURT OF CASSATION JUDGMENT NO. 6/94
DATED 13 NOVEMBER 1994

SUMMARY
In an action before the Dubai Courts, the Court of Cassation held that local Courts have jurisdiction to hear a dispute concerning an agreement containing an arbitration clause unless the Defendant or his/her representative challenges the jurisdiction of the Court during the first hearing of the case and requests the matter to be referred to arbitration in accordance with the terms of the agreement. When there is more than one Defendant in a particular case, any Defendant may challenge the jurisdiction of the Court on the date of the first hearing after which he/she has officially become joined in the case. Furthermore, if a Defendant is joined in the case subsequent to the joining of another Defendant who did not challenge the Court's jurisdiction, the challenge by the subsequent Defendant and resulting transfer to arbitration will also apply to the previously joined Defendant.

CLAIM

An action was brought before the Dubai Court by a local company ("Plaintiffs") against three Defendants. The Plaintiffs requested that the Court order the Defendants be jointly and severally liable to pay Dhs. 2,000,000 as damages in connection with a dispute as to the purchase and sale of Brazilian coffee. The Plaintiffs also requested the Court to refer the matter to arbitration in Dubai instead of Geneva or Paris, as provided for in the purchase and sale agreement.

COURT OF FIRST INSTANCE

The Court of First Instance held that Dubai Courts had no jurisdiction over the case and the matter was to be referred to arbitration in Geneva or Paris.

COURT OF APPEAL

The Plaintiffs appealed to the Dubai Court of Appeal. The court upheld the judgment delivered by the Court of First Instance.

COURT OF CASSATION

The Plaintiffs appealed further to the Court of Cassation arguing that the application of the 1992 UAE Civil Procedure Law[1] ("the CPL") nullifies the arbitration clause contained in the purchase and sale agreement and the Dubai Courts should assume jurisdiction over the matter. In its decision, the Court of Cassation upheld the lower Court judgments and referred the matter to arbitration in Geneva or Paris.

The Court of Cassation held that the first and second Defendants had failed to challenge the jurisdiction of the Court in their first appearance in the case as required under the CPL. However, the third Defendant did challenge the jurisdiction of the Court at the first hearing it attended and the Court will recognize such challenge. In cases where the Defendants were sued jointly, the Court held that the benefits of any relevant defence filed by any one of the individual Defendants would be applied to the remaining Defendants.

The Court of Cassation further held that, with regard to the place of arbitration, the Court will not rule contrary to the terms of an arbitration clause contained in an agreement. Therefore, the Court refused to refer the case to arbitration in Dubai since the arbitration clause contained in the agreement provided for arbitration elsewhere.

[1] Paragraphs (1) and (5) of Article 203 the CPL provide (where relevant) as follows;

" (1) In general, contracting parties may provide in the main contract or under a later annex for referring any dispute arising between them in respect of the execution of any certain contract to one or more arbitrator(s). Arbitration may also be agreed to or conducted under special conditions in particular cases.

(5) If the opponents agree to refer any dispute to arbitration for settlement, such dispute may be subject to a lawsuit before the Court. However, should either party resort to legal proceedings before the Court disregarding the arbitration clause and if the other party does not object to the same during the first session, the lawsuit may be examined and the arbitration clause shall no longer be binding."

It is Possible under UAE Law to Attach Assets Pending the Outcome of Foreign Arbitration

DUBAI COURT OF CASSATION JUDGMENT NO. 267/93
DATED 9 MARCH 1996

SUMMARY

In an action filed before the Dubai Courts, the Court held that a company may obtain an attachment against the assets of a Defendant company as security for arbitration proceedings outside of the UAE and request the Court to maintain the attachment and suspend the case pending the outcome of the arbitration proceedings.

CLAIM

An action was brought before the Dubai Court by the owners of a vessel (the "Plaintiffs") under a charter party dated 23 September 1993. The Plaintiffs chartered the vessel to the first Defendant for a period of 120 days at a daily hire rate of US $4,600. The charter party was later amended whereby the first Defendant's obligations were assigned to the second Defendant in this proceeding. However, it was agreed that the first Defendant would remain as a guarantor for the obligations of the second Defendant under the charter.

When the Defendants failed to pay the charter hire, the Plaintiffs obtained an attachment order against their bank accounts in Dubai.

Since the charter party contained a clause for arbitration in England, the Plaintiffs gave notice of arbitration and proceeded with the arbitration in England.

COURT OF FIRST INSTANCE

The Court of First Instance dismissed both the action and the attachment orders on the grounds that the agreement of the parties to refer the dispute to arbitration had removed the Dubai Court of jurisdiction in the matter.

COURT OF APPEAL

The Plaintiffs appealed to the Dubai Court of Appeal. The Court upheld the judgment delivered by the Court of First Instance.

COURT OF CASSATION

The Court of Cassation overturned the judgments delivered by the lower courts and held that it was possible under Article 22[1] of the UAE Civil Procedure Law ("the CPL") and relevant procedure to :

- attach assets in the UAE,
- file a request, within eight days of such attachment, to uphold the attachment proceedings without requesting the Court to deal with the merits of the case.

The parties may then proceed to arbitration according to the agreement. The arbitrator will not have jurisdiction to deal with any application regarding the execution of the award or the attachment of assets.

It is, therefore, possible for the Plaintiffs to apply to the competent Court for an attachment and to file an action within eight days to maintain the attachment proceedings and to proceed with the main action elsewhere according to the relevant agreement.

Accordingly, the Court of Cassation referred the matter back to the Court of Appeal to deal with the same according to the guidelines set out by the Court of Cassation. The Court of Cassation further ordered that in case the Defendants failed to appoint their arbitrator, the Court of Appeal should proceed with the action on the merits and order the Defendants to pay the Plaintiff an amount of Dhs. 2,714,507 plus costs and interest.

Notwithstanding the above, the Dubai Court of Appeal dismissed the action on the grounds that the parties had agreed to proceed to arbitration and therefore the Dubai Court had no jurisdiction.

The Plaintiffs further appealed to the Dubai Court of Cassation and argued that the Court of Cassation's judgment in this case had allowed the Plaintiffs to attach assets in the UAE and to proceed with the main action elsewhere according to the agreement made by the parties. The Plaintiffs had filed the main action (i.e. the arbitration proceedings) within eight days of the attachment in accordance with UAE law and it is possible under Article 22 of the CPL to proceed to foreign arbitration and attach assets locally in the UAE.

---

[1] Article 22 of the CPL provides (where relevant) as follows;
"The Courts have the power to examine primary matters and ancillary requests to the original action falling within their jurisdiction. They have the power to examine any request connected with such actions, where the proper course of justice requires such examination. The courts further have the power to order expedited or precautionary procedures to be executed in the country even if they would not have had jurisdiction in the original action."

Even if the Court had no jurisdiction on the merits of the claim, it was consistent with Articles 102[2] and 255 of the CPL[3] to uphold the attachment and request the Court to suspend the main action pending the outcome of the arbitration. The judgment, however delivered by the lower Courts did not take this into account and dismissed the case in violation of UAE law.

The Court of Cassation held that it is not possible to refer matters such as attachments or execution proceedings to an arbitrator unless the parties had specifically agreed to do so. Accordingly, the attachment proceedings must be filed with a competent court and not the arbitrator. It was evidenced in this case that the Plaintiff proceeded to arbitration in London according to the charter party. They had, therefore, filed the main action, as required by UAE law, within eight days following the attachment proceedings in Dubai whilst requesting the Dubai Courts just to maintain the attachment proceedings pending the London arbitration award.

The Court of Cassation held, therefore, that the judgments delivered by the lower Courts were wrong in law. The Plaintiffs had the right to commence the attachment action in Dubai, which is quite separate from the arbitration proceedings in England, and request that the Dubai Courts simply maintain the attachment proceedings. A determination of the merits of the case properly falls within the jurisdiction of the arbitrator in England.

Accordingly, the Court of Cassation cancelled the judgment delivered by the Appeal Court and again referred the matter back to the Appeal Court to determine in accordance with the guidelines set out by the Court of Cassation.

---

2 Article 102 of the CPL provides (where relevant) as follows;
"The Court shall order an action to be stopped if it sees fit to suspend judgment on the matter in question until other issues on which the judgment depends have been tried. As soon as the cause for the action being stopped has been removed, either adversary may expedite the action."

3 Article 255 of the CPL provides (where relevant) as follows;
"In cases where the attachment is by order of the summary judge, within a maximum of eight days from the date of imposition of the attachment, the attachor is to bring an action before the Court concerned for proof of the merits and the propriety of the attachment, otherwise the attachment shall be deemed null and void. If an action on the merits has already been brought, an action for the propriety of the attachment is to be brought in the same Court for them to be examined together."

If an Extension to an Arbitration Period is Not Granted before its Expiry, any Award Delivered thereafter will be Null and Void

DUBAI COURT OF CASSATION JUDGMENT NO. 9/96
DATED 13 JULY 1996

SUMMARY

In an action filed before the Dubai Courts, the Court of Cassation held that an arbitration award will be null and void if delivered after the expiry of the period for issuing the award agreed to between the parties. Any extensions must be granted before the expiry of the initial period.

CLAIM

An international company (the "Plaintiffs") brought an action against three Defendants requesting that the Court liquidate a partnership and management agreement signed between the Plaintiffs and the Defendants and order the Defendants to pay the monies which will become due to the Plaintiffs following the liquidation. The Plaintiffs assessed this amount at ten million Dirhams.

The Defendants filed a counterclaim against the Plaintiffs requesting that the court order the Plaintiffs to pay them Dirhams 18,422,524. The parties agreed to refer the matter to arbitration. An arbitration agreement was signed before the Court and an arbitrator was duly appointed.

The period by which the arbitration award was to be given expired on 15 March 1993. No extension was granted before this date. The Defendants continued to attend hearings and submit memoranda arguing that the arbitration should be suspended and cancelled as the date had expired.

A Court order delivered on 25 April 1993 extended the arbitration period. The Plaintiffs requested that the Court ratify the award which was subsequently granted, whereas the Defendants requested that it be considered null and void.

COURT OF FIRST INSTANCE

The Court of First Instance ratified the arbitration award.

COURT OF APPEAL

The Defendants appealed to the Court of Appeal. The Court of Appeal held that because the Defendants continued to attend the arbitration hearings, in spite of the expiry of the arbitration period, they were implicitly deemed to

have agreed to an extension. The Defendants' appeal was, therefore, dismissed and the judgment delivered by the lower Court ratifying the arbitration award was upheld.

COURT OF CASSATION

The Defendants lodged a further appeal to the Dubai Court of Cassation where they argued that at no time had they, directly or indirectly, agreed to an extension of the arbitration period. Their presence at the arbitration hearings was required as the arbitrator continued to hear arguments from both parties and showed no intention of stopping the matter from proceeding despite the clear fact that the agreed arbitration period had lapsed.

The Court of Cassation held that, according to Article 216 of the UAE Law of Civil Procedure ("The CPL"),[1] the arbitrator must deliver the arbitration award within the time period agreed to by the parties. If he fails to do so, he must secure the agreement of both parties to extend the arbitration or, alternatively, apply to the Court for an extension. If no extension is granted before the expiry of the original period, any award delivered thereafter will be declared null and void.

The Court of Cassation confirmed that the expiry of the time period mentioned in Article 216 of the CPL is not a matter of public policy. The parties may agree to waive such a right. However, if one of the parties wishes to raise a time-expiry argument, they must do so, before the arbitrator or the Court, at the time when the arbitration award is brought in for ratification. Therefore, if a party raises this defence before the arbitrator, it will continue to be valid unless withdrawn at any stage during the arbitration or before the Court.

---

[1] Article 216 of the CPL provides (where relevant) as follows;

" 1. If the adversaries under an arbitration clause do not agree to a certain period during which the arbitration decision shall be passed, the arbitrator shall pass his decision within six months after the date of the first session, otherwise any of the adversaries may refer the dispute to Court or proceed with it before the Court if already filed therewith.

2. Adversaries may expressly or implicitly agree to extend the legally or consensually agreed period and may authorize the arbitrator to extend it to a certain date. The Court may, upon the arbitrator's request or any of the adversaries' petition, extend the period for a period it deems suitable for the settlement of the dispute.

3. Such period shall cease whenever proceedings are stopped or suspended before the arbitrator and shall continue to count as of the date on which the arbitrator was notified of the removal of such stoppage or suspension and if the remaining period is less than a month it shall be extended to a month."

In this case, the Defendants challenged the power of the arbitrator after the period expired. However, the arbitrator chose to proceed with the arbitration. While the Defendants continued to attend the hearings and submit memoranda, there was no evidence before the Court that they simultaneously consented to withdraw their main argument that the arbitration should be suspended as the period for the same had expired.

It is not relevant that the Court extended the arbitration period on 25 April 1993 since the extension was granted after the lapse of the original period, and therefore is not a valid extension. A Court order will not resuscitate an arbitration procedure which has already expired.

Accordingly, the Court of Cassation held the arbitration award to be null and void and the Plaintiffs were ordered to bear costs and expenses.

Actions before UAE Courts will Not be Permitted if Parties have Previously Agreed to Foreign Arbitration to Settle any Disputes

DUBAI COURT OF CASSATION JUDGMENT NO. 61/94
DATED 13 NOVEMBER 1996

SUMMARY

In an action filed before the Courts in Dubai, the Court of Cassation held that if parties to a dispute agree to arbitrate, it is not permissible for one of the parties to proceed with an action before the local Courts. If, however, one of the parties proceeds with the action before the local Courts, the other party may challenge the jurisdiction of the local Court on the grounds that the parties had agreed to refer their dispute to arbitration. If such a defence is raised at the first hearing of the case after the parties have been summoned and properly represented, the Court will dismiss the case on the grounds that the parties have already agreed to refer the dispute to arbitration.

The Court of Cassation further held that if the parties have agreed to refer their dispute to arbitration in a foreign country and there is no evidence to show that there would be difficulties in conducting the arbitration in that foreign country, the matter should be arbitrated at the place to which the parties had agreed. It will not be permissible for either of the parties to request the Court to arbitrate the matter locally and the matter must go to arbitration in the place and country agreed upon.

CLAIM

An action was filed by a Saudi establishment (the "Plaintiff") before the Dubai Courts against a local company and its two partners (the "Defendants"). The Plaintiff claimed that it had suffered damages as a result of the breach of an agreement made between the Plaintiff and the Defendants. The Plaintiff claimed that the Defendants had failed to advertise the Brazilian coffee it had purchased from the first Defendant and as a result the Plaintiff was unable to sell it. The Plaintiff requested that judgment be delivered jointly and severally against the Defendants for 1 million Dirhams or, alternatively, for the matter to be referred to arbitration in the UAE. The original agreement between the parties provided for disputes to be settled by arbitration in Geneva, Switzerland.

COURT OF FIRST INSTANCE

The Court of First Instance referred the matter to arbitration in Geneva on the grounds that the parties had agreed to that location previously. The Plaintiff appealed.

COURT OF APPEAL

The Court of Appeal upheld the judgment of the Court of First Instance. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that the Defendants had failed to raise the argument relating to the arbitration clause at the first hearing of the case and, accordingly, should have been deemed to have accepted the Dubai Court's jurisdiction. It makes no difference, the Plaintiff argued, that the third Defendant (being the husband of the second Defendant) did not attend Court at the first hearing when the matter was adjourned to allow his lawyer to produce a power of attorney. Furthermore, it was evident that the Plaintiff in their statement of claim had requested that the Court refer the matter to arbitration locally rather than in Geneva.

The Dubai Court of Cassation, making reference to the provisions of Article 203 of the UAE Law of Civil Procedure (the "CPL"),[1] held that where the parties in a dispute have agreed to refer a matter to arbitration, they may not proceed with an action before the local Courts. However, the Courts may hear the subject matter of the proceedings if the defendants fail to raise the issue of the arbitration clause by way of defence at the first hearing of the case.

The phrase "first hearing of the case" refers to the hearing at which all the parties have been duly summoned and are duly represented. In cases where there are several defendants, each can raise the jurisdiction defence at the first hearing it attends and that defence, if accepted, will operate for the benefit of all defendants.

---

[1] Article 203 of the CPL provides (where relevant) as follows;

" 1. In general, contracting parties may provide in the main contract or under a later annex for referring any dispute arising between them in respect of the execution of any specific contract to one or more arbitrator(s). Arbitration may also be agreed to or conducted under special conditions in particular cases.

2. Agreement to arbitration cannot be proven unless executed in writing.

3. The subject of dispute shall be determined in the arbitration document or during case examination even if arbitrators were authorized to effect conciliation otherwise arbitration shall be illegal.

4. Arbitration may not be held in respect of matters for which it is not permitted. Arbitration may not be agreed to except by persons authorized to dispose of the right subject to the dispute.

5. If the adversaries agree to refer any dispute to arbitration for settlement, such dispute may be the subject of a lawsuit before the Court. However, should either party resort to legal proceedings before the Court disregarding an arbitration clause and if the other party did not object to the same during the first session, the lawsuit may be examined and the arbitration clause shall be annulled."

In this case, it was evident that none of the Defendants had attended the first hearing of the case. Their lawyers had attended to request time to file a power of attorney and had filed a memorandum challenging the jurisdiction of the Dubai Court on the grounds that there was already an agreement in place between the parties to refer the matter to arbitration. Therefore, the Court held that the lower Courts were correct in dismissing the action.

The Court of Cassation further held that it was evident that the parties had pre-selected Geneva as the location of the arbitration and there was no evidence in the documents to suggest that there would be difficulties if it was conducted there. The arbitration should be held in Geneva and not Dubai.

Accordingly, the Dubai Court of Cassation upheld the judgment delivered by the Court of Appeal and dismissed the Plaintiff's action.

If the Parties Agree upon the Arbitrator in their Contract, they may Not Apply to the Court to Nominate Another Arbitrator

DUBAI COURT OF CASSATION JUDGMENT NO. 167/94
DATED 13 NOVEMBER 1996

SUMMARY
In an action filed before the Dubai Courts, the Dubai Court of Cassation held that a Plaintiff may not apply to the Court to request the Court to refer a dispute to arbitration or to nominate another arbitrator if the parties had already agreed in their contract to refer their dispute to arbitration and had nominated the arbitrator, unless the arbitrator had resigned, was unable to act or there was a legal reason preventing him from acting as arbitrator. Otherwise, the parties must adhere to their agreement and may not apply to the Court to change the arbitrator or cancel the arbitration clause.

CLAIM
The action was brought before the Courts by the Plaintiff requesting the Court to deliver judgment against the Defendant for an amount of Dhs. 237,248, claimed to be the balance due from the Defendant under a contract for the construction of premises. The Defendant argued that there was an arbitration clause in the contract and therefore, requested the Court to dismiss the proceedings on the grounds that the parties had agreed to this form of dispute resolution. The Plaintiff had in fact given the Defendant notice requesting it to nominate an arbitrator and refer the matter to arbitration. The Defendant, however, had refused.

COURT OF FIRST INSTANCE
The Plaintiff then filed an action before the Dubai Court of First Instance requesting the Court to appoint an arbitrator or otherwise deliver judgment against the Defendant for the full amount claimed. The Defendant challenged the jurisdiction of the Dubai Court on the grounds that there was an arbitration clause that prevented either party from filing a claim in Court. The Court of First Instance dismissed the action on the grounds that the matter could not be heard in Court because the parties had agreed to refer the dispute to arbitration.

COURT OF APPEAL
The Court of Appeal upheld the judgment delivered by the Court of First Instance. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

It argued that according to Article 204 of the UAE Civil Procedure Law[1] ("CPL"), the Court had jurisdiction to nominate and appoint an arbitrator if the parties failed to do so.

Accordingly, the Plaintiff had the legal right to proceed with the Court action requesting the Court to appoint an arbitrator in this matter. The Plaintiff did not request the Court to cancel the arbitration clause. It was evident from the facts of this case that despite repeated reminders from the Plaintiff, the Defendant had failed to respond to the Plaintiff's request to refer this matter to arbitration.

[1] Article 204 of the CPL provides as follows:

" 1. If a dispute occurs and the opposing parties have not agreed on the arbitrators, or if one or more of the agreed arbitrators refrains from acting, dissociates himself from the arbitration, is discharged, or if a ruling is given for his rejection, or if an impediment to him so acting arises, and there is nothing agreed between the opposing parties in this regard, then at the request of one of the opposing parties the court with original jurisdiction to examine the dispute shall appoint whatever arbitrators are needed by normal litigation procedures, and the number of arbitrators appointed by the court must be equal or complementary to that agreed between the opposing parties.

2. A ruling given thereon may not be contested in any way."

An Arbitration Award will be Null and Void if the Parties Fail to File their Terms of Reference or Agreement to Refer the Matter to Arbitration with the Court before the Arbitration Award is Delivered

DUBAI COURT OF CASSATION JUDGMENT NO. 173/96
DATED 16 MARCH 1997

SUMMARY

In an action filed before the Courts in Dubai to ratify an arbitration award, the Court of Cassation held that, according to Article 212 of the UAE Law of Civil Procedure, the terms of reference or the parties agreement to refer the matter to arbitration must be filed with the Court in order to ratify the arbitration award. Not doing so will render the award null and void.

CLAIM

An action was filed by an individual in Dubai (the "Plaintiff") against another individual (the "Defendant") requesting the Court to refer a dispute between the parties to arbitration and to appoint a judicial administrator for the company owned jointly by the Plaintiff and Defendant. The parties had established a company with a total capital of Dhs. 80,000. The Plaintiff's share of the company was 49 percent while the Defendant controlled the remaining 51 percent.

The Plaintiff was denied the opportunity to become involved in the active management and operation of the company. The Defendant offered the Plaintiff Dhs. 20,000 in consideration for his share. This was in violation of the shareholders' agreement between the parties.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance referred the matter to arbitration according to Clause 14 of the shareholders' agreement and appointed three arbitrators. The Court also decided to suspend the case until such time as the arbitration award was delivered on the matter. The arbitration proceedings, however, were temporarily suspended while the arbitrators referred two invoices to the Court to determine whether or not they had been forged. It was subsequently determined that one of the invoices was genuine while the other was a forgery. The arbitrators were informed of this finding and the arbitration resumed. The arbitrators delivered judgment on 29 January 1996 dismissing the case. The arbitration award was filed in Court and upheld by the Court of First Instance and ratified as a judgment delivered by the Dubai Courts. The Plaintiff appealed against this judgment to the Court of Appeal.

COURT OF APPEAL

Before the Court of Appeal, the Plaintiff's appeal was dismissed and the judgment delivered by the Court of First Instance was upheld. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued the following;

(1) That the arbitrators had not understood the facts of the case and had exceeded their powers when they held that the request made by the Plaintiff was limited to a request to liquidate the company, whereas they had not requested liquidation and the subject of liquidation was only brought to the Court's attention when dealing with the forged invoices. The subject matter of the arbitration was independent from the issue of the forged documents.

(2) That the arbitrators had decided to refer the forged document to the Court in the absence of one of the appointed arbitrators and the eventual decision made by the arbitrators was made in the Plaintiff's absence and at a time that the file was not available to the arbitrators.

(3) That the arbitration award was not delivered for a year and it should have been delivered within three months.

(4) That the Court had upheld and ratified the arbitration award and ignored the fact that the Plaintiff had submitted a request to the arbitrators before the award was delivered challenging one of the arbitrators and requesting a change in the membership of the panel. The arbitrators should have dealt with this application before delivering the award.

(5) That the judgment delivered by the Court of First Instance should be held to be null and void as the Court in ratifying the arbitration award had not acknowledged that the terms of reference to arbitration had not been filed with the award, as is required by Article 212 of the UAE Civil Procedure Law (the "CPL").[1]

In its comprehensive response to the Plaintiff's arguments, the Dubai Court of Cassation acknowledged that arbitration is an exceptional way of settling disputes which normally would have to be adjudicated by the local Courts.

---

[1] Article 212 of the CPL provides (where relevant) as follows;

" (1) The arbitrator shall adjudicate unconstrained by the processes of legal proceedings, except as stated in this Chapter and in the procedures relating to calling upon the opposing parties, hearing the aspects of their cases and enabling them to present their documentation. The opposing parties may, however, agree to particular procedures for the arbitrator to follow.

(2) The arbitrator's judgment shall be in accordance with the legal rules, unless he is empowered to effect a composition in which case he shall not be constrained by these rules except insofar as they concern public order.

(3) The rules governing summary enforcement shall apply to the rulings of arbitrators.

(4) The ruling of the arbitrator must be given within the State of the United Arab Emirates, otherwise the rules prescribed for the rulings of arbitrators in issue in a foreign country shall be observed.

Footnote: see next page

Arbitrators, however, are limited to the subject matter of the arbitration and the specific arguments which are put before them by the parties. It will be up to the arbitrators to assess the facts and the merits of the case based on the evidence placed before them without any supervision or review by the Court. The Court of Cassation, therefore, has no jurisdiction to review a judgment delivered by the Court of First Instance ratifying an arbitration award provided that the procedure for such ratification was correctly followed.

The Court further held that pursuant to Article 212 of the CPL, an arbitrator is not obliged to follow the rules of procedure applicable to Court cases. Arbitrators only have to abide by the procedure set out in the Arbitration Section of the CPL but not other procedures applicable to the regular case heard before the Court. This is in addition to any other procedures which may be agreed to between the parties and the general rules of natural justice which entitle both parties to submit their arguments, be present at the hearing, have their evidence put forward and entitle the other party to comment on the same. In this particular case, these norms were satisfied as both sides were given a fair chance to present their case.

Regarding the Plaintiff's argument concerning the lapse of time, the Court held that pursuant to Article 210 of the CPL,[2] even though an arbitration should be finalized within 3 months, both parties may agree to extend this period implicitly or by application or an extension may be granted by the Court. However, if either of the parties objects to an extension of time or to the arbitrators continuing after the required time has passed, they must raise this argu-

(5) A ruling by arbitrators shall be given on a majority vote and it must be recorded along with any dissenting view. In particular it must include a copy of the arbitration agreement, a summary of the statements and exhibits of the opposing parties, the reasons and grounds for the ruling, its date and place of issue and the signatures of the arbitrators. If one or more of the arbitrators refuses to sign the ruling, this is to be stated, but the ruling shall be valid if the majority of arbitrators have signed it.

(6) The ruling shall be written in Arabic unless the opposing parties agree otherwise, upon which, when being lodged, it must be accompanied by an official translation.

(7) The ruling shall be deemed to have been issued on the date it is signed by the arbitrators after it has been written."

2 Article 210 of the CPL provides (where relevant) as follows;

" (1) If the opposing parties do not specify a time for a ruling to be given in the arbitration agreement, the arbitrator is to give his ruling within six months from the date of the initial arbitration hearing, otherwise any of the opposing parties may raise the dispute to the Court or may pursue it before the Court if already raised.

(2) The opposing parties may explicitly or implicitly agree to extend the date prescribed by agreement or by law, and they may empower the arbitrator to extend it to a particular date. At the request of the arbitrator or one of the opposing parties, the Court may extend the date specified in the foregoing paragraph for such period as it deems appropriate for a settlement of the dispute.

(3) The period shall be interrupted whenever the Court proceedings are interrupted or suspended, and shall be resumed from the date on which the arbitrator becomes aware that the cause of the interruption or suspension has been eliminated. If the remaining period is less than a month, it shall be extended to a month."

ment before the arbitrators at that time and before the arbitration award is delivered, otherwise there will be an implied agreement that the parties have agreed to extend the arbitration further.

Regarding the challenge to the presence of one of the arbitrators, the Court of Cassation held that it is possible to do so according to Article 216[3] of the CPL. However, the conditions under which it can be done are limited by the law.

It is evident, furthermore, from Article 207[4] of the CPL that there is a time limit for challenging an arbitrator for reasons of incompetence or otherwise and such a challenge must be brought within 5 days of notification of the arbitrator's appointment, whether or not the arbitration was carried out under the supervision of the Court. Therefore for the Court, or the arbitrator, to consider any challenge to the composition of the arbitration panel, the parties must follow the procedures within the time specified by law, otherwise such challenge will be dismissed.

The Court of Cassation dismissed the argument raised by the Plaintiff with regard to the Court order ratifying the arbitration award. However, regarding the

---

3 Article 216 of the CPL provides (where relevant) as follows;

" (1) In the following instances, the opposing parties may apply for the annulment of an arbitrator's ruling when the Court is examining whether to validate it:

a. If given without a deed of arbitration or if based on an invalid deed, or if the same has lapsed through prescription, or if the arbitrators have exceeded the limits of the deed.

b. If the ruling has been given by arbitrators not appointed according to the law, or if given by some of them without being so empowerd in the absence of the others, or if given under a deed of arbitration in which the subject of the dispute is not stated, or given by someone not competent to agree to arbitration or by an arbitrator who does not fulfill the legal requirements.

c. If there is something invalid in the ruling or in the procedures affecting the ruling.

(2) Acceptance of invalidity shall not be inhibited by the opposing party abandoning his right thereto before the arbitrator's ruling is issued."

4 Article 207 of the CPL provides (where relevant) as follows;

" (1) Acceptance of an arbitrator must be in writing or by entering his acceptance in the record of the hearing.

(2) If an arbitrator fails to carry out his job after he has agreed to arbitrate, without due cause, he may be required to pay compensation.

(3) He may not be dismissed without the agreement of all the opposing parties, but the Court with original jurisdiction to examine the dispute may, at the request of one of the opposing parties, release the arbitrator and order a replacement to be appointed by the same method as he was appointed initially, in the case where it is established that the arbitrator has deliberately neglected to act in accordance with the arbitration agreement despite his attention having been drawn thereto in writing.

(4) Refusal to allow him to adjudge may only be done for reasons that come to light or occur after his personal appointment, and such refusal may be requested on the same grounds as for rejection of a judge or on the basis of which he is considered unsuitable to give a ruling. A request for rejection is to be made to the Court with original jurisdiction to examine the dispute within 5 days from notification to the opposing party of the appointment of the arbitrator, or from the date on which the reason for rejection occurred or came to knowledge if subsequent to notification of the arbitrator's appointment. In all cases, a request for rejection shall not be acceptable if the Court has made its judgment or if the proceedings have closed in the case."

fact that the terms of reference and the parties' agreement to refer the matter to arbitration was not filed before the Court of First Instance, the Court held that according to Article 212 of the CPL, the terms of reference and evidence of the agreement to refer the matter to arbitration between the parties must be filed with the arbitration award. Otherwise it will be null and void.

Accordingly, the Court of Cassation held that the Court of First Instance had violated the law when it decided to ratify the arbitration award despite the fact that there had been no terms of reference or evidence of the agreement of the parties to refer the matter to arbitration filed with the Court, as required by Article 212 of the CPL. The Court of Cassation therefore cancelled the judgment and referred the matter back to the Court of First Instance to deal with according to the guidelines set out herein.

Jurisdiction Cases

Table of Contents
Jurisdiction Cases

Jurisdiction of the Abu Dhabi Court is a Matter of Public Policy and the Parties may Not Agree Otherwise

ABU DHABI COURT OF CASSATION JUDGMENT NO. 6/17
DATED 23 MAY 1995

SUMMARY

In an action filed before the Abu Dhabi Courts, the Abu Dhabi Court of Cassation held that, in principle, the UAE Courts should exercise jurisdiction in relation to all matters which are filed before them. This position is understood to be a matter of public policy connected to the sovereignty of the country. The Courts may not refer a dispute to a foreign judicial body for a decision except in those rare instances where justice can best be served by doing so. Furthermore, the parties may not agree amongst themselves to withdraw jurisdiction from the local Court. The Abu Dhabi Court properly assumed jurisdiction as the disputed contract, in this case, was executed in Abu Dhabi and related to commercial activity conducted by the Defendants within the same Emirate.

CLAIM

The action was brought before the Court by a credit company ("Plaintiffs") against an Abu Dhabi establishment ("Defendants"). The Plaintiffs claimed US $ 190,032 for foodstuffs which were sold by the Plaintiffs to the Defendants. The Defendants challenged the jurisdiction of the Abu Dhabi Court arguing that the matter was already the subject of Court proceedings in Cairo. There had been no specific election of jurisdiction in the contract executed between the parties. The Defendants also challenged the capacity of the Plaintiffs to bring forward this action by claiming that they had no legal right to do so.

COURT OF FIRST INSTANCE

The Abu Dhabi Court of First Instance dismissed the defence arguments raised by the Defendants and appointed an expert to investigate and report on the matter.

COURT OF APPEAL

The Defendants appealed against this decision to the Court of Appeal where the judgment of the lower Court was upheld.

COURT OF CASSATION

The Defendants appealed to the Abu Dhabi Court of Cassation. They argued for a dismissal of the action on the grounds that the Abu Dhabi Court had erroneously assumed jurisdiction over the matter. The transaction entered into by the parties involved the shipment of foodstuffs to Cairo where the Defendants maintained their permanent residence. Furthermore, the dispute was already being considered in the Cairo Courts.

The Court of Cassation held that it is the responsibility of the Court to consider the facts and evidence submitted by the parties to the proceedings and determine if the Defendants had a place of residence or business in the UAE. If they had a place of business in the UAE, this will be regarded as a place of residence in any action filed in connection with the business of the Defendants or their trading activities. It was evident from the facts of this case and the agreement signed between the parties that the Defendants had a principal place of business in Abu Dhabi where they were engaged in the purchasing of goods for re-export to Cairo. This gave the Court jurisdiction to hear the case.

In their decision, the Court of Cassation also considered Articles 87[1] and 88[2] of the UAE Civil Procedure Law of 1992 ("the CPL").

The Court of Cassation held that any defence raised by these provisions must be specifically pleaded by the Defendants and the Court may not deal with such a defence on its own motion. As the judgments of the lower Courts were not in conflict with the provisions in Articles 87 and 88 of the CPL, they were upheld and the appeal filed by the Defendants was dismissed.

1 Article 87 of the CPL provides (where relevant) as follows;
"If the dispute is brought before two Courts, the claim shall be referred for judgment to the Court before which the dispute was last brought."

2 Article 88 of the CPL provides (where relevant) as follows;
"A plea of remittal on grounds of connection may be brought before either of the two Courts but the Court receiving the remittal shall try the case."

In a Commercial Transaction, Jurisdiction is Given to the Court where the Defendant is Domiciled, or where the Contract is Executed or Meant to be Executed

ABU DHABI COURT OF CASSATION JUDGMENT NO. 290/17
DATED 28 NOVEMBER 1995

SUMMARY

In an action filed before the Sharjah Courts, the Abu Dhabi Federal Court of Cassation held that in cases where a transaction is commercial with regard to one of the parties, and civil with regard to the other, the 1992 Commercial Transactions Law ("the CTL") will apply. The Court further held that in a commercial transaction, jurisdiction will normally be given to the Court where the Defendant is residing or where the contract was executed or was meant to be executed or implemented.

CLAIM

An action was brought before the Sharjah Courts for monies owing on the sale of a mechanical shovel by the Plaintiffs to the Defendants. The Plaintiffs claimed an amount of Dhs. 136,360 plus interest and costs. The Defendants challenged the jurisdiction of the Sharjah Court and claimed that the Ras Al Khaimah Court had jurisdiction over this matter as the Defendants resided in that Emirate.

COURT OF FIRST INSTANCE

The Sharjah Court of First Instance dismissed the action for non-jurisdiction of the Sharjah Court. The Plaintiff appealed to the Court of Appeal.

COURT OF APPEAL

The Court of Appeal held that it had jurisdiction in view of the fact that this matter was considered to be a commercial transaction and therefore, Article 10 of the CTL[1] would be applied to determine the issue of jurisdiction. The Court cancelled the judgment and referred the matter back to the Sharjah Court of First Instance. However, the Defendant appealed to the Court of Cassation.

[1] Article 10 of the 1992 UAE Commercial Transactions Law provides (where relevant) as follows: "If the business is of a trading nature to one party and of a civil nature to the other party, the provisions of this Law shall apply to both parties unless enacted by law or the parties have agreed otherwise."

COURT OF CASSATION

Before the Court of Cassation the Defendant argued that the shovel had been purchased for personal use and was not for commercial purposes. Therefore, the CTL should not apply to the transaction.

The Court of Cassation held that the Court of Appeal had correctly applied Article 10 of the CTL to this case. As the Plaintiffs were merchants and the transaction was commercial, jurisdiction properly rested with the Sharjah Court. Accordingly, the Court of Cassation dismissed the Defendant's appeal and upheld the earlier judgment delivered by the Sharjah Court of Appeal.

Islamic *Shari'a* Courts are Not at Liberty to Pass Sentences for Non-*Hadd* Crimes that are Not Authorized by Statute

ABU DHABI COURT OF CASSATION JUDGMENT NO. 228/95
DATED 11 MARCH 1996

SUMMARY

In an action filed before the Abu Dhabi Court, the Court of Cassation held that Article 1 of the UAE Penal Code[1] (Law No. 3 of 1987) (the "Penal Code"), which stipulates the application of the *Shari'a* for *hadd* offences,[2] cannot be applied to a non-Muslim. Therefore, although the *hadd* penalty for consumption of alcohol could be applied to a Muslim, it could not be applied to a non-Muslim. Equally, the Court held, it would be incorrect to apply *ta'zir* punishments[3] which are not found in the statute governing the punishment of those who consume alcohol. In essence, the *Shari'a* Court is not at liberty to fashion sentences for non-*hadd* crimes that are not authorized by statute.

CLAIM

Two Asian residents of Abu Dhabi (the "Plaintiffs") were brought before the *Shari'a* Court in Abu Dhabi on charges filed by the Public Prosecutor for the consumption of alcohol and physically assaulting each other in contravention of the Islamic *Shari'a* and Article 339 (2)[4] of the Penal Code.

---

1 Article 1 of the Penal Code provides, where relevant, as follows;
"The Law attached hereto shall apply to all crimes and punishments, and any text contradicting its provisions shall become null and void."

2 A *Hadd* offence under Islamic Law is one carrying a severe penalty of corporal punishment such as death, beating or amputation.

3 A *Ta'zir* offence under Islamic Law is one attracting less severe penalties such as fines or imprisonment.

4 Article 339 of the Penal Code provides, where relevant, as follows;
"There shall be punishable by confinement and by fine any individual who commits assault on the physical integrity of another person and causes him disease or disability to carry on his personal activities for more than twenty days.
The punishment shall be confinement for a period not exceeding one year and a fine not exceeding ten thousand Dirhams if the results of the assault are not as serious as is described in the preceding paragraph.
And where abortion results from an assault on a pregnant woman, this shall be considered a circumstance of aggravation."

COURT OF FIRST INSTANCE

The Court of First Instance found the Plaintiffs guilty as charged of drinking alcohol and assault. They were sentenced, as a *ta'zir*, to sixty lashes each and fined two hundred Dirhams. The Plaintiffs appealed against their sentence to the Court of Appeal.

COURT OF APPEAL

The Court of Appeal dismissed the Plaintiffs' appeal and upheld the judgment of the lower Court. Both appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiffs argued that as they were non-Muslims, the consumption of alcohol without a licence was punishable by imprisonment and/or a fine pursuant to Law No. 8 of 1976 ("Law No. 8"). Law No. 8 did not, however, stipulate flogging as a penalty. The judgment of the lower Court, the Plaintiffs argued, should therefore be set aside as contrary to law.

The Court of Cassation held that if a non-Muslim drinks alcohol, such a deed cannot be deemed an offence deserving of *hadd* punishment. This is attested in the treatises of the various schools of Islamic jurisprudence. In particular, *Maliki* treatises hold that the consumption of alcohol by a non-Muslim cannot be considered a criminal offence requiring a *hadd* punishment. In all of these writings, adherence to Islam is a fundamental requirement for the *hadd* offence of drinking.

The Court of Cassation further held that Article 1 of the Penal Code, which stipulates the application of the *Shari'a* for *hadd* offences, cannot be applied to a non-Muslim. Equally, it is incorrect to apply *ta'zir* punishments which are not found in the statute governing the punishment of those who consume alcohol. To apply such punishments to non-Muslims would be to go beyond the bounds of the divine justice of Islam, which exempts protected non-Muslims in Islamic countries from being punished for acts permitted to them by their religion, save when accompanied by conduct offending against public morals.

The Court held that the Ruler of the UAE had this in mind when he promulgated Law No. 8. This Law requires non-Muslims to obtain a licence from the authorities concerned and not to appear drunk in a public place, so as not to insult the feelings of Muslims or corrupt Muslim society. Law No. 8 provides that anyone in breach of these conditions shall be subject to a *ta'zir* punishment in the form of imprisonment and a fine, ranging from a minimum to a maximum or both. The stipulated punishment does not include flogging.

The Court held that Law No. 8 must be applied by the *Shari'a* judge but does not deprive the judge of the discretion granted by the *Shari'a* to select, from the punishments specified in that law, the most appropriate *ta'zir* punishment for non-Muslims who consume alcohol without a licence. Section 53 of

Law No. 8 stipulates that the punishment for a non-Muslim who drinks or is in possession of alcoholic drinks without a licence from the concerned authorities is imprisonment for a period of not less than one month and not more than six months and a fine of not less than five hundred Dirhams and not more than two thousand Dirhams or either of these penalties. There is no mention of flogging in this legislation.

Accordingly, the Court of Cassation set aside the judgment under appeal and referred the case back to the Court of Appeal to be re-tried before a different bench.

The UAE Courts will Not Uphold a Foreign Jurisdiction Clause in a Contract as such a Clause is Contrary to Public Policy

ABU DHABI COURT OF CASSATION JUDGMENT NO. 482/18
DATED 15 APRIL 1997

SUMMARY
In an action filed before the Abu Dhabi Court, the Court of Cassation held that a foreign jurisdiction clause will not be upheld as the subject of jurisdiction is a matter of public policy and sovereignty and parties to a contract are not free to agree otherwise.

CLAIM
A shipowner (the "Plaintiff") brought an action before the Fujairah Court requesting that the Court order a towing company (the "Defendant") to pay it US $700,000 which represented the value of the Plaintiff's vessel which was lost at sea while it was being towed in a negligent manner by the Defendant.

COURT OF FIRST INSTANCE
The Fujairah Court of First Instance dismissed the Plaintiff's action on the ground that the Court had no jurisdiction to hear the matter. The Plaintiff appealed to the Fujairah Court of Appeal.

COURT OF APPEAL
The Fujairah Court of Appeal reversed the judgment of the lower Court and held that the Fujairah Court did have jurisdiction to hear the matter. The Defendant appealed against this judgment to the Abu Dhabi Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation the Defendant argued that it was evident from the addendum to the towage contract filed with the Court that the parties had agreed to give jurisdiction to the English Courts in the event that a dispute arose thereunder.

The Defendant further argued that the Court had violated Article 122 of the UAE Maritime Code (the "Maritime Code")[1] and Articles 21[2] and 31[3] of the UAE Law of Civil Procedure (the "CPL").

---

1 Article 122 of the Maritime Code provides (where relevant) as follows;
" The Civil Court within the area of which the arrest is effected shall have jurisdiction to adjudicate upon the subject matter of the claim in the following circumstances, even if the vessel does not have the nationality of the State, in addition to those circumstances set out in the procedural laws in force in the State:
(a) If the claimant has a usual place of residence or head office in the State.
(b) If the maritime debt arose in the State.
(c) If the maritime debt arose during a voyage during which the arrest was effected on the vessel.
(d) If the maritime debt arose out of a collision or assistance over which the Court has jurisdiction.
(e) If the debt is secured by a maritime mortgage over the arrested vessel."

2 Article 21 of the CPL provides (where relevant) as follows;
" The Courts shall have the jurisdiction to hear cases against the foreigner who maintains no residence in the country if:
(1) He maintains a chosen domicile in the country.
(2) The case was concerned with funds in the country or inheritance accruing to a citizen or estate declared therein.
(3) The case was concerned with a commitment implemented or stipulated to be implemented in the country or the case concerned a contract to be attested therein or an event occurring therein or a bankruptcy declared by a Court thereof.
(4) The case was filed by a wife who maintains a domicile in the country against her husband who used to maintain domicile therein.
(5) The case was concerned with alimony for either parent, wife, incapacitated person, a minor or his relatives or a guardian/trustee of funds or persons if the alimony was demanded by the wife, minor or the incapacitated person who maintains a domicile in the country.
(6) If the case was concerned with the personal status and the plaintiff was a citizen or foreigner maintaining a domicile in the country in the event the defendant has no specific domicile abroad or the national law was compulsorily applicable to the case.
(7) If any of the defendants had maintained domicile or residence in the country."

3 Article 31 of the CPL provides (where relevant) as follows;
" (1) The jurisdiction shall be given to the Court in whose circuit the defendant's domicile is situated unless otherwise stipulated by law. If the defendant does not maintain a domicile in the State, the jurisdiction shall be given to the Court in whose circuit the defendant's residence or place of work is situated.
(2) The lawsuit may be filed before the Court in whose circuit the damage was inflicted with regard to indemnity cases due to damages inflicted on persons or properties.
(3) Jurisdiction on commercial items shall be given to the Court in whose circuit the defendant's domicile is situated, to the Court in whose circuit agreement was made in full or in part or to the Court in whose circuit the agreement is to be implemented.
(4) If more than one defendant is involved, the jurisdiction shall be given to the Court in whose circuit any of them maintains domicile.
(5) In cases other than those stipulated in Articles 32, and 34 to 39, agreement may be made on the jurisdiction of a specific Court to hear the dispute. In such case, the jurisdiction shall be given to this Court or to the Court in whose circuit the defendant's domicile, residence or place of work is situated."

The Court of Cassation held that it was evident from the facts that the Fujairah Court had jurisdiction to hear this matter. Even if the parties had agreed to foreign jurisdiction, the Court will not uphold such a clause as the issue of jurisdiction is a matter of public policy and sovereignty and the parties may not contract otherwise.

The Court further held that according to Article 21(3) of the CPL, a UAE Court will have jurisdiction to hear any action filed against a foreign party who has no place of domicile in the UAE if the contract was executed, signed or intended to be executed in the country or if the contract was authenticated in the UAE. In this particular case, moreover, the Fujairah Court had jurisdiction because part of the towage contract was executed and implemented in Fujairah and the vessel was surveyed there.

Accordingly, the Court of Cassation dismissed the Defendant's appeal and upheld the judgment in the Plaintiff's favour delivered by the Fujairah Court of Appeal.

A Rental Committee's Competence to Adjudicate Disputes between Landlords and Tenants is an Exception to the Exclusive Jurisdiction of the Courts which must be Narrowly Applied

DUBAI COURT OF CASSATION JUDGMENT NO. 175/91
DATED 21 JULY 1991

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that it is a well established rule that the Courts have exclusive jurisdiction to adjudicate all manner of disputes unless an exception is granted to other entities by a special law. However, even if such a law has given a certain entity competence to look over private disputes, that law should be applied narrowly.

CLAIM
An individual landlord in Dubai (the "Plaintiff") applied to the court for execution of a Rental Committee decision ordering his tenant (the "Defendant") to pay Dhs. 240,000 in outstanding rent and to vacate the rented premises if he no longer wished to occupy them. The Execution Court ordered the evacuation and the attachment of the Defendant's property to satisfy the debt, and in a later decision also impounded his passport, thereby prohibiting him from leaving the UAE. The Defendant submitted a complaint to the Execution Court arguing that the Rental Committee was not competent to issue a binding decision regarding outstanding rental payments.

COURT OF FIRST INSTANCE
The Court of First Instance rejected the Defendant's argument. The Defendant appealed.

COURT OF APPEAL
The Court of Appeal also rejected the Defendant's argument. He appealed further to the Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation the Defendant argued that the lower Courts had incorrectly applied the law since the Rental Committee's competence to look into disputes between landlords and tenants is an exceptional one and should only be narrowly applied. The Committee does not, the Defendant argued, have competence to adjudicate disputes related to the payment of outstanding rent.

The Court of Cassation held that Article 1 of Decision No. 507/74 of His Highness the Ruler of Dubai established a committee to look over disputes between landlords and tenants and provided that its decision would be binding on the parties. Article 3 of the said Decision states that the Committee shall have such authority as His Highness sees fit.

The Court of Cassation held that the Rental Committee has competence relating to disputes between landlords and tenants, to consider issues with regard to the rent, or vacation of the premises because of misuse by the tenant, his making fundamental alterations to the premises, the transfer of the lease to a third party without the landlord's approval, the landlord's need to use the premises or non-payment of rent. These kinds of disputes do not include requesting the payment of rent unless it is a reason for vacation. As the Rental Committee ordered the Defendant to pay the outstanding rent, it had exceeded its competence.

Accordingly, the Court of Cassation ordered the release of the Defendant's passport and overruled the judgment of the Court of Appeal on this matter.

Foreign Judgments will not be Enforceable in the UAE even if Final, if the UAE Courts also have Jurisdiction over the Subject Matter in the Original Proceedings

DUBAI COURT OF CASSATION JUDGMENT NO. 117/93
DATED 20 NOVEMBER 1993

SUMMARY

In an action filed before the Courts in Dubai, the Court of Cassation held that in cases where a UAE judge has jurisdiction to hear the subject matter of the proceedings, a foreign judgment regarding the same subject matter will not be executed within the UAE.

CLAIM

A foreign bank (the "Plaintiff") brought an action in Dubai Court against three persons domiciled in Dubai (the "Defendants") requesting that the Dubai Court enforce three judgments which the Plaintiff had obtained against the Defendants in the Hong Kong High Court requiring them to pay the balance outstanding to the Plaintiff for facilities granted by the Plaintiff to a company owned by the Defendants. Hong Kong jurisdiction was expressly provided for in the facility agreement.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance dismissed the Plaintiff's action on the grounds that, pursuant to Article 235 of the UAE Civil Procedure Law (the "CPL")[1] foreign judgments, even if final, will not be executed in the UAE until ratified by a local Court as being qualified for execution according to the conditions and terms set out in the said Article. Such conditions had not been satisfied. The Plaintiff appealed this decision.

1 Article 235 of the CPL provides (where relevant) as follows;

" 1. Judgments and orders passed in a foreign country may be ordered for execution and implementation within the UAE under the same conditions provided for in the law of the foreign State for the execution of judgments and orders passed in the State.

2. A petition for an execution order shall be filed before the Court of First Instance under whose jurisdiction execution is sought under standard procedures for lawsuit filing. Execution may not be ordered unless the following is verified:

(a) That the State Courts have no jurisdiction over the dispute on which the judgment or the order was passed and that the issuing foreign courts have such jurisdiction in accordance with the international jurisdictional rules set out in its applicable law.

(Note 1 is continued on next page).

COURT OF APPEAL

The judgment of the Dubai Court of First Instance was upheld by the Court of Appeal. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued two main points. Firstly, the lower Court had dismissed the action and refused to implement the judgment granted in the Plaintiff's favour by the Hong Kong Court on the ground that, under Article 235(2)(a) of the CPL, it could not enforce a foreign judgment in the UAE unless UAE Courts would have had no jurisdiction over the subject matter of the proceedings. As the Defendants were all Dubai residents, it would appear that the local Courts do have jurisdiction and therefore the pre-condition in Article 235 (2)(a) of the CPL was not satisfied. The Plaintiff argued that this is an incorrect interpretation of the CPL.

Secondly, the Plaintiff argued that, although the Defendants were not properly summoned for the proceedings filed in the Hong Kong High Court in accordance with UAE law, the applicable law in this instance should have been Hong Kong law, under which the Defendants were properly summoned. Furthermore, the CPL was not promulgated at the time when the service was effected. In any event, the Defendants had become aware of the proceedings by a summons eventually served on them.

The Court of Cassation held that, according to the meaning of Article 235 of the CPL, it is not enough to provide evidence to the effect that the Hong Kong Court originally had jurisdiction over the subject matter of these proceedings under its own criteria. It is also important that the UAE Courts do not have jurisdiction in relation to the same subject matter. A judge, before enforcing a foreign judgment, must ascertain not only that the foreign Court had jurisdiction according to the laws of jurisdiction applicable in that foreign country but also that, correspondingly, the UAE Courts have no jurisdiction according to the laws applicable in the UAE. If the UAE Courts do have jurisdiction to adjudicate over the subject matter of the proceedings under their own criteria, a judge should refrain from executing a foreign award.

(b) That a judgment or order was passed by the competent Court according to the law of the country in which it was passed.
(c) That the adversaries in the lawsuit on which the foreign judgment was passed were summoned and duly represented.
(d) That the judgment or order has acquired the force of a *fait accompli* under the law of the issuing Court.
(e) That it does not conflict or contradict with a judgment or order previously passed by another Court in the State and does not include any violation of moral code or public order."

Regarding the Plaintiff's second argument, the Court of Cassation further held that even if the CPL was not directly applicable to this case because the service of the summons was effected before the CPL came into force, this case should be dismissed for more fundamental reasons. The fact that the UAE Courts had jurisdiction to hear the case effectively prevents the Court from executing the judgment delivered by the Hong Kong High Court.

Accordingly, the Plaintiff's appeal was dismissed and the judgments delivered by the Court of First Instance and Court of Appeal were upheld.

Dubai Courts do Not have Jurisdiction to Hear Cases relating to Land Granted by the Ruler of Dubai

DUBAI COURT OF CASSATION JUDGMENT NO. 72/95
DATED 5 NOVEMBER 1995

SUMMARY
In an action filed before the Courts in Dubai, the Court of Cassation held that an order promulgated by the Ruler of Dubai prohibits the Courts from assuming jurisdiction over matters related to the sale of "granted land" (i.e. land granted by the Ruler). Therefore, any disputes regarding title to granted land should not be heard in Dubai Courts.

CLAIM
A UAE national (the "Plaintiff") brought an action in Dubai Court against another UAE national (the "Defendant") requesting that the Court order the Defendant to vacate certain premises to permit the entry of the Plaintiff. The Plaintiff claimed that he had received the land, by grant, from the Ruler of Dubai and that the Defendant was in possession of the land without proper legal title. The Plaintiff had originally filed a complaint with the Land Department for the Emirate of Dubai from where the matter was referred to the Courts.

While the matter was being reviewed by the Dubai Court of First Instance, the Defendant filed a counterclaim requesting that the Court order the Plaintiff to transfer title to the real estate to the name of the Defendant. Alternatively, the Defendant requested that the Court order the Plaintiff to pay the Defendant Dhs. 73,000 as compensation for the value of the land plus Dhs. 300,000 for the value of the buildings which had been constructed on the property. The Defendant argued that the land had been sold to him under a valid purchase and sale agreement.

COURT OF FIRST INSTANCE
The Court of First Instance ruled in favour of the Defendant and ordered the transfer of title to the land to the Defendant. The Plaintiff appealed.

COURT OF APPEAL
The Court of Appeal upheld the decision of the Court of First Instance.
The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff argued that the decisions of the lower Courts ran counter to Dubai law. While the case was being heard by the Court of First Instance, an order was delivered by the Ruler of Dubai which stated, as a matter of public policy, that no action in connection with land granted by the Ruler of Dubai was to be considered before Dubai Courts. Furthermore, the Plaintiff argued, this order was intended to apply to all cases pending at that time before the Court.

The Court of Cassation distinguished the effect of a separate order, also issued in 1994, which the Court determined related only to real estate contracts being notarized before the Court Notary. This latter Order prohibits a Court Notary from notarizing documents related to the sale of granted land. However, the Order referred to by the Plaintiff in these proceedings prohibits persons who have been granted land by the Ruler from selling such land, as they do not have power to do so by virtue of the grant. They may not transfer the title to such land nor may the title to the land be the subject of Court proceedings.

There was no dispute between the parties as to whether the land at issue was actually land granted by the Ruler of Dubai. Accordingly, the Dubai Court of Cassation cancelled the judgment of the Court of Appeal and held that the Dubai Courts have no jurisdiction to hear the main action in this dispute or the counterclaim filed by the Defendant.

UAE Courts will have Jurisdiction to Hear the Merits of a Maritime Case if the Vessel was Arrested within UAE Territorial Waters

DUBAI COURT OF CASSATION JUDGMENT NO. 83/96
DATED 11 JANUARY 1997

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that when a vessel is arrested within UAE territorial waters pursuant to a maritime debt, the local Court will have jurisdiction to hear the matter. The Court further held that even if the parties to the dispute had earlier agreed upon a foreign jurisdiction clause, such an agreement was contrary to UAE public policy and will be ignored by the Court.

CLAIM

An application for arrest of a vessel berthed in Rashid Port in Dubai was filed by an American oil company which specialized in supplying bunker oil to ships around the world (the "Plaintiff"). Following the arrest of the vessel, the Plaintiff filed a civil case and requested that the Court order the owners and operators of the vessel (the "Defendants") to pay it the amount of US $74,362.50 plus legal costs and interest for bunker oil which had been supplied to the Defendants and to uphold the arrest order.

The Defendants challenged the jurisdiction of the local Court, arguing that it had no jurisdiction to hear the matter, especially since the sales agreement between the parties gave jurisdiction to the United States Court over any disputes that arose.

COURT OF FIRST INSTANCE

The Court of First Instance dismissed the action on the ground that the Dubai Court lacked jurisdiction over the matter. The arrest order was also lifted. The Plaintiff appealed to the Court of Appeal.

COURT OF APPEAL

The Court of Appeal reversed the judgment of the lower Court and held that the Dubai Court did have jurisdiction over the subject matter of the dispute. The matter was, therefore, referred back to the Court of First Instance. The Defendants appealed against this decision to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Defendants argued that the Dubai Court lacked jurisdiction. The Court of Cassation, referring in its decision to Article 151[1] of the UAE Law of Civil Procedure (the "CPL"), held that a party may appeal against a judgment to the Court of Cassation in cases relating to an attachment order or matters relating to the jurisdiction of the local Court.

Further, the Court held that Articles 115[2] and 122[3] of the UAE Maritime Code (the "Code") were both applicable to the case before it. Article 115 states that the arrest of a vessel cannot be ordered unless an order is given by the Civil Court and such an order can only be granted for the recovery of a maritime debt. Maritime debt under this Article, and Article 122, would include the supply of bunker oil.

Finally, the Court held that the Dubai Court had jurisdiction to hear the dispute in spite of the fact that the parties had agreed to give jurisdiction to the US Court. Article 24 of the Law of Civil Procedure[4] states that jurisdiction is a matter of public policy and that parties may not agree otherwise.

Accordingly, the Court of Cassation dismissed the Defendants' appeal and referred the matter back to the Court of First Instance for a decision on the merits.

---

1 Article 151 of the CPL provides (where relevant) as follows;
" No challenge shall apply to judgments passed during the case progress which do not finalize litigation unless after the judgment finalizing litigation is passed except in interim and expedient judgments issued in suspension of the case, the judgments subject to obligatory execution, non-jurisdiction or jurisdiction judgments if the Court were competent to try the case."

2 Article 115 of the Maritime Code provides (where relevant) as follows;
" It shall be permissible to effect a preservatory arrest against a vessel by an order of the Civil Court having jurisdiction. Such an arrest shall not be made save for the satisfaction of a maritime debt."

3 Article 122 of the Maritime Code provides (where relevant) as follows;
" The Civil Court within the area of which the arrest is effected shall have jurisdiction to adjudicate upon the subject matter of the claim in the following circumstances, even if the vessel does not have the nationality of the State, in addition to those circumstances set out in the procedural laws in force in the State:
(a) if the claimant has a usual place of residence or head office in the State.
(b) If the maritime debt arose in the State.
(c) If the maritime debt arose during a voyage during which the arrest was effected on the vessel.
(d) If the maritime debt arose out of a collision or assistance over which the Court has jurisdiction.
(e) If the debt is secured by a maritime mortgage over the arrested vessel."

4 Article 24 of the CPL provides (where relevant) as follows:
" Any agreements made in violation of the Articles of this Chapter are deemed null and void."

The Fact that a Defendant has a Shipping Agent in Dubai will Not be Sufficient to Give Jurisdiction to the Dubai Courts

DUBAI COURT OF CASSATION JUDGMENT NO. 202/96
DATED 6 APRIL 1997

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that having a shipping agent located in Dubai is not sufficient to give the Dubai Court jurisdiction to hear an action filed against non-resident owners of a vessel.

CLAIM
An action was filed by a shipping agent in Dubai (the "Plaintiff") against owners of a vessel (the "Defendants") claiming an amount of US $ 75,000 for services rendered while the vessel was located in port in Sudan. The Defendants failed to pay for the services. The Plaintiff obtained an arrest order against the vessel and filed the main action against the Defendants before the Dubai Court, requesting the Court to order the Defendants to pay the full amount claimed, plus costs and to uphold the arrest order.

The Defendants argued that the Dubai Court had no jurisdiction to hear the main action and the case should therefore be dismissed.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance dismissed the action on the ground that the Dubai Court, as the Defendants argued, had no jurisdiction over the matter. The Plaintiff appealed to the Dubai Court of Appeal.

COURT OF APPEAL
Before the Court of Appeal, the Plaintiff argued that the Defendants had a local shipping agent in Dubai and because they carry out business and activities in Dubai through this agent, the Dubai Court should have jurisdiction. The Dubai Court of Appeal, however, dismissed the appeal and upheld the judgment delivered by the Court of First Instance. The Plaintiff appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Plaintiff repeated the arguments advanced before the Court of Appeal. They argued that the Defendants had a general manager sitting at their shipping agent's office in Dubai and that both are there to represent the Defendants' commercial activities in the UAE. The Defendants were using all telephone, telex and postal box facilities of the agent as their own.

Furthermore, the Plaintiff argued that they have a maritime lien over the Defendant's vessel and they had a right to exercise their lien in Dubai where the vessel was arrested. The UAE, therefore, will have jurisdiction according to the provisions of Article 122[1] of the UAE Maritime Code.

The Dubai Court of Cassation held that according to Article 21 of the UAE Civil Procedure Law (the "CPL"),[2] UAE Courts will not have jurisdiction in an action filed against a foreign entity unless certain pre-conditions established in this Article are satisfied. In brief, the Defendants must have a place of domicile, place of business or chosen address or location in Dubai, or the action must relate to assets situated in Dubai or an obligation which has been established or executed or meant to be executed in the Emirate.

---

1 Article 122 of the Maritime Code provides (where relevant) as follows;

" The civil Court within the area in which the arrest is effected shall have jurisdiction to adjudicate upon the subject matter of the claim in the following circumstances, even if the vessel does not have the nationality of the State, in addition to those circumstances set out in the procedural laws in force in the State:

(a) If the claimant has a usual place of residence or head office in the State.
(b) If the maritime debt arose in the State.
(c) If the maritime debt arose during a voyage during which the arrest was effected on the vessel.
(d) If the maritime debt arose out of a collision or salvage over which the Court has jurisdiction.
(e) If the debt is secured by a maritime mortgage over the arrested vessel."

2 Article 21 of the CPL provides (where relevant) as follows;

" The Courts have the power to hear an action against an alien with no address or place of residence in the country in the following circumstances:

(1) If he has an elected address in the country.
(2) If the action relates to assets in the country or to a citizen's estate or to a legacy made in the country.
(3) If the action relates to an obligation concluded or executed or to be executed in the country or to a contract to be legalised in the country or to a death occurring in the country or to a bankruptcy declared in a Court of the country.
(4) If the action is brought by a wife with an address in the country against a husband who previously had an address in the country.
(5) If the action relates to support in respect of a parent, wife, minor, child in guardianship, affiliated child or personal or financial guardianship, if the party requesting support, the wife, minor or child in guardianship has an address in the country.
(6) If the action is concerned with the registration of births, marriages and deaths and the plaintiff is a citizen or an alien with an address in the country, where the defendant has no known address abroad or where national law must apply in the action.
(7) If one of the defendants has an address or a place of residence in the country."

The Court of Cassation also referred to Article 85[3] of the CPL and held that to decide whether someone has used the UAE as a place of domicile or place of business, the Plaintiff must present evidence that the Defendants had actually meant to establish a business and intended to continue to carry out business on a permanent basis in the UAE. This evidence and related facts will be assessed by the Court which first hears the case.

Furthermore, the Court held that according to Article 122 of the Maritime Code, the Court will have jurisdiction to hear a matter if the arrest was granted in Dubai only under certain conditions, none of which applied to this case.

The Court reviewed the documents, including the invoices rendered by the Plaintiff and the correspondence between the parties, and concluded that the Defendants had no formal place of domicile or business in the UAE. Further, it was not open to the Plaintiff to argue that the Defendants had nominated their shipping agent in Dubai as their place of domicile as such a nomination must be in writing and supported by evidence. There was no evidence before the Court to show that the shipping agents were authorized to accept service or represent the Defendants in litigation.

Accordingly, the Plaintiff's appeal was dismissed and the judgment delivered by the lower Courts was upheld.

---

[3] Article 85 of the CPL provides (where relevant) as follows;

" (1) A plea that the Court is not competent because it does not have jurisdiction or because of the type or value of the action may be stated at any stage of the action and the Court will pronounce at its discretion.

(2) If the Court decides that it is not competent on the grounds of the type of action or lack of domestic jurisdiction, it must order that the action be referred to the relevant Court.

Trademark Cases

Table of Contents
Trademark Cases

DUBAI COURT OF CASSATION

A Trademark Proprietor can Apply to the Court for an Order to Destroy a Counterfeit Product

DUBAI COURT OF CASSATION JUDGMENT NO. 77/91
DATED 29 DECEMBER 1991

SUMMARY
In an action filed before the Dubai Court, the Court of Cassation held that a trademark proprietor may apply to the Court for an order to destroy counterfeit products. However, judgment must be given by the Court confirming the violation before the destruction of the counterfeit packages will be sanctioned.

CLAIM
The proprietor of the trademark "Red Label Tea" and their Dubai agent (the "Plaintiffs") filed an action with the Dubai Court requesting that the Court confirm the proprietor-ship of the trademark and to confirm that four local merchants (the "Defendants") had infringed the trademark by marketing and selling a counterfeit product under the name of "Red Label" in Dubai. The Plaintiffs also requested that the Court order the Defendants to stop their violation of the law, for the right to publish the judgment in a local newspaper and to destroy all quantities of the counterfeit goods attached by a previous Court order.

All of the four Defendants denied liability. The first and second Defendants from whose warehouses the counterfeit Red Label was attached, denied any knowledge of the fact that the Red Label they had been dealing with was actually counterfeit. They claimed that they had purchased it in the belief that it was original and not counterfeit.

An interlocutory order was made by the Court by which the case was referred to an expert from the Dubai Criminal Investigation Division (CID) laboratory to advise on whether there were differences between the offending products which had been attached and the original Red Label tea product. The laboratory confirmed that both products were very similar. There were slight differences and it would be difficult for an average person to distinguish between the original product and a counterfeit one.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance gave judgment against the first and second Defendants. The action was dismissed against the third and fourth Defendants

on the grounds that there was no evidence showing that they had any knowledge of or dealing with the counterfeit product. The Court further dismissed the Plaintiff's request to destroy the attached offending product on the grounds that there is no law entitling the Court to destroy goods which have value. The Plaintiffs appealed to the Court of Appeal. The first and second Defendants also appealed and requested the Court to dismiss the action against them.

COURT OF APPEAL

The Dubai Court of Appeal upheld the judgment of the Court of First Instance. The Plaintiffs appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

With regard to the request to deliver judgment against the third and fourth Defen-dants, the Court of Cassation held that the evidence filed in Court concerning their alleged involvement in selling and marketing the offending product was only circum-stantial evidence and not sufficient for the Court to deliver judgment against them. Further, any admission of liability must be clear and without any doubt. Should there be any doubt with regard to an admission of liability, the Court must set aside such admission, especially when the parties concerned come before the Court and deny such admission. Accordingly, the Court of Cassation dismissed the action against the third and fourth Defendants.

However, with regard to the Plaintiff's request to have the counterfeit Red Label packets which were attached by Court order destroyed, the Court of Cassation held that this appeal should be allowed. According to Islamic *Shari'a* principles, any harm must be rectified. Furthermore, Articles 42[1] and 295[2] of the UAE Civil Code ("the Code") allow damage to be quantified in monetary terms.

---

1 Article 42 of the Code provides (where relevant) as follows;
" (1) No harm shall be done, nor harm done in return.
(2) Harm shall be made good.
(3) Harm may not be made good by causing similar harm (in return)."

2 Article 295 of the Code provides (where relevant) as follows;
" The compensation shall be assessed in money, but provided that the judge may, according to the circumstances and upon the application of the victim, order that the plaintiff be restored to his former position, and he may also order that a specific act connected with the harmful act be performed by way of making good."

The Court held that a judge may give an order to restore a matter back to its previous state or, alternatively, order that the party concerned rectify the harmful acts by way of compensation. Accordingly, it is permissible to request that the Court rectify the offence or the harm that has been committed by one party. In this case, it had been proven to the Court that the Red Label product attached by the Court was counterfeit. As the attachment was being enforced by the Court, the Plaintiff's request to destroy the counterfeit product was justified. Had the Court decided otherwise, the Defendants would have been in the untenable position of being able to sell the counterfeit product in the local market, regardless of the earlier Court order given in this case.

The Court of Cassation, therefore, granted the Plaintiffs the right to destroy the attached products at the Defendant's cost.

However, the Court of Cassation also held that it would not be possible to grant the Plaintiffs a right to destroy any and every counterfeit Red Label packet in the market. This right would be limited to those products attached, as it would not be possible to ascertain whether other Red Label was counterfeit or not. Judgment must be given by the Court confirming the violation before before granting the right to destroy counterfeit packages of any products.

Accordingly, this judgment was subsequently enforced against the first and second Defendants by the Dubai Execution Court.

The Proprietor of a Trademark need Not be a Creditor to Apply for an Attachment Order Against Infringing Products

DUBAI COURT OF CASSATION JUDGMENT NO. 98/96
DATED 20 JULY 1996

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that, in the normal course, attachment orders will only be granted if the plaintiff in the action is a creditor of the defendant. However, an exception to this rule is provided in Article 41 of the UAE Trademarks Law. Where the plaintiff is the holder of a registered trademark, he has only to show that his trademark has been infringed, and that the infringement is being carried out by the defendant, in order to make, and obtain, an application for attachment of the infringing product.

CLAIM
An action was filed in Dubai Court by an international company, (the "Plaintiffs"), against a local company and a factory in the UAE (the "Defendants") to obtain an order for attachment against the Defendant's products and label.

The Plaintiffs manufactured and sold a cleaning product using the trademark "Clorox". This trademark was owned and registered in the Plaintiff's name internationally, and in the UAE, and they were using the same to distinguish their product from others in the marketplace. The Defendants were infringing the Plaintiff's trademark by marketing a similar locally manufactured product under the brand name of "Clorix".

A Dubai Court of First Instance judge, acting on an urgent precautionary attach-ment application filed by the Plaintiffs, granted an order for attachment in their favour against the products and the label being manufactured and sold by the Defendants. The Defendants objected to the attachment. The Plaintiffs had, by law, ten days to file an action on the merits following the issuance of the precautionary order.

Court of First Instance

The Court of First Instance cancelled the attachment order on the grounds that Article 252 of the UAE Civil Procedure Law ("the CPL")[1] requires that one of the conditions for granting an attachment order be that the Plaintiffs become creditors to the Defendants. This condition was not satisfied in this case. The Plaintiffs appealed.

Court of Appeal

The Court of Appeal upheld the judgment delivered by the Court of First Instance lifting the attachment and dismissed the appeal. The Plaintiffs again appealed.

Court of Cassation

The Plaintiffs requested that the Court of Cassation reverse the decision of the Court of Appeal, arguing that the lower Court had failed to apply Article 41 of the UAE Trademarks Law of 1992 ("The Trademarks Law")[2] to this matter.

---

1 Article 252 of the CPL provides (where relevant) as follows;
"Without prejudice to the provisions of any other law, the creditor may request the examining Court, or the summary judge as the case may be, to levy a preventative attachment on its adversary's movables in any of the following cases:
1. Cases in which he fears to lose security of his right as in the following cases:
   a. If the debtor did not have a permanent residence in the state.
   b. Should the creditor fear his debtor may abscond, smuggle or conceal his monies.
   c. If the collateral for the debt is threatened to be lost.
2. Where he is a lessor of property with a claim against the sub-tenant on movables, fruits and crops on the rented realty as security for his legally decided lien. A property lessor may take this step also if the movables, fruits and crops were moved without his knowledge unless thirty days had lapsed after the movement thereof or there has been left enough monies to guarantee his decided lien.
3. If the creditor was holding an official or a normal unconditional note of a due debt.
4. If, from the papers enclosed with the request for attachment, the judge establishes the presence of a serious claim on the part of the plaintiff against the defendant.
5. In all cases, the Court may, whenever it deems necessary before responding to any request for attachment, ask for any information, evidences or affidavits."

2 Article 41 of the Trademarks Law provides (where relevant) as follows;
"The owner of a trademark may at any time, and even before initiating any civil or criminal action, obtain from the Court, upon submission of a petition accompanied by an official certificate establishing the registration of the mark, an order directing the necessary preventive measures to be taken, including in particular the following:
1. The preparation of a detailed descriptive inventory of the articles and tools intended to be used or actually used in committing any of the crimes provided in this law. The said inventory shall also include the products and goods, manufactured locally or imported, the addresses of the establishment or packaging, papers or any other articles on which the counterfeit mark or statement was affixed.
2. The seizure of the articles mentioned in the preceding paragraph after the plaintiff has submitted a financial security determined by the Court to indemnify the defendant if this should become necessary.

The Court may nominate one or more experts to assist in the implementation of the preventative measures. In all cases, the preventative measures taken by the owner shall be considered null and void unless followed, within eight days after the date of the Court order, by a civil or criminal action initiated by the owner of the trademark against the party in respect of whom the measures were taken."

The Dubai Court of Cassation held that Article 252 of the CPL establishes pre-conditions to the granting of an attachment order against movable property. However, this does not mean that there are no other conditions for granting attachment, specified by other specific laws, which may set different criteria.

The Court held that Article 41 of the Trademarks Law does not require that a plaintiff become a creditor to a defendant as is required under Article 252 of the CPL. The Trademarks Law requires only that there be an infringement of a trademark registered in the name of the plaintiff in the UAE Trademarks Register. The Plaintiff's trademark, in this case, was registered in the UAE Register.

In this application the Plaintiffs showed that the Defendants were infringing the trademark which they had registered in the UAE Trademarks Register, by selling a product which is very similar in name to one which is sold by the Plaintiffs. These facts fall within the purview of Article 41 and therefore there is no need for the Plaintiffs to prove that they are a creditor of the Defendants for an order for attachment to be granted in their favour.

The Court of Cassation held that as the Court of Appeal had not applied Article 41 of the Trademarks Law, their decision to cancel the attachment order was wrong and in violation of UAE law. Accordingly, the Court cancelled the judgment and referred the matter back to the Court of Appeal to be dealt with according to the guidelines set out above.

Trademarks will be Protected under UAE Trademarks Law even if the Trademark has Not yet been Registered

DUBAI COURT OF CASSATION JUDGMENT NO. 117/96
DATED 11 JANUARY 1997

SUMMARY
In an action filed before the Dubai Courts, the Court of Cassation held that even in the absence of the registration of a trademark, parties who are displaying and selling counterfeit goods with the knowledge that they are counterfeit will be subject to prosecution pursuant to Article 37 of the UAE Trademarks Law.

CLAIM
An international company (the "Plaintiff") filed a complaint with the Dubai Police against two traders (the "Defendants") who were selling a deodorant product ("Impulse") which was very similar in appearance to another very popular product ("Madonna") which was manufactured, distributed and sold in the local market by the Plaintiff. The matter was referred to the Prosecutor's Office who subsequently agreed to prosecute the two Defendants pursuant to UAE criminal and trademark law.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance, after hearing submissions from the Plaintiff, the Defendants and the Prosecutor's Office, delivered a judgment in favour of the Plaintiff. The Defendants were ordered to pay a fine of Dhs. 3,000. An attachment order confiscating the counterfeit goods was also granted.

COURT OF APPEAL
The matter was appealed unsuccessfully to the Court of Appeal where the judgment of the Court of First Instance was upheld and the appeal dismissed.

COURT OF CASSATION
The Defendants appealed to the Court of Cassation where they argued that the Plaintiff in this case only registered their trademark after the original complaint was filed. Further, the Defendants argued, they had no knowledge of the fact that the products which they were selling were similar to the Plaintiff's and were,

therefore, counterfeit. In fact, they claimed to have no knowledge of the existence of the Plaintiff's product at all.

The Court of Cassation, in its decision, held that according to Section 4 of Article 37 of the Trademarks Law ("the Law"),[1] any party who displays, sells, distributes or possesses counterfeit goods, with the knowledge that they are counterfeit, is liable to prosecution. There is no prerequisite for a trademark to be registered for a crime to be committed, according to Article 37, which extends protection to unregistered trademarks, provided that the accused has exhibited the goods for the purpose of selling them, with the knowledge that the goods were counterfeit. This Article was designed to protect consumers from unscrupulous traders who knowingly sell products which are not genuine.

The Courts of First Instance and Appeal had both assessed the relevant facts in this case. They concluded that a crime had been committed. This was confirmed by expert reports filed before these proceedings showing that the product "Impulse" which had been imported and sold by the Defendants was very similar in appearance to the product manufactured by the Plaintiff under the trade name "Madonna". Further, as the Defendants were experienced traders in the market, they should have known that the goods which they were selling were not originals.

Accordingly, the Court of Cassation dismissed the appeal and upheld the decision of the lower Courts in imposing a fine of Dhs. 3,000 on the Defendants.

---

1 Article 37 (4) of the Law provides (where relevant) as follows;
" The following persons shall be liable to imprisonment and to a fine or to either of these two penalties:
(4) Any person who knowingly sells or offers for sale or distributes or possesses for the purpose of sale products bearing a trademark which is counterfeit, imitated or wrongfully affixed."

Famous Trademarks will be Protected even if They are Not Used in the United Arab Emirates

DUBAI COURT OF CASSATION JUDGMENT NO. 251/96
DATED 11 MAY 1997

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that trademarks which are famous throughout the world will be protected in the United Arab Emirates, even if not used in this country.

CLAIM

This action was filed before the Dubai Court by a local paint company ("the Plaintiff") against the international owner of the trademark "Canon" (the "Defendant"). The Plaintiff claimed that the Defendant had registered "Canon" under Class 2, the "International Trademark Class" of the UAE Trademark Register, for the protection of paints and paint products. The Plaintiff claimed that the Defendant did not, in fact, deal in paint products and, therefore, requested that the Court order the trademark removed from the Register.

Furthermore, the Plaintiff claimed that they had been manufacturing and selling paints under the trademark name "Canon" since 1977 whereas the Defendant had, as of the date of the action, never sold any paint products in the UAE using the disputed trademark.

COURT OF FIRST INSTANCE

The Dubai Court of First Instance dismissed the Plaintiff's action. The Plaintiff appealed to the Dubai Court of Appeal.

COURT OF APPEAL

The Dubai Court of Appeal also dismissed the Plaintiff's action and upheld the judgment delivered by the Court of First Instance. The Plaintiff appealed further to the Dubai Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued that the protection of foreign trademarks should not be an absolute right for foreign companies. Protection, it argued, should be accorded to local trademarks, which are used in the UAE,

with an exception granted to international trademarks which are registered according to the terms and conventions of the Paris Convention to which the UAE adhered by virtue of Decree No. 20 of 1996. This latter exception, the Plaintiff continued, should only be granted to those trademarks which were used locally and if there was a chance that the international trademark may be confused with similar products bearing the same mark.

The Plaintiff further argued that there was no evidence before the Court that the Defendant had used the trademark "Canon" internationally, or even within the UAE, to distinguish similar products from those marketed by the Plaintiff. The only products which the Defendant claimed to be marketing in the UAE were ink and toner for photocopier machines. The Plaintiff put forward the observation that toners are used only as spare parts and accessories to the machine and lack independent status as a product requiring the protection of a registered trademark. The Plaintiff, however, was selling paints and paint products which are a completely different line of products.

Finally, the Plaintiff argued that the lower Courts should have taken into consideration the fact that the Plaintiff had used the trademark "Canon" for its paint products since 1977 while the Defendant had failed to show that they had used the disputed trademark in connection with paint products anywhere in the world. The Court should have referred the matter to an expert to provide an opinion on the matter.

The Dubai Court of Cassation held that Article 4 of the UAE Trademarks Law No. 37 of 1992 states that "internationally renowned trademarks may not be registered except upon application of the original owner". This Article is clear and unambiguous and leaves little room for misinterpretation.

Furthermore, the Court held that this Article is an exception to the general principle that trademarks are usually protected if used in the United Arab Emirates. The exception provides that international trademarks which have established a famous name and reputation will have global protection, as these trademarks have exceeded the boundary of the country where they were originally registered. In such cases, the Court held that such famous trademarks cannot be registered by any party other than the proprietor of the mark.

Whether or not a trademark becomes famous or not is a matter of fact which can be assessed by the Court based on the evidence and facts before it. The Court had absolute discretion to consider the evidence before it and was under no obligation to refer the matter to an expert if the Court was able to reach a satisfactory conclusion based on the material before it. In this particular case, the lower Court had come to the conclusion that the trademark "Canon', which had been registered in Japan, the country of origin since 1936, and in many other countries including the UAE, has an international reputation and name and some of the products produced by its proprietor were registered under Class 2. The Court held that, as the Plaintiff had no license to use the trademark, they

therefore had no corresponding right to challenge the Defendant's right to register the trademark under the UAE Trademarks Law, or to use the trademark "Canon" in the UAE.

Accordingly, the Dubai Court of Cassation dismissed the Plaintiff's appeal and upheld the judgment delivered by the Court of Appeal in this matter.

Family Cases

Table of Contents
Family Cases

A Wife may Apply to the Court for a Divorce if She has been Abused by Her Husband

ABU DHABI COURT OF CASSATION JUDGMENT NO. 16/15
DATED 22 FEBRUARY 1994

SUMMARY

In a divorce action filed before the Abu Dhabi Court, the Court of Cassation held that a Muslim lady has the right to divorce her husband where there is evidence that he has abused her physically and the dispute between the two has not been settled. For the Court to take any notice of settlement, it must be evident that the husband and wife had settled their differences and lived together as such, after the last incident of abuse.

CLAIM

A Muslim woman (the "Plaintiff") brought an action before the Sharia Court in Abu Dhabi against her husband (the "Defendant") requesting a divorce on the grounds that he had repeatedly beaten and abused her physically. She argued that it had become impossible for her to continue living with him as he had beaten her several times to the extent that she was forced to file a complaint against him with the local Police. In support of her claim, medical reports were filed showing bruises on her arms, legs, head and back. The Defendant rejected the claim.

COURT OF FIRST INSTANCE

The Plaintiff's action was dismissed by the Abu Dhabi Court of First Instance. The Plaintiff appealed to the Court of Appeal.

COURT OF APPEAL

Before the Court of Appeal the Defendant admitted that he had beaten his wife several times, however, he claimed that she had initiated the altercations by insulting him. The last time he had beaten her was because she had left the house without his permission, although they had settled their differences and made up thereafter.

The Court administered an oath to the Plaintiff who swore that she was telling the truth and that all statements made in this action were true. She had also brought a witness who had heard her husband beating her inside the house.

The Court of Appeal delivered judgment in favour of the wife and she was granted her divorce. The Defendant husband appealed to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

Before the Abu Dhabi Court of Cassation the Defendant argued that the Court of Appeal had ignored the fact that it was his wife who had caused most of the fights and that they had settled their disagreements amicably after the latest incident and lived normally as husband and wife thereafter. Furthermore, the Defendant argued that there was no evidence linking him to the bruising indicated on the medical reports submitted.

The Court of Cassation held that it was evident from the facts before it that the Defendant had admitted to beating his wife viciously and on many occasions. Furthermore, there was no evidence before the Court to substantiate the Defendant's claim that the pair had settled their disagreements. For the Court to take any notice of such settlement, it must be evident that the husband and wife had settled their differences and resumed living together as such. There was no evidence to show that the two had actually lived as husband and wife since the incident which resulted in the Defendant being reported to the Police. The Plaintiff's application for divorce was therefore fully justified.

Accordingly, the Court of Cassation upheld the judgment delivered by the Abu Dhabi Court of Appeal granting the Plaintiff a divorce.

Persons will Only be Declared Dead if They are Absent from their Family without any Trace for a Period of at Least Four Years

ABU DHABI COURT OF CASSATION JUDGMENT NO. 18/15
DATED 26 JUNE 1994

SUMMARY

In an action filed before the Abu Dhabi Court, the Court of Cassation held that, according to *Shari'a* principles, a person will only be declared dead after missing for a period of four years without any trace. A declaration of death will, however, not allow the Court to distribute the deceased's assets. This will only be done when the Court receives confirmation that the person has actually died or has constructively reached the age of seventy years.

CLAIM

In an application filed before the Al Ain Sharia Court, an expatriate Muslim woman (the "Plaintiff") requested an order from the Court declaring her husband dead and, accordingly, to distribute his assets amongst his heirs. The Plaintiff claimed, in a supporting affidavit, that her fifty-four year old husband had left her approximately three years earlier for an unknown destination and had never returned. She also claimed that he had suffered from a mental illness in the past.

COURT OF FIRST INSTANCE

The Al Ain Sharia Court delivered a judgment declaring the Plaintiff's husband to be effectively dead, from the date the judgments were delivered and, additionally, confirmed his heirs as the wife and children who were named in the original appli-cation. The Court also gave an order for the distribution of the deceased's assets.

The General Attorney in Abu Dhabi appealed against this decision to the Abu Dhabi Court of Cassation on the grounds that the matter should be reassessed by a judge in accordance with Islamic jurisprudence and scholars, who had established that only if a person has been absent for a minimum of four years before judgment can the Court declare that they are, for all legal intents and purposes, dead.

COURT OF CASSATION

The Abu Dhabi Court of Cassation held that it has been established by the Al Maliki School of Islamic jurisprudence, applicable in the UAE, that if no information is received about a person who has left his family, the family must wait until such time as they receive confirmation of the person's actual death or residence in another location.

In some circumstances, however, the Court held, Islamic scholars have set out limited conditions under which a declaration of death will be granted. Firstly, concerned parties must apply to the Court for such a declaration. Secondly, a minimum of four years must have elapsed since the last contact before an application to this effect can be made. This exception will not be applied until a concerted effort has been made by the parties concerned to establish the whereabouts of the presumably deceased person.

The Court of Cassation acknowledged that there has been a dispute amongst Islamic scholars regarding when the required four year period commences. Nevertheless, it is well established in the Al Maliki School that such a period commences from the date on which the person becomes absent or when no further information is received concerning his whereabouts.

With regard to the Defendant's assets in this particular case, the Court of Cassation held that it will not be possible to distribute them, nor have the Courts any right to do so, until such time as the Courts receive confirmation of the death or after the expiry of the life-period for that person, assuming that he had lived out his life. The Al Maliki School of Islamic Jurisprudence has assessed the "life" of a person to be seventy years from his date of birth. Therefore, his assets his assets could not be distributed, (although his wife would be considered a widow) until at least seventy years has passed from the allegedly deceased persons date of birth. Documents filed with the Court showed the husband to be fifty-four years old at the time of his disappearance.

The Court of Cassation held that the lower Court was wrong to grant a declaration of death after only three years had elapsed since his disappearance and to grant an order allowing for the distribution of his assets. Accordingly, the Court of Cassation cancelled the judgment of the Court of First Instance and referred the matter back to them to be determined in accordance with *Shari'a* principles.

A Single Woman has No Authority to Administer her Personal and Financial Affairs in the UAE

ABU DHABI COURT OF CASSATION JUDGMENT NO. 116/17
DATED 13 APRIL 1996

SUMMARY

In a unique judgment delivered by the Abu Dhabi Court of Cassation, the Court held that a single woman, having reached the age of 18, cannot administrate her own personal and financial affairs and remains under the care and control of her parents until such time as she is married or it is proved by witnesses that she is capable of administering her own affairs.

CLAIM

An eighteen year old Muslim woman (the "Plaintiff") filed an action in the Abu Dhabi Shariah Court requesting a Court order terminating the custodial rights which her mother (the "Defendant") had to administrate the Plaintiff's personal and financial affairs since her birth in 1976. The Plaintiff brought to the Court two witnesses to confirm that she had reached the age of eighteen years, was not married and was capable of administering her own affairs.

COURT OF FIRST INSTANCE

The Abu Dhabi Court of First Instance delivered the order as requested terminating the custodial rights of the Defendant over the Plaintiff and held that the Plaintiff was perfectly capable of administering her own affairs as a full adult. The Defendant appealed.

COURT OF APPEAL

The Abu Dhabi Court of Appeal upheld the judgment of the Court of First Instance. However, the Attorney General, with the power accorded him by virtue of UAE law to act on the public's behalf, appealed against this decision to the Abu Dhabi Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation the Attorney General argued that according to UAE law, children will only be considered as adults when they reach the age of 21. The lower Court, it was argued, had therefore violated Islamic *Shari'a* prin-

ciples in holding that an 18 year old female is capable of administering her own financial and personal affairs.

The Court held that, according to the Maliki School of Islam, applicable to the Emirate of Abu Dhabi, a daughter who is under the custody of her mother or father will remain under their custody until such time as she marries or the following conditions are fulfilled;

(1) She is shown to be capable of administering her personal and financial affairs.
(2) She has a history of acting responsibly and adequately in her normal day to day affairs.
(3) Witnesses confirm that she is capable of administering her own affairs and there is no need to have a parental custodian do so.

Unless the above conditions are fulfilled a woman will not be able to administer her own affairs without a custodian, even if she reaches the age of 21. However, it is possible for a custodian to license a minor, if the minor has reached the age of 18, to carry out certain financial transactions provided that permission to do so has been granted by the custodian and custody remains in their hands.

Accordingly, the Abu Dhabi Court of Cassation cancelled the judgment delivered by the Court of Appeal and referred the matter back to the Court of Appeal to deliver a judgment on the matter consistent with the guidelines established herein.

A Parent's Custodial Rights may be Relinquished by Agreement

DUBAI COURT OF CASSATION JUDGMENT NO. 8/97
DATED 1 JULY 1997

SUMMARY
In a family dispute filed before the Dubai Court, the Court of Cassation held that each person who has a right of custody over children may relinquish that right by agreement, as long as such an agreement will not harm the children involved and the terms of the agreement do not conflict with UAE public policy on the subject.

CLAIM
A local individual (the "Plaintiff") brought an action against his ex-wife (the "Defendant") requesting that the Court order the Defendant to relinquish custody of her two children who were one and three years of age. The Plaintiff claimed that his ex-wife had remarried and he did not want his children to grow up with their new step-father.

COURT OF FIRST INSTANCE
The Dubai Court of First Instance dismissed the Plaintiff's action. The Plaintiff appealed to the Dubai Court of Appeal.

COURT OF APPEAL
The Court of Appeal, having heard the witnesses, cancelled the judgment delivered by the Court of First Instance and awarded custody of the children to the father. The Defendant appealed to the Court of Cassation.

COURT OF CASSATION
Before the Court of Cassation the Defendant argued that the Plaintiff had agreed in writing, before the Dubai Court Notary, that he would not claim custody of the children from their mother, even if she were to re-marry. In addition, the Defendant argued that the Plaintiff would be an unfit custodial parent.

The Court of Cassation held that, regarding the issue of custody, the lower Court should have evaluated the interests of the father, the mother and the children in order to effect a balance between the parties' competing interests. Nevertheless, in the case of competing interests, the Court held that the interests of the children would supersede those of either parent.

However, the Court also held that each person who has a right of custody over children may relinquish that right by agreement with another, if no harm will be done to the children by doing so. According to Islamic principles of *Shari'a* a mother would lose her custodial rights to children if she were to remarry a stranger unless the father is aware of the marriage and had consented to it.

In this case, the Court held that it was evident from the written declaration given by the Plaintiff and signed before a *Shari'a* Judge and the Public Notary in Dubai that he had relinquished his custodial rights and had no objection to his ex-wife's remarriage. Furthermore, nothing in the agreement appeared to run contrary to UAE public policy. Consequently, the Plaintiff can have no objection to the Defendant retaining custody of her children.

Accordingly, the Defendant's appeal was upheld and the decision of the Court of Appeal was reversed.

Miscellaneous Cases

Table of Contents
Miscellaneous Cases

Drivers of Vehicles will Not be Held Liable for Damages if Pedestrian Victims had Crossed the Street at an Undesignated Area

ABU DHABI COURT OF CASSATION JUDGMENT NO. 23/14
DATED 27 MAY 1992

SUMMARY

In an action heard before the Abu Dhabi Court, the Court of Cassation held that in cases where a moving vehicle hits a pedestrian, the driver of the vehicle will not be liable for damages to the pedestrian victims if the latter had negligently entered the street from an undesignated area.

CLAIM

The Abu Dhabi Prosecutor's office brought an action against a vehicle driver (the "Defendant") claiming that the latter had been driving his vehicle negligently and recklessly. The Defendant allegedly hit two pedestrians who had been crossing the street. Both suffered extensive physical injuries which were fully detailed in the medical reports filed before the Court. The location where the accident occurred, however, was not designated as a pedestrian crossing. The Prosecutor requested that the Court deliver judgment against the driver for having violated the Abu Dhabi Traffic Act of 1967.

COURT OF FIRST INSTANCE

The Court of First Instance delivered judgment against the Defendant and ordered him to pay Dhs. 500 in fines, plus Dhs. 90,000 in damages to the first victim and Dhs. 15,000 in damages to the second victim. The Defendant appealed.

COURT OF APPEAL

The Court of Appeal amended the judgment of the lower Court and ordered the Defendant to pay Dhs. 57,750 to the first victim and Dhs. 10,000 to the second one. With respect to the fine, the Court of Appeal upheld the decision of the Court of First Instance. The Defendant appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Defendant argued that the earlier judgments were in error on the basis of the facts which had been assumed. The lower Courts had given considerable weight to the finding that the Defendant had been driving carelessly, whereas it was equally relevant, the Defendant argued, that the two pedestrian victims had been crossing the street recklessly, suddenly and from an area which was not a designated pedestrian crossing. They were not acting in a cautious and careful manner and the Defendant could not have avoided hitting them when they had so suddenly appeared in front of his vehicle.

The Court of Cassation held that in any judgment delivered against an accused for causing death or damages to another party, the Court is obliged to set out the full circumstances of the accident, how it had taken place and how a fault had been committed by the party accused of committing the same, in violation of the law. The Court must also consider the actions of each of the victims and the defendant in those proceedings, at the time of the accident.

The Court of Cassation held that for the decision of the lower Court to be upheld, it must be evident to the Court that the accident would not have taken place in the absence of speeding and negligent driving by the Defendant. The lower Courts had not considered the full implications of the victims suddenly appearing on the road from an area which was not designated for pedestrian use.

Accordingly, the Court of Cassation cancelled the judgment of the Court of Appeal and referred the matter back to it for reconsideration.

Company Reorganization is a Valid Reason to Terminate an Employee

ABU DHABI COURT OF CASSATION JUDGMENT NO. 133/14
DATED 8 NOVEMBER 1992

SUMMARY
In an action filed before the Abu Dhabi Court, the Court of Cassation held that termination of employment based on company reorganization is justified under the UAE Labour Law (No. 8 of 1980). The Court also held that reporting injuries under Article 142 of the UAE Labour Law is an obligation imposed on the employer and not the employee.

CLAIM
An employee (the "Plaintiff") brought an action against his employer (the "Defendant") claiming an amount of Dhs. 93,285.00 as compensation for injuries suffered. The Plaintiff claimed that he had been injured during the course of his employment resulting in 20 percent disability. The Plaintiff had worked for the Defendant for eight years as a watchman and 2 years as a driver under an unlimited term contract. The Defendant had terminated the Plaintiff's employment without paying him compensation and end of service benefits despite the fact that he was injured. The Defendant argued that the Plaintiff's injuries were not caused during the course of his employment and the reason he was dismissed was because falling world oil prices had necessitated a company reorganization.

COURT OF FIRST INSTANCE
The Court of First Instance ordered the Defendant to pay the Plaintiff an amount of Dhs. 18,312.00. The Plaintiff appealed against this judgment to the Court of Appeal.

COURT OF APPEAL
The Plaintiff's appeal was dismissed by the Court of Appeal and the judgment delivered by the Court of First Instance was upheld. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued that the lower Courts erred in holding that it is the responsibility of the employee and not the employer to report injuries to the police and the Labour Department as is required by Article 142[1] of the UAE Labour Law. The Plaintiff argued that he was not required by law to follow the procedures laid down in the labour legislation as they were directed at employers and not employees. The Plaintiff further claimed that his employer was aware of the injuries which he had sustained. Subsequent medical reports confirmed the fact that he had suffered a 20 percent disability.

The Court of Cassation held that reporting injuries under Article 142 to the Police and to the Labour Department is an obligation imposed on the employee. Furthermore, the fact that there was no medical report which the employee could have submitted, does not deprive him of other legally applicable means of establishing the nature and extent of his injuries.

The Court of Cassation also held that assessing whether or not the termination of the employee's employment was justified fell within the jurisdiction of the lower Court. It was evident from the facts of this case that the employment contract entered into between the parties was an unlimited term one which could be terminated at any time. In this case, the Defendant had terminated the Plaintiff's contract pursuant to a letter which had been issued as a circular to all employees which stated that a world-wide decline in oil prices was the reason behind a company reorganization and the termination of several employment contracts. Termination based on economic necessity, the Court held, does not amount to an unjustified dismissal as was claimed by the Plaintiff.

The Court further held that an employer who had a set of rules, which were established and applied uniformly to all employees without discretion, may reduce an employee's living allowance if there was good reasoning behind the reduction. The Plaintiff in this case had earlier agreed to an allowance reduction in writing and had, therefore, waived his right to argue the matter before this Court.

Accordingly, the Court of Cassation cancelled the Court of Appeal judgment in part and referred the matter back to the Court of Appeal to deal with in accordance with the guidelines established by this Court in regard to Article 142 of the Labour Law.

---

[1] Article 142 of the Labour Law provides (where relevant) as follows;
"If the employee sustains a labour injury or occupational disease as enumerated in Schedule (1) and (2) attached to this law, the employer or its representative must report the accident instantly to the Police and Labour Department or any of its branches having jurisdiction over the place of business. The report must include the employee's name, age, vocation, address and nationality in addition to a brief description of the accident, its circumstances and the arrangements made for the employee's medical aid or treatment.
The police shall carry out the necessary investigation, upon receipt of the report which contains statements of witnesses and the employer or his representative and a statement from the injured party if his condition so allows and the report must indicate in particular if the accident is related to work and whether it was deliberate or a result of gross misconduct on the part of the employee."

A Claim for Wrongful Arrest will Only be Sustainable if Bad Faith is Shown

DUBAI COURT OF CASSATION JUDGMENT NO. 193/93
DATED 25 DECEMBER 1993

SUMMARY

In an action filed before the Dubai Court, the Court of Cassation held that it is not sufficient for a ship-owner, to recover damages for wrongful arrest, to show that no right of arrest existed or that it has suffered damages as the result of the arrest, or that damages to it could have been anticipated at the time of the arrest. A Plaintiff in such an action must prove that the Defendant had bad faith and that it had deliberately arrested the vessel so as to cause damages. However, if the party who had obtained the arrest order has done so through the due process of the Court and has exercised its rights within the legal system according to the normal process, it will not be held liable in damages.

CLAIM

An action was brought by the owner of a vessel (the "Plaintiff") against an individual (the "Defendant") requesting that the Court order the Defendant to pay the Plaintiff the amount of Dhs. 6,011,965, plus US $22,884, by way of damages incurred by the Plaintiff as a result of a wrongful arrest of the vessel instigated by the Defendant. The Plaintiff claimed that while its vessel was berthed in Ras Al Khaimah discharging cargo, and before continuing *en route* to Jordan, the Defendant had obtained an order for the arrest of the Plaintiff's vessel from the Ajman Court on the grounds that the vessel was owned by another party against whom the Defendant was proceeding in a separate action. The Plaintiff had submitted evidence to the Court to substantiate its claim that their vessel was not owned by the defendant in the separate action, yet it was a considerable period of time before the Defendant would agree to the release of the Plaintiff's vessel. In the interim, cargo was damaged and profit was lost.

COURT OF FIRST INSTANCE

The Court of First Instance dismissed the Plaintiff's action on the ground that there was no evidence to show that the Defendant had applied for the arrest with a mala fide intention or had otherwise abused the process of the Court. The Plaintiff appealed to the Court of Appeal.

COURT OF APPEAL

The Court of Appeal upheld the judgment of the Court of First Instance. The Plaintiff appealed further to the Court of Cassation.

COURT OF CASSATION

Before the Court of Cassation, the Plaintiff argued that after they had provided the lower Court with evidence of the fact that the defendant in the separate action was not also the owner of this particular vessel, the Defendant challenged this fact and claimed that the Plaintiff's certificates were forged, thereby prolonging the action unnecessarily. The Plaintiff also argued that it is an extremely onerous burden to place upon a Plaintiff to adduce evidence of bad faith in order to claim damages.

The Court of Cassation held that according to the principles of UAE law governing wrongful arrest, a party will not be held liable for causing damage to another while exercising his lawful rights. However, when a person is exercising his rights, it must be done so as to achieve some benefit and such benefit must be both lawful and proper.

The Court also held that there must exist bad faith for an award of damages to be made. To assess whether or not there has been the requisite bad faith, four preconditions must be fulfilled. Firstly, the exercise of rights must have been solely intended to cause damage. It must be asked whether or not an intended legitimate benefit would have accrued from the exercise of these rights. Secondly, the party exercising his rights must have intended to accomplish an illegal benefit (i.e. in violation of Islamic Sharia principles or public order). Thirdly, the benefit intended must be small and insignificant in comparison to the damages resulting from achieving such benefit. Finally, the Court held that the party in the intentional exercise of his rights must have exceeded what is considered normal in usage and practice among average persons.

The Court held that it is established by law that each person may seek a remedy through the Court to protect or to seek a right without causing damage to another. The burden of proof is on the claimant (the Plaintiff in these proceedings) to show that the Defendant violated their rights and fell within the criteria of wrongful arrest set out herein. It will not be sufficient merely to show that the Defendant could have anticipated that damages would be caused as this does not necessarily mean that the Defendant deliberately intended to cause such damages.

Accordingly, the Court of Cassation dismissed the Plaintiff's appeal and the judgment delivered by the Court of Appeal was upheld.

Series General Editor
Dr. Mark S. W. Hoyle

Titles in the Series

United Arab Emirates Court of Cassation Judgments 1989 - 1997, Richard Price and Essam Al Tamimi
(ISBN 90-411-1005-4)

Islamic Law and Finance: Religion, Risk an Return, Frank E. Vogel and Samuel L. Hayes III
(ISBN 90-411-05476)

Islamic Institutions in Jerusalem, Yitzhak Reiter
(ISBN 90-411-0382-1)

The Law of Business Contracts in the Arab Middle East, Nayla Comair-Obeid
(ISBN 90-411-0216-7)

Arab Islamic Banking and Renewal of Islamic Law, Nicholas D. Ray
(ISBN 1-85966-104-1)

Business Laws of Yemen, Abdulla M.A. Maktari and John McHugo
(ISBN 1-85966-112-2)

Finance of International Trade in the Gulf, Dr. Ahmed A.M.S. Al-Suwaidi
(ISBN 1-85333-947-4)

Islamic and Public Law, Chibli Mallat (ed.)
(ISBN 1-85333-768-4)

Islamic Family Law, Chibli Mallat and Jane Connors (eds.)
(ISBN 1-85333-301-8)

Islamic Law and Finance, Chibli Mallat (ed.)
(ISBN 1-85333-121-X)

The Islamic Law of Personal Status (2nd ed), Jamal J. Nasir
(ISBN 1-85333-280-1)

The Law of Commercial Procedure of the United Arab Emirates, Dawoud S. El Alami
(ISBN 1-85966-080-0)

The Status of Women under Islamic Law (2nd ed), Jamal J. Nasir
(ISBN 1-85966-084-3)

The Marriage Contract in Islamic Law, Dawoud S. El Alami
(ISBN 1-85333-719-6)

Mixed Courts of Egypt, Mark S.W. Hoyle
(ISBN 1-85333-321-2)

The Theory of Contracts in Islamic Law, S.E. Rayner
(ISBN 1-85333-617-3)

Unlawful Gain and Legitimate Profit in Islamic Law, Nabil A. Saleh
(ISBN 1-85333-721-8)

(please order by ISBN or by title)