Environmental Liability in Commercial Space Launches: Examining the South Texas Mass Tort Case Against SpaceX

May 4, 2026

On April 30, 2026, eighty plaintiffs filed a federal complaint in the U.S. District Court for the Southern District of Texas against Space Exploration Technologies Corp. ("SpaceX"). The case, *Aguilar et al. v. Space Exploration Technologies Corp.*, No. 1:26-cv-00485, alleges that repeated Starship launch and landing operations at the Starbase facility in Cameron County have caused structural damage to homes across Port Isabel, South Padre Island, and Laguna Vista. Asserting claims of negligence, gross negligence, and trespass under the exclusive federal jurisdiction of the Commercial Space Launch Act ("CSLA"), the case has the potential to reshape the legal relationship between commercial launch operators and neighboring communities.

The Complaint

The plaintiffs are homeowners residing roughly six to twenty-two miles from Starbase's launch pads. The complaint alleges that eleven Starship/Super Heavy test flights between April 2023 and October 2025, together with earlier sub-orbital tests and static firings, subjected their properties to intense acoustic energy. The complaint relies on peer-reviewed research by Brigham Young University scientists whose field measurements during the fifth and sixth test flights recorded maximum unweighted sound levels exceeding a threshold that SpaceX's own assessments and FAA environmental reviews recognize as the onset of structural damage risk. Sonic boom

overpressures near and exceeding such a threshold were recorded at the closest locations, which is generally associated with windows shattering and superficial structural damage.

Critically, the complaint draws on SpaceX's own regulatory submissions, including a 2024 corporate statement acknowledging a "gap in data" regarding acoustic prediction for its Raptor engines. The plaintiffs frame this as evidence that SpaceX has been operating at the frontier of acoustic science while conducting the most powerful rocket launches in history, establishing both foreseeability and conscious indifference to risk.

Legal Claims and Statutory Framework

The complaint asserts three causes of action. First, the negligence claim alleges that SpaceX failed to conduct adequate pre- and post-launch studies and proceeded despite a high likelihood of property damage. Second, the gross negligence claim seeks exemplary damages, arguing that SpaceX had actual awareness of acoustic risks, especially after the inaugural April 2023 test destroyed its own launch pad, yet continued with conscious indifference. Lastly, the trespass claim contends that SpaceX intentionally caused acoustic energy to enter the plaintiffs' properties without consent, resulting in physical harm.

Jurisdiction rests on 51 U.S.C. § 50914(g), which grants federal courts exclusive jurisdiction over third-party property damage claims arising from licensed launch activities. This provision confirms that the CSLA contemplates such suits but does not immunize the licensee. SpaceX is required under the statute to carry up to $500 million in third-party liability insurance, and the FAA's 2022 environmental assessment explicitly stated that SpaceX would be responsible for resolving structural damages caused by sonic booms.

Potential Legal Consequences

The outcome will turn on causation: whether the plaintiffs can demonstrate that launch-generated acoustic energy, rather than pre-existing deficiencies or other factors, caused their alleged damages. The complaint does not itemize specific harm to each property, which will demand expert engineering and acoustic testimony. SpaceX may challenge the causal link and argue for regulatory compliance.

However, regulatory compliance is not typically a complete defense to tort claims under Texas law; an FAA launch license does not, by itself, insulate a licensee from negligence or trespass liability. The gross negligence claim, if successful, could expose SpaceX to exemplary damages well beyond compensatory relief. The plaintiffs' strategy of grounding their case in SpaceX's own admissions and peer-reviewed acoustic data gives it a scientific credibility that may prove difficult to overcome at summary judgment.

Industry Implications

The ripple effects of this case will likely extend well beyond South Texas. The FAA authorized up to 25 Starship launches per year from Boca Chica in 2025, and similar acoustic concerns have been flagged at Cape Canaveral, Florida, where SpaceX is building another Starship launch site. A substantial damages award or a judicially imposed constraint could prompt a reassessment of how launch site proximity to residential communities is evaluated during environmental review.

The case also exposes a gap in the CSLA framework: while the statute requires insurance and channels claims to federal court, it does not establish a dedicated compensation mechanism for communities chronically affected by launch operations (e.g., like airport regimes or military installations). As vehicles grow more powerful and cadences increase, policymakers may need to reconsider whether this

framework adequately balances interest in space access with the existing property rights of neighboring populations. For operators planning new or expanded sites, this lawsuit is a timely reminder to integrate acoustic modeling and community engagement from the outset.

Author: Abdulla Abuwasel
Title: Partner – Transactions
Email: awasel@waselandwasel.com
Profile: https://waselandwasel.com/about/abdulla-abuwasel/

War Series: Can War Set Aside an Arbitration Award? Applying the Dubai Cassation Court's Afghan Precedent to the 2026 Iran War

May 4, 2026

Introduction: Procedural Defenses in the Context of Regional Conflict

The 2026 Iran War introduces logistical and administrative challenges for commercial operations across the Middle East. As contracting parties address contract performance and supply chain disruptions in various sectors, disputes are frequently referred to international arbitration in accordance with standard commercial agreements.

In the context of regional instability, a relevant procedural issue arises when a party attempts to challenge the validity

of arbitration proceedings or seeks the annulment of a resulting award by citing the conflict. Respondents may argue that wartime disruptions constitute a procedural force majeure, asserting that conditions prevented them from appointing representatives, receiving proper notification, or participating in hearings.

For parties seeking to enforce or defend arbitral awards in Gulf Cooperation Council (GCC) jurisdictions, understanding how local courts evaluate these annulment requests provides necessary context. Dubai Court of Cassation Judgment No. 483 of 2024 (Commercial), issued on February 12, 2025, analyzed an annulment dispute stemming from the 2020 conflict in Afghanistan, offering legal principles applicable to arbitrations conducted during the 2026 Iran War.

The Factual Matrix: The Afghan Conflict and Annulment Proceedings

The dispute in Dubai Cassation Judgment No. 483/2024 originated from a 2018 contract concerning the Afghan National Airports project. Following the change in government and the outbreak of conflict in Afghanistan in 2020, the claimant initiated arbitration before the Permanent Court of Arbitration (PCA). When the respondent did not appoint an arbitrator within the contractual timeframe, the PCA appointed a sole arbitrator who eventually issued an award.

The respondent subsequently filed an annulment action in the Dubai courts. The respondent argued that the Afghan conflict constituted a force majeure event that prevented the formation of a government, hindered the appointment of authorized legal representatives, and restricted their ability to present a defense. Additionally, they claimed the arbitrator violated due process by sending procedural orders to an unauthorized employee’s email address rather than an official representative. Finally, the respondent argued the arbitrator failed to correctly apply the agreed-upon Afghan law,

specifically contesting the award of interest, which they asserted was not permitted under that legal framework.

The Court’s Ruling: Digital Participation and Procedural Due Process

The Dubai Court of Cassation dismissed the annulment action, establishing that the physical constraints of a regional conflict do not automatically invalidate arbitration proceedings if the party had practical means to participate.

The Court examined the procedural record and observed that, despite the ongoing war, the respondent was aware of the proceedings and engaged with the tribunal. The evidentiary record demonstrated that the respondent had requested extensions of time, submitted documents, and paid their share of the arbitration advance on costs (amounting to 145,625 AED). Furthermore, representatives for the respondent had appeared before the arbitrator and corresponded via email.

Crucially, the Court noted that the arbitration hearings were conducted via video conferencing technology. The Court concluded that the use of video technology enabled direct participation, and therefore the claims regarding the war did not constitute a sufficient reason for the failure to present a defense.

This precedent indicates that GCC courts review the factual record of a party’s engagement. Administrative interactions, such as paying fees, sending email correspondence, or accessing virtual hearings, are weighed against claims that wartime conditions precluded participation.

Scope of Review and the Burden of Proving Foreign Law

The Court also addressed the respondent’s claim that the arbitrator misapplied the substantive Afghan law regarding the awarding of interest.

The Dubai Court of Cassation reaffirmed a standard principle of the UAE arbitration framework: an annulment action is a procedural review, not an appeal on the substantive merits. The judiciary's supervisory role does not extend to reassessing the arbitrator's evaluation of evidence or their interpretation of the law.

Furthermore, under UAE evidentiary principles, foreign law is treated as a material fact. The party asserting that a foreign law was misapplied bears the burden of proving its existence and content. Because the respondent alleged that interest was prohibited under Afghan law but failed to submit formal proof that the provisions applied by the arbitrator were invalid or contrary to Afghan law, the Court rejected the argument.

Procedural Considerations for Arbitration in the 2026 Context

For commercial entities and legal practitioners managing arbitrations and subsequent enforcement proceedings during the 2026 Iran War, the Dubai Court of Cassation precedent highlights several practical considerations:

- **Documenting Engagement:** Tribunals and claimants should maintain comprehensive records of interactions with the respondent. Routine administrative actions, such as the payment of institutional fees, email correspondence, or requests for procedural extensions, can serve as evidence of notification and capacity to participate, addressing subsequent annulment claims based on wartime disruption.
- **Utilizing Virtual Proceedings:** Conducting proceedings via video conferencing addresses logistical constraints. As demonstrated in the judgment, the availability of digital hearing options provides an accessible venue and mitigates claims that regional instability prevented a party from presenting their case.
- **Evidentiary Requirements for Foreign Law:** When challenging or defending an award based on the

application of a foreign substantive law before GCC courts, parties must adhere to evidentiary standards. Assertions regarding foreign legal principles must be supported by submitting authenticated texts of the relevant foreign legislation to meet the burden of proof.

Conclusion

As regional operations adjust to the logistical challenges of the 2026 Iran War, disputes concerning the validity of arbitration proceedings are evaluated on procedural grounds by local courts. Dubai Court of Cassation Judgment No. 483/2024 demonstrates that GCC courts maintain a defined scope for annulment. The logistical difficulties associated with regional conflict do not inherently justify a failure to participate, particularly when virtual proceedings are utilized and administrative engagement is documented. For parties enforcing contractual rights, adherence to procedural requirements and evidentiary standards remains standard practice for securing and defending arbitral awards.

Wasel & Wasel advises on commercial disputes, international arbitration, and cross-border award enforcement within the UAE courts and the broader GCC. The firm represents international contractors and commercial entities in proceedings before the UAE Federal and Emirate-level Courts, handling the execution of arbitral awards and advising on annulment actions. Their practice includes advising entities on procedural requirements, managing multi-jurisdictional arbitrations under institutional rules, and addressing jurisdictional matters in international dispute resolution.

Author: Abdulla Abuwasel
Title: Partner – Transactions
Email: awasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/abdulla-abuwasel/

Artificial Intelligence Hallucinations in Arbitration: Analyzing the Landmark Award Annulment in ARIHQ c. Santé Québec

May 4, 2026

The advent of generative artificial intelligence (AI) has brought unprecedented capabilities and efficiencies to the legal profession. However, alongside its benefits come profound risks, particularly when AI is employed in adjudicative decision-making. The recent landmark ruling by the Quebec Superior Court in *Association des ressources intermédiaires d'hébergement du Québec (ARIHQ) c. Santé Québec* (2026 QCCS 1360) serves as a stark warning to the international and domestic arbitration communities. In an unprecedented move, the Court annulled an arbitral award after finding that the sole arbitrator had implicitly delegated his decision-making authority to a generative AI tool, which resulted in the inclusion of "hallucinated" jurisprudence and legal doctrine.

This article unpacks the *ARIHQ* judgment, explores the comparative international grounds for setting aside such awards under the New York Convention and the UNCITRAL Model Law, surveys the growing global judicial consensus on AI, and proposes practical safeguards for inclusion in arbitration agreements and Terms of Reference.

The Judgment: *ARIHQ c. Santé Québec*

The dispute originated from an unpaid retroactive remuneration claim between a healthcare intermediary resource (Osman) and a Montreal health authority (CCSMTL, now Santé Québec). An arbitrator dismissed the claim on preliminary grounds, ruling that the contractual notice periods had expired. The claimants sought to annul the award before the Quebec Superior Court, relying on two grounds: first, that the award violated public policy by modifying statutory prescription periods; and second, that the arbitral procedure was not respected because the arbitrator relied on non-existent legal authorities, strongly suggesting the use of generative AI.

The Honourable Martin F. Sheehan swiftly dismissed the public policy argument, affirming the well-established principle that a mere error of law—even concerning public policy provisions—does not justify setting aside an arbitral award unless the outcome itself is fundamentally repugnant to public order.

However, the Court decisively upheld the procedural challenge. Reviewing the award, the Court verified that the central doctrinal and jurisprudential authorities cited by the arbitrator to support the validity of the forfeiture clause simply did not exist. The arbitrator had referenced a fabricated doctrinal article by a real author and hallucinated judgments ostensibly from the Quebec Court of Appeal and the Superior Court (e.g., fictitious citations for *Ville de Montréal c. Syndicat des cols bleus* and *Tremblay c. Commission scolaire de la Jonquière*).

The Court emphasized the *intuitu personae* nature of arbitration—the principle that an arbitrator is chosen for their personal expertise, judgment, and authority. Relying on an AI tool to formulate the substantive reasoning without verifying the output violated the fundamental maxim *delegatus non potest delegare* (a delegate cannot delegate) and breached the secrecy of deliberations.

Translating the crucial analytical and operative parts of the judgment, Justice Sheehan concluded:

"The preponderance of the evidence therefore leads to the conclusion that the Arbitrator's authority was delegated and that he abdicated his role to review the result. This conclusion is inevitable given that all of the doctrinal and jurisprudential references on which the Arbitrator relies are non-existent and 'hallucinated'. For this reason, the Award must be annulled."

The Court, however, added a critical caveat: not every use of AI will automatically lead to annulment. If the AI usage is minimal, or if the hallucinated references do not form the crux of the reasoning, the award might survive if the breach did not fundamentally taint the proceedings. But in this case, the breach struck at the very heart of the arbitrator's reasoning and affected the confidence of the parties in the arbitration regime.

The operative part (*dispositif*) reads:

"FOR THESE REASONS, THE COURT: ANNULS the arbitral award rendered on August 8, 2025, by the impleaded party, Mr. Michel A. Jeanniot; ORDERS the parties to choose a new arbitrator within 60 days of this judgment; THE WHOLE, with legal costs."

Domestic Set-Aside Grounds and Comparative International Frameworks

The Quebec Code of Civil Procedure (C.C.P.) is deeply influenced by the UNCITRAL Model Law, making this judgment highly instructive for international practitioners. The Court annulled the award under Article 646(3) of the C.C.P., which allows set-aside where "the applicable arbitral procedure was not respected."

The UNCITRAL Model Law and the New York Convention

Under Article 34(2)(a)(iv) of the UNCITRAL Model Law, and identically under Article V(1)(d) of the New York Convention, an award may be set aside or refused enforcement if "the arbitral procedure was not in accordance with the agreement of the parties."

When parties agree to arbitrate, they contract for a bespoke dispute resolution process wherein a specific human tribunal exercises independent intellectual judgment. The use of an unverified Large Language Model (LLM) to draft the award's substantive reasoning is a structural deviation from this agreed procedure. Furthermore, feeding confidential submissions into a public AI tool violates the confidentiality and secrecy of deliberations inherent in arbitration.

The Public Policy Exception

While the Quebec Court dismissed the substantive public policy argument, an award heavily reliant on AI hallucinations could trigger the procedural public policy exception under Article 34(2)(b)(ii) of the Model Law and Article V(2)(b) of the New York Convention. An award anchored in fabricated law deprives the losing party of the right to a fair hearing and the opportunity to present its case (*audi alteram partem*). The parties cannot possibly address or distinguish phantom precedents during the proceedings. Enforcement courts in major hubs like London, New York, or Singapore would view the abdication of the adjudicative function to a "black box" algorithm as a severe affront to fundamental notions of justice, procedural fairness, and due process.

Global Court Directions on AI Usage in Proceedings

The *ARIHQ* judgment resonates with an emerging global judicial consensus that demands strict guardrails around the use of generative AI in dispute resolution. Courts and tribunals worldwide have recently confronted the consequences of "AI hallucinations" and have responded with firm directives.

United States

The U.S. has been ground zero for AI in litigation, notably following the infamous *Mata v. Avianca* case, where lawyers were sanctioned for submitting AI-generated fictitious case law. Consequently, numerous federal and state judges have issued standing orders. These orders typically mandate that counsel file a certificate attesting that no generative AI was used in drafting, or that if it was, a human attorney rigorously verified the accuracy of all citations and legal propositions. The focus is squarely on human accountability and preventing the waste of judicial resources on fabricated jurisprudence.

United Kingdom

In late 2023, the UK Courts and Tribunals Judiciary issued official guidance for judicial office holders. While acknowledging the utility of AI for administrative tasks, the guidance explicitly warns judges about the severe risks of hallucinations and deepfakes. The UK Master of the Rolls has emphasized that judges remain personally responsible for their judgments and must not delegate legal analysis or substantive drafting to AI tools, safeguarding the integrity of the "judicial mind." Furthermore, it firmly warns against entering any confidential case information into public AI chatbots.

Middle East (QFC and ADGM)

Progressive commercial courts in the Middle East have taken decisive action against AI misuse. In the Qatar Financial Centre (QFC), the Civil and Commercial Court's late-2025 judgment in *Sheppard v Jillion LLC* found a lawyer in contempt for repeatedly citing AI-generated fake cases. This prompted the QICDRC to issue Practice Direction No. 1 of 2026, which established a comprehensive framework requiring lawyers to independently verify AI-generated submissions. Similarly, in the Abu Dhabi Global Market (ADGM), the Court in *Arabyads v*

Gulrez Alam [2025] ADGMCFI 0032 ordered severe wasted costs against a legal team that submitted a defense riddled with false, AI-generated legal authorities, concluding that unverified AI use amounts to reckless professional conduct.

Proposed Directions for Terms of Reference and Arbitration Agreements

The *ARIHQ* decision underscores a critical vulnerability: waiting for a court to set aside a tainted award means the parties have already suffered the immense costs and delays of a compromised arbitration. To proactively mitigate these risks, parties should expressly regulate the use of AI in their Arbitration Agreements, or more practically, in the Terms of Reference (ToR) and Procedural Order No. 1 (PO1).

Practitioners should consider integrating the following AI protocols:

- **Explicit Prohibition of Delegation:** The ToR should clearly state that the arbitral tribunal must not delegate its adjudicative, analytical, or substantive decision-making functions to any generative AI tool. The arbitrator must assume full, personal responsibility for the reasoning, legal research, and drafting of the award.
- **Permitted Uses and Mandatory Verification (Human-in-the-Loop):** Parties can define acceptable AI use, such as utilizing AI for translation, formatting, or document summarization, provided it does not replace substantive analysis. PO1 should include an affirmative obligation for both the tribunal and counsel to strictly verify any AI-assisted output against primary legal sources. The tribunal could be required to issue a "Statement of Human Authorship" within the final award confirming that all citations and factual references have been manually verified.
- **Confidentiality and Data Security Guardrails:** To protect

the secrecy of deliberations and party confidentiality, the ToR must prohibit the uploading of confidential case information, pleadings, or evidence into open-source or publicly accessible generative AI models (e.g., public versions of ChatGPT). Only secure, closed-loop enterprise AI systems that do not retain data for model training should be permitted.

- **Transparency and Disclosure:** If a party intends to rely on materials or legal submissions substantially generated by AI, they should be required to disclose this fact to the tribunal and opposing counsel. Likewise, the tribunal should disclose if AI tools were used for any significant administrative or drafting assistance.

Conclusion

The Quebec Superior Court's annulment of the award in *ARIHQ c. Santé Québec* serves as a defining precedent in the modern era of dispute resolution. It establishes a clear boundary: while technology can enhance the efficiency of the arbitral process, it cannot usurp the human judgment that parties contractually bargained for. As generative AI tools become ubiquitous, the international arbitration community must proactively regulate their use. By embedding robust AI guidelines into Terms of Reference, parties can protect the integrity of their proceedings, safeguard confidentiality, and insulate their awards from the devastating consequences of digital hallucinations.

Author: Abdulla Abuwasel
Title: Partner – Transactions
Email: awasel@waselandwasel.com
Profile: https://waselandwasel.com/about/abdulla-abuwasel/

Misappropriated Mining Hardware and Newly Minted Tokens: Analysis of Yimiao v 3V (Supreme Court of Victoria) – Opportunity Loss, Unjust Enrichment, and Constructive Trusts

May 4, 2026

Introduction

The Supreme Court of Victoria's judgment in *Yimiao Australia Pty Ltd v 3V Development Australia Pty Ltd* [2026] VSC 133 provides a detailed examination of how established common law and equitable doctrines apply to the unauthorized retention of cryptocurrency mining hardware and the subsequent generation of digital assets. Delivered by Justice Attiwill, the decision addresses the quantification of damages in volatile digital asset markets, the application of unjust enrichment to misappropriated infrastructure, and the equitable classification of newly minted cryptocurrency.

This article objectively outlines the facts and legal findings of the judgment, and it compares the Victorian Supreme Court's approach with the legal frameworks in the United Kingdom (UK), Hong Kong (HK), the Dubai International Financial Centre (DIFC), and the Abu Dhabi Global Market (ADGM), focusing on global hot topics such as digital asset valuation and equitable tracing.

The Factual Matrix

The plaintiff, Yimiao Australia Pty Ltd, purchased 1,598 Bitmain L7 Antminer machines, configured to mine Litecoin and Dogecoin. These machines were hosted at a site in Victoria owned by the defendant, 3V Development Australia Pty Ltd (3V).

The Court found that on 25 July 2022, 3V excluded Yimiao's agents from the premises. The Court stated that "3V voluntarily took possession of the Yimiao Machines without any legal right to do so" [987]. Subsequently, 3V disconnected the hardware from Yimiao's designated mining pool and connected a portion of the machines to F2Pool and ViaBTC mining pool accounts linked to 3V personnel, including its sole director, Dajian Li. The Court found that 3V utilized the hardware to mine 8,850,529 Dogecoin and 4,806 Litecoin [1010].

Yimiao initiated proceedings claiming bailment, detinue, conversion, trespass to goods, restitution, and knowing receipt of trust property against 3V and Dajian Li.

Quantification of Damages and Loss of Commercial Opportunity

A primary issue before the Court was the quantification of damages for Yimiao's "loss of a commercial opportunity" to mine cryptocurrency over the hardware's four-year lifespan. Yimiao sought over AUD $26 million, relying on expert evidence projecting future network hashrates (mining difficulty), token issuance, and a realization strategy where tokens would be held until reaching specific fiat values.

Justice Attiwill confirmed the availability of damages for a lost commercial opportunity but rejected Yimiao's calculation. Applying principles from *Sellars v Adelaide Petroleum NL* and quoting the High Court in *Cessnock City Council v 123 259 932 Pty Ltd*, the Court noted that a plaintiff is given a "'fair wind' but not a 'free ride'" [541] when a defendant's wrongdoing causes uncertainty.

The Court found the expert's methodology unreliable, observing that it failed to properly account for the mathematical hard

caps on token issuance and abandoned historical average pricing when updating forecasts. Justice Attiwill held:

“In my view, the value of the opportunity that Yimiao lost cannot be ascertained by reference to the degree of possibilities and probabilities. There is insufficient evidence of what the value of that opportunity might have been. Yimiao did not adduce important evidence of value, despite being able to do so. In addition, important evidence of Mr McNew is not cogent and is unreliable. As a result, there are substantial and important gaps in the evidence concerning value. In these circumstances, it is not for the Court to use uninformed guesswork to determine the issue of damages.” [653]

Consequently, the Court awarded nominal damages of $100 for the torts of conversion and detinue regarding the lost profits [917].

The insistence on objective, non-speculative evidence when claiming damages in volatile digital asset markets is consistent across major common law jurisdictions. In the UK and Hong Kong, courts demand rigorous economic models to establish quantum in digital asset disputes. For example, in the UK (*B2C2 Ltd v Quoine Pte Ltd* [2020] SGCA(I) 02, applying common law), courts have rejected retrospective, hypothetical trading strategies for volatile assets. Similarly, the DIFC Digital Assets Law (DIFC Law No. 3 of 2024) expressly defines digital assets as property but relies on standard common law principles of foreseeability and certainty for damages. The ADGM, applying English common law via the Application of English Law Regulations 2015, mirrors this approach, aligning with the Victorian Court’s refusal to engage in “uninformed guesswork.”

Restitution and Unjust Enrichment: Objective Valuation of Hardware

While the claim for future crypto profits failed due to evidentiary deficiencies, Yimiao successfully recovered AUD $14,850,066.72 under the doctrine of restitution for unjust enrichment.

The Court determined that 3V was unjustly enriched by obtaining possession of the machines. Quoting the High Court in *Redland City Council v Kozik*, Justice Attiwill noted:

“A claim for restitution of unjust enrichment requires a defendant to have received some benefit for which restitution must be made. Unlike compensation or loss, and unlike the prophylactic principle of accounting for and disgorging a defendant’s net profits, restitution of unjust enrichment focuses upon the benefit of the transaction between the plaintiff and the defendant.” [936]

The Court categorized the relevant benefit not as the actual cryptocurrency generated, but as the “opportunity to use the machines.” The Court observed:

“Where a person obtains property of another person without the authority or consent of that person, and obtains a benefit in doing so (ie the opportunity to use it), this may give rise to a claim for restitution of an unjust enrichment.” [942]

To value this benefit, the Court utilized the objective replacement cost of the hardware at the time of the misappropriation. Relying on expert evidence that a new L7 Antminer was valued at $19,310.88 AUD on 25 July 2022, the Court awarded restitution based on the 769 unreturned machines:

“The missing Yimiao Machines were received by 3V, and have never been returned to Yimiao. On and from 25 July 2022, 3V received the benefit of the opportunity to use the Yimiao Machines… In these circumstances, the replacement value as at 25 July 2022 is an appropriate measure of the objective value of the missing Yimiao Machines… It is the amount of

$14,850,066.72. This is the value of the benefit retained by 3V at the expense of Yimiao." [964-965]

The treatment of digital asset infrastructure as property subject to objective restitution aligns with approaches in the UK, HK, DIFC, and ADGM. Under English law, unjust enrichment requires that a defendant be enriched at the claimant's expense without a juristic reason. Courts frequently grant restitutionary remedies for the objective value of misappropriated property, often assessed via a hypothetical "reasonable hiring fee" or replacement cost (*Attorney General v Blake* [2001] 1 AC 268). The DIFC and ADGM Courts apply similar tests derived from English equity. By anchoring the unjust enrichment claim to the physical hardware's replacement cost rather than the volatile digital tokens it produced, the Victorian Court utilized a valuation mechanism widely accepted across these international jurisdictions.

Constructive Trusts and Knowing Receipt: Hardware vs. Newly Minted Tokens

A central legal issue was whether the newly minted Dogecoin and Litecoin constituted trust property, which would trigger third-party liability for Dajian Li under the "knowing receipt" doctrine (*Barnes v Addy*), as the mined tokens were deposited into his F2Pool accounts.

The Court bifurcated its analysis between the physical hardware and the newly minted tokens. For the physical hardware, the Court applied the principle from *Black v S Freedman & Co*:

"Where money has been stolen, it is trust money in the hands of the thief, and he cannot divest it of that character." [980]

Justice Attiwill concluded:

"I find that 3V held the Yimiao Machines on constructive trust

(institutional) for Yimiao upon the principles in *Black v S Freedman & Co* on and from 25 July 2022. 3V misappropriated the Yimiao Machines." [982]

However, the Court reached a different conclusion regarding the newly minted Dogecoin and Litecoin. While 3V breached its fiduciary duty as a constructive trustee by using the machines for its own profit, the resulting cryptocurrency was not trust property at the exact moment of its creation.

Quoting *Grimaldi v Chameleon Mining NL [No 2]* and *Hospital Products Ltd v United States Surgical Corporation*, the Court explained that under Australian law, the trust imposed over profits generated in breach of fiduciary duty is a *remedial* constructive trust, which only comes into existence upon a court order:

"The imposition of such a constructive trust is remedial, not institutional. In *King v Fister*, the Queensland Court of Appeal stated that a 'remedial constructive trust is, as its name suggests, one imposed by way of remedy in order to do equity. It is a trust imposed by the court and arises at the time of the making of the order'." [1007]

Consequently, because the cryptocurrency was not classified as institutional trust property at the time it was received by Dajian Li's wallet, the cause of action for knowing receipt failed:

"As a result, any receipt of the cryptocurrency by Mr Dajian Li did not involve the receipt by him of trust property. The cryptocurrency was not trust property when it was misappropriated by 3V or when it may have been subsequently received by Mr Dajian Li… To the extent the cryptocurrency may be the subject of a constructive trust, that constructive trust would be remedial rather than institutional, and thus would not apply to the cryptocurrency until the time of this Court making an order to that effect. The claim against Mr

Dajian Li must be dismissed." [1008]

The distinction between institutional and remedial constructive trusts highlights a notable divergence between Australian equity and English law. English courts have rejected the concept of the remedial constructive trust. In *FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45, the UK Supreme Court held that unauthorized profits or bribes obtained by a fiduciary are held on an *institutional* constructive trust from the moment of receipt.

If the *Yimiao* facts were adjudicated in the UK, or in jurisdictions that strictly follow English equity such as Hong Kong, the DIFC, or the ADGM, a court would likely determine that the newly minted cryptocurrency was held on an institutional constructive trust immediately upon generation. Under that framework, the tokens would constitute "trust property" upon deposit, potentially satisfying the necessary elements for a "knowing receipt" claim against the director. The Australian retention of the remedial constructive trust for fiduciary profits creates a temporal gap that limits third-party recipient liability prior to a court order, a framework that contrasts with the approaches in the UK, HK, DIFC, and ADGM.

Conclusion

As digital asset operations mature, *Yimiao Australia v 3V Development* outlines the application of common law frameworks to hardware misappropriation and cryptocurrency generation. The Victorian Supreme Court's rigorous approach to the quantification of damages, combined with the jurisdictional variances identified in equitable tracing and trust doctrines across the UK, DIFC, ADGM, and Hong Kong, confirms that digital asset recovery requires a jurisdictionally tailored strategy.

Author: Abdulla Abuwasel
Title: Partner – Transactions
Email: awasel@waselandwasel.com
Profile: https://waselandwasel.com/about/abdulla-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

Contractor Withholding Your Tax Invoice? How UAE Courts Are Protecting Tax Refunds (Abu Dhabi Cassation Judgment No. 289 of 2026)

May 4, 2026

In the evolving legal landscape of the United Arab Emirates (UAE), the intersection between commercial construction disputes and tax compliance presents unique challenges for property owners. Often, contractors withhold essential documentation, particularly tax invoices, as leverage during payment disputes. However, these invoices are strictly required by the Federal Tax Authority (FTA) for taxpayers seeking Value Added Tax (VAT) refunds. A landmark ruling by the Abu Dhabi Court of Cassation in **Judgment No. 289 of 2026 (Commercial)**, issued on April 14, 2026, provides a masterclass on how UAE courts utilize the civil doctrine of specific performance to mandate the delivery of tax invoices, empowering taxpayers to strictly comply with FTA regulations.

The Factual Matrix and The Court's Ruling

The dispute in Judgment No. 289 of 2026 arose from a construction contract for a residential villa. The contractor

(the Respondent) initiated a lawsuit against the project owner (the First Defendant), the financing bank (the Appellant), and the consultant.

The Court summarized the facts, noting that the contractor sought the remaining value of the project works and compensation after a breakdown in the relationship:

("By virtue of a contracting contract dated 20/07/2020 for the construction, completion, and maintenance of a residential villa… against a lump sum of 2,000,000 dirhams… however, following the connection of electricity… the first defendant, the employer, took possession of the villa and lived in it, and prevented the respondent's workers from entering the site to complete the remaining works and final finishes, in addition to retaining equipment, machinery, and cables belonging to the respondent inside the villa.")

During the proceedings, an engineering expert was appointed. Crucially, the expert assessed not only the financial dues but also the documentation necessary for tax compliance. The Court of Cassation highlighted this vital finding:

("The supervising judge appointed an engineering expert who deposited a report concluding that the remaining amount for the respondent is 360,577 dirhams… and that it is incumbent upon the contractor (the respondent) to deliver to the first defendant (the owner) the tax invoices in the amount of 85,577 dirhams so that he can recover the value-added tax.")

Recognizing the statutory necessity of these documents, the Court applied the principle of specific performance, upholding the lower court's ruling which strictly ordered:

("Compelling the respondent to deliver to the first defendant (the owner) all invoices and documents related to the project…")

The FTA's Position on Holding Compliant Tax Invoices

The project owner’s demand for the tax invoices via a court order highlights the uncompromising administrative position of the Federal Tax Authority (FTA). Under UAE Federal Decree-Law No. 8 of 2017 on Value Added Tax, recovering input tax or claiming a refund, such as the special scheme for UAE Nationals building new residences under Article 61, is strictly conditional upon the taxpayer holding a valid, compliant tax invoice.

The FTA operates on strict documentary compliance. It mandates that a tax invoice must meet all rigorous requirements set out in Article 59 of the Executive Regulations (e.g., displaying the words “Tax Invoice,” the supplier’s Tax Registration Number, a description of the goods or services, and the exact tax amount). A mere bank transfer receipt, a payment certificate, a contract, or even a court-appointed expert’s report establishing that VAT was paid is legally insufficient for the FTA.

Because the FTA acts as a strict gatekeeper, withholding refunds if compliant invoices are absent, a contractor’s refusal to issue or hand over a tax invoice causes direct, quantifiable financial harm. In this case, the owner stood to lose 85,577 AED in VAT refunds solely due to the lack of compliant invoices. Consequently, taxpayers must rely on specific performance to force counterparties to produce these mandatory documents.

Legal Principles Applied by the Court

The judgment is rich in its application of procedural and substantive legal principles. Beyond specific performance, the Court of Cassation addressed **Capacity or Legal Standing**.

The financing bank appealed the judgment, arguing it lacked capacity as it was merely a funder:

(“That its role was limited to financing the project only, without there being any direct or indirect relationship with

the respondent…")

The Court decisively rejected this, laying out a foundational legal principle regarding capacity:

("A lawsuit is the right to resort to the judiciary to protect a claimed right or legal position; hence, substantive capacity must exist for both parties… Capacity is met in the defendant if the right claimed in the lawsuit exists against him, considering him a concerned party and responsible for it if the plaintiff's entitlement is proven.")

Furthermore, the bank argued it could not disburse funds without the owner's written instructions. The Court established the vital principle of **Judicial Supremacy over Contractual Restraints**, stating:

("And that the judgment issued by the court to liquidate the account serves in place of the owner's written instructions and supersedes them, rendering unnecessary the existence of written instructions from the owner to the appellant to disburse the respondent's dues…")

Conclusion

Abu Dhabi Court of Cassation Judgment No. 289 of 2026 serves as an essential precedent for taxpayers navigating the intersection of contract law and VAT compliance. By affirming the order for specific performance to hand over tax invoices, the court recognized the functional reality of UAE tax law: without the physical tax invoice, the statutory right to a VAT refund is nullified. This judgment safeguards taxpayers, ensuring that the withholding of tax documentation cannot be weaponized in commercial disputes.

Author: Abdulla Abuwasel
Title: Partner – Transactions
Email: awasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/abdulla-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

Navigating Downstream Corporate Tax Liability in the UAE: An Analysis of Dubai Court of First Instance Judgment No. 1188 of 2025

May 4, 2026

Introduction

The introduction of the UAE Corporate Tax regime via Federal Decree-Law No. 47 of 2022 has fundamentally shifted the commercial landscape in the region. As businesses adapt to the new regulatory environment, a critical legal question has emerged: to what extent can a company unilaterally pass its corporate tax liabilities downstream to independent contractors, agents, or service providers? A recent judgment from the Dubai Court of First Instance (Case No. 1188 of 2025) provides vital clarity on this issue. By decisively ruling against unilateral tax deductions, the Court established clear tests and boundaries for corporate tax liability distribution, setting an essential precedent for future commercial disputes.

Overview of the Facts

The dispute arose from a real estate brokerage relationship. The Plaintiff, an independent real estate agent, successfully brokered the sale of a property unit for a total transaction value of AED 1,638,947. According to the agreement between the Plaintiff and the Defendant, a real estate brokerage company, the total 6% sales commission was to be split, with the

Plaintiff receiving an 80% share, amounting to AED 78,669.47.

However, upon final settlement, the Defendant company remitted only AED 71,589.22 to the Plaintiff, withholding a balance of AED 7,080.25. When the Plaintiff demanded the outstanding amount, the Defendant justified the withholding by claiming the deduction was necessary to cover its Corporate Tax and Value Added Tax (VAT) liabilities. Following unsuccessful attempts to resolve the matter amicably, the Plaintiff initiated legal proceedings to claim the withheld balance plus a statutory delay interest of 5%.

The Legal Arguments and Laws Cited

In its defense, the Defendant company relied heavily on the nascent tax legislation, specifically citing Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (referencing Articles 1, 2, 3, 11, and 12) and the applicable UAE Value Added Tax legislation (cited in the pleadings as Law No. 18 of 2022). The company argued that because taxes are imposed on corporate income and revenues at respective rates of 9% and 5%, the proportionate burden of these taxes should naturally be deducted from the commission paid out to the agent who generated that revenue.

The Court evaluated this premise by rooting its analysis in the UAE Civil Transactions Law. Citing the Law of Evidence (Article 1), which dictates that the burden of proof lies with the claimant, the Court examined the contractual nexus between the parties. It heavily referenced Article 243(2) of the Civil Transactions Law, which mandates that each contracting party must fulfill what the contract obliges them to do, and Article 246, which requires contracts to be executed in good faith and in accordance with their explicit terms. Furthermore, the Court invoked Article 272(1), emphasizing that if one party fails to perform their contractual obligations, the other party has the right to demand execution.

The Court's Tests for Downstream Tax Liability

Upon reviewing the findings of a court-appointed accounting expert, the Court laid down a definitive framework, effectively establishing key tests, to determine the ability or inability of a corporate entity to impose tax liabilities downstream onto service providers:

1. **The Statutory Burden Test (Who bears the legal incidence?):** The Court affirmed that the statutory burden of Corporate Tax and VAT inherently falls upon the taxable corporate entity that registers the revenue; in this case, the Defendant company. The legal framework establishes that the tax burden is placed on the company itself, rather than being an automatic obligation of the downstream service provider or commission earner. Absent any other legal or contractual mechanism, the entity legally defined as the taxable person under the prevailing tax laws must bear its own tax costs.

2. **The Express Contractual Agreement Test (Is there explicit consent?):** To shift or deduct this statutory tax burden from a downstream party's remuneration, the Court established a strict evidentiary threshold. There must be an express, written agreement between the parties authorizing such a deduction. The Court categorically stated that without a written contract explicitly permitting the company to deduct statutory taxes from the agent's commission, any such deduction is legally baseless and unsupported by documentary evidence. Because the Defendant could not produce a written agreement authorizing the tax deduction, the Court deemed the unilateral "tax sharing" an unlawful breach of contract.

Judgment and Strategic Implications

Applying these tests, the Court ruled in favor of the

Plaintiff, ordering the Defendant to pay the withheld AED 7,080.25. Additionally, reflecting updated judicial precedent from a 2021 directive of the General Assembly of the Dubai Court of Cassation, the Court awarded a 5% legal interest rate on the owed amount from the date of the judicial claim until full settlement, and ordered the Defendant to bear all legal fees and expenses.

This judgment serves as a strict warning to corporations in the UAE. Companies cannot use the introduction of Corporate Tax as a unilateral excuse to reduce payouts to contractors, freelancers, or agents. If a business intends to share its tax burden or calculate commissions on a post-tax basis, this mechanism must be explicitly drafted into written agreements. Moving forward, businesses should urgently audit and revise their independent contractor and brokerage agreements to ensure tax liability allocations are clearly defined, mutually agreed upon, and fully compliant with UAE contract law.

Author: Abdulla Abuwasel
Title: Partner – Transactions
Email: awasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/abdulla-abuwasel/

War Series: Rogue Charterers, Vessel Misappropriation, and the Illusion of “Washed” Titles – Applying the 2001

UAE Supreme Court Gulf War Precedent to GCC Maritime Logistics in the 2026 Iran War

May 4, 2026

Introduction: The Maritime Fog of War and the Weaponization of Charter Parties As the

2026 Iran War aggressively destabilizes the Middle East, the world's most critical maritime chokepoints, the Strait of Hormuz, the Arabian Gulf, and the Gulf of Oman, have been transformed into theaters of intense logistical paralysis. With naval blockades, soaring war risk premiums, and sweeping economic sanctions dominating the operational landscape, the global shipping industry finds its standard Charter Party Agreements (CPAs) fracturing under the pressure.

While much of the industry's focus is understandably directed toward the frustration of time charters, safe port warranties under standard BIMCO forms (such as CONWARTIME or VOYWAR), and off-hire disputes, a far more considerable legal crisis is emerging in the offshore sector: the outright misappropriation of vessels.

Operating under standard bareboat agreements (such as the BIMCO BARECON form), certain charterers are exploiting the geopolitical chaos by invoking the 2026 war not merely to excuse operational delays, but to entirely evade their absolute obligation to redeliver the vessel. Taking advantage of the "fog of war," these operators effectively hijack multi-million-dollar assets, sever communications, and attempt to "wash" the vessel's title through opaque judicial sales in

peripheral jurisdictions, eventually re-flagging the ship and deploying it back into lucrative trade routes under a new identity.

In standard peacetime practice, disputes arising from these CPAs are overwhelmingly directed to arbitration, most notably under the London Maritime Arbitrators Association (LMAA) Terms. However, an LMAA arbitral award is ultimately a contractual remedy; it cannot physically intercept a stolen ship. When a misappropriated vessel suddenly drops anchor in a GCC port, shipowners require immediate, coercive *in rem* action from local civil courts.

For maritime stakeholders navigating this crisis, the UAE Federal Supreme Court provides an effective blueprint for vessel recovery. By examining a landmark judgment (Federal Supreme Court Judgment No. 252 of 2001, Civil), which adjudicated a complex vessel misappropriation stemming from the Second Gulf War (the 1990 Iraq-Kuwait conflict), we can transpose these powerful jurisdictional precedents directly onto the maritime realities of the 2026 Iran War.

The Factual Matrix: Transposing the 1990 Gulf War Misappropriation

The factual matrix of UAE Supreme Court Judgment No. 252/2001 serves as a perfect analogue for the aggressive title disputes erupting today. The dispute originated in the shadows of the 1990 Gulf War and the subsequent international embargoes, mirroring the blockades and sanctions defining the 2026 conflict.

On March 27, 1990, the original shipowner (the First Respondent) leased their vessel, the *Arabian Sea* (registered in Basra), to a commercial operator (the Charterer) under a five-year bareboat charter. Shortly after the vessel was delivered, the geopolitical landscape violently collapsed. As the regional war escalated and sanctions isolated operations,

the Charterer exploited the blackout. When the charter period expired, the Charterer flatly refused to redeliver the vessel to the original owner, under the cover of wartime blockade and boycott.

Years later, the original owner tracked the vessel down. It had entered the territorial waters of the UAE and docked at the Port of Sharjah, flying the flag of Belize and operating under a new name, the *Baron*. Acting swiftly, the original owner petitioned the Sharjah Court of First Instance and successfully secured a conservatory arrest order (Attachment No. 4/1997), physically trapping the ship in port and demanding its delivery free of any encumbrances.

The legal battle escalated when a foreign corporate entity, Redcap Limited (the Intervener/Appellant), intervened in the lawsuit, demanding the arrest be lifted. Redcap claimed they were the new, legitimate owner of the vessel, having purchased it in 1996 for $1,700,000 USD through a formal judicial sale executed by the High Court in Kenya.

Relying on standard international maritime principles, Redcap argued that a judicial sale at public auction physically purges a vessel of all prior liens, encumbrances, and ownership claims. They asserted that if the original owner had a grievance regarding the stolen ship, their claim must be directed exclusively against the $1.7 million sale proceeds held in Kenya, not against the physical vessel itself. Furthermore, the Intervener launched a jurisdictional challenge, arguing that the UAE courts had no authority to adjudicate the ownership of a foreign-flagged vessel, owned by a foreign entity, that was merely passing through UAE waters “incidentally.”

Jurisdictional Supremacy: The “Asset in Port” Trap

In 2026, foreign shipowners, rogue charterers, and P&I Clubs frequently assume that because a CPA is governed by English

law, or because a vessel flies a flag of convenience, GCC courts will decline jurisdiction over complex ownership disputes. The UAE Supreme Court dismantled this assumption.

The Intervener argued that under the UAE Maritime Commercial Law, the vessel's presence in Sharjah was merely "incidental" and did not grant the civil courts substantive jurisdiction over an international ownership dispute.

The Supreme Court rejected this entirely, anchoring its ruling in the absolute sovereignty principles of the UAE Civil Procedure Code. The Court established a definitive rule: the physical presence of the asset dictates the jurisdiction.

("The original principle is regional judicial jurisdiction, and the administration of justice is a public interest exercised by the State within the limits that achieve this interest through its national judiciary… Therefore, the international jurisdiction vested in the national judiciary is, in this capacity, a matter of public policy linked to the sovereignty of the State.")

Applying Article 21 of the Civil Procedure Law, the Court held that UAE courts possess absolute jurisdiction over lawsuits filed against foreigners who have no domicile in the UAE, provided the lawsuit relates to "funds or property located within the State." The Court explicitly ruled:

("The reason for jurisdiction in that case goes back to the fact that the disputed property is located in its territory, which is an objective criterion based on the location of the property. If it is located there, jurisdiction is established for the State's courts, even if the source of the obligation did not arise there, or if the presence of the property was incidental.")

Furthermore, the Court harmonized this with Article 115 of the UAE Maritime Commercial Law applicable at the time, confirming that a dispute over the "ownership of a vessel" unequivocally

constitutes a “maritime debt” justifying an immediate conservatory arrest. For 2026 rogue charterers hoping to use UAE ports as temporary safe havens, the precedent is clear: the moment your hull crosses into UAE territorial waters, the protective veil of foreign jurisdictions is challengeable.

Piercing the “Cleansed Title” Myth: The Burden of Proving Foreign Law

The most considerable finding by the Supreme Court, and the most critical warning for the 2026 crisis, was its treatment of the Kenyan judicial sale. The Intervener believed that presenting a foreign court’s auction decree would automatically force the UAE courts to recognize their clean title.

Under the GCC civil law framework, foreign law is not treated as binding legal authority that a judge must independently research; rather, it is treated purely as a “material fact.” According to strict conflict of laws principles, the party relying on a foreign legal mechanism (such as the purging effect of a Kenyan judicial sale) bears the absolute burden of conclusively proving the existence, text, and application of that foreign law.

Because the Intervener merely alleged the effect of the foreign judicial sale in their memorandums but failed to formally, procedurally prove the foreign law to the standard required by UAE evidentiary rules, the Supreme Court upheld the lower courts’ dismissal of the Kenyan sale entirely.

(“Foreign law is a mere fact, the burden of proving which falls on the party invoking it, and the Appellant did not prove its existence.”)

By invalidating the foreign judicial sale due to evidentiary failures, the Court retroactively erased the Intervener’s title. The Supreme Court confirmed the original owner’s absolute title to the vessel, solidifying the Sharjah arrest

order and mandating the ship be handed over to them, completely free of any actions taken by the rogue charterer. The Intervener, despite having paid $1.7 million, lost the ship.

Strategic Playbook for Maritime Logistics in the 2026 Crisis

For international shipowners, lessors, and maritime litigators attempting to secure assets in the chaotic theater of the 2026 Iran War, the 2001 UAE Supreme Court precedent dictates a highly determined, localized strategy.

Bypass LMAA Delays for Immediate Asset Recovery: While you must commence LMAA arbitration (if not modified) to resolve the underlying BARECON or NYPE breach regarding the unpaid hire or failure to redeliver, arbitration will not physically stop the ship from trading. Shipowners must utilize maritime intelligence to track misappropriated vessels. The moment a stolen vessel enters UAE or broader GCC waters (such as Jebel Ali, Fujairah, or Sharjah), owners must immediately file an *ex parte* application under local maritime law (e.g., UAE Maritime Law Art. 115) to arrest the vessel based on the ownership dispute. The local courts may assert jurisdiction strictly based on the physical presence of the hull.

Do Not Fear “Title Washing” or Flags of Convenience: If a rogue bareboat charterer has attempted to extinguish your title by routing the vessel through a dubious judicial sale in a peripheral jurisdiction, do not assume your claim is reduced to chasing the sale proceeds. As the precedent proves, UAE courts will heavily scrutinize foreign judicial sales. If the new “owner” cannot flawlessly prove the foreign law that allegedly purged your title, the UAE courts may disregard the foreign auction and return the physical asset to its original registered owner.

Strict Evidentiary Hygiene for Foreign Law: Conversely, if you are a legitimate buyer of a vessel that was lawfully auctioned

during the 2026 conflict, and you face an arrest in the UAE from a disgruntled former owner, you cannot merely submit the foreign court judgment. You must submit legally authenticated, translated copies of the foreign maritime legislation, supported by expert legal affidavits, to prove *as a matter of fact* that the foreign judicial sale extinguished all prior encumbrances. Relying on "general principles of international maritime law" may result in a fatal loss at the local courts.

Conclusion: Territorial Reality Over Contractual Illusion

The 2026 Iran War has created a highly volatile environment for wider international commercial operations, where severe disruptions in shipping lanes, banking, and port operations have catalyzed a surge in distressed asset scenarios, complex cross-border restructuring, and, in some instances, outright maritime opportunism. As international operators, distressed stakeholders, and occasional rogue charterers navigate these disruptions, whether to resolve legitimate operational disputes, execute complex foreign sales, or obscure vessel identities, the belief that standard LMAA arbitration clauses will keep procedures safely insulated in London while the physical ships continue to trade or seek refuge in the Middle East may not be the case.

UAE Federal Supreme Court Judgment No. 252/2001 provides clarity in this sense. The GCC civil law framework is often protective of its territorial sovereignty. When a maritime asset enters domestic waters, the state's courts possess the jurisdiction to arrest it, adjudicate its true ownership, and strip away fraudulent or unproven foreign titles. For shipowners fighting to reclaim their fleets in the 2026 crisis, the message is clear: the most powerful weapon in your arsenal is not just the arbitration clause in your charter party, but the sovereign reach of the local port state.

Wasel & Wasel demonstrates extensive expertise in navigating complex maritime disputes, admiralty matters, and vessel

arrests within the UAE courts and international arbitration forums. The firm has a proven track record of representing maritime contractors in grievance proceedings before the UAE Federal Courts to challenge the precautionary seizure of vessels. Their capabilities include advising logistics companies on appealing vessel arrest orders and successfully obtaining stays of execution from the UAE Federal Supreme Court against lower court vessel seizure orders. Furthermore, Wasel & Wasel actively handles complex charter party disputes, recovers outstanding debts under SUPPLYTIME agreements , and represents international shipping companies in London-seated LMAA arbitration proceedings concerning vessel sales and management.

Author: Abdulla Abuwasel
Title: Partner – Transactions
Email: awasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/abdulla-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

Civilian Space Facilities in an Era of Armed Conflict: Dual Use Military Targets

May 4, 2026

The strikes conducted against the IRGC Aerospace Force Headquarters in Tehran in March 2026, followed days later by the bombing of a building at the Iran University of Science and Technology (“IUST”) on March 28, have introduced a crucial question for the global commercial space industry: at what point does a civilian aerospace facility lose the protection its designation is understood to afford it?

The answer, as these events demonstrate, carries direct and immediate consequences for every private company, university research program, and commercial operator that shares infrastructure, personnel, or technology with a state-affiliated space program operating in a contested geopolitical environment.

The justification advanced for the Aerospace Headquarters strike was that the facility served simultaneously as a research center for civilian satellite operations and as a command-and-control node for military satellite programs, including those assessed to have provided surveillance and intelligence capabilities over a wide regional theater. The core assertion was function, not designation. Whether or not one accepts that characterization, the doctrinal logic underlying it is well-established: a facility's protected status under international law is determined by what it does, not by how it is labeled. The moment a civilian asset makes an effective contribution to military action and its destruction offers a definite military advantage, its civilian character becomes legally contestable.

The IUST situation is more layered and, for the international academic and commercial space community, more immediately concerning. Founded in 1929 as Iran's first institution to train engineers, IUST is a ranked technical university with thousands of students across dozens of fields of engineering and science; an institution whose civilian educational mission is not in reasonable dispute. Yet, the IUST faculty have conducted research with direct applications for unmanned aerial vehicles and, in 2022, the Japanese government listed the university as an entity of concern for proliferation relating to missiles and nuclear weapons. More concretely, the Zafar satellite project was developed by IUST in direct partnership with the Iranian Space Agency, a joint venture that exemplifies the close collaboration between Iran's academic institutions and its governmental space bodies.

This is the dual-use problem made operational and inescapable. The same department that produces graduate engineers for a country’s commercial aerospace sector also advances propulsion and systems research that feeds its state satellite program. The same laboratory that publishes peer-reviewed papers on orbital mechanics may contribute to launch vehicle development whose applications extend well beyond scientific inquiry. Civilian designation, in this context, functions as a starting presumption, rather than a permanent shield once thought to have existed.

The Chamran-1 satellite, launched in 2024 and developed at facilities that have since been destroyed, was characterized as a research and technology demonstration mission. The distinction between a research asset and an operational intelligence platform, it turns out, was one of framing rather than function. That gap, between what a facility or satellite is called and what it materially enables, is precisely where the commercial space industry’s legal exposure now lives.

The consequences are significant and practical. Export control regimes, from the U.S. International Traffic in Arms Regulations to the EU Dual-Use Regulation, already require licensing determinations that assess whether a given technology could serve military ends in the hands of the recipient state or institution. What the current conflict has demonstrated is that the same analysis must now be applied at the facility and institutional level. A ground station that processes both civilian and military satellite telemetry, a university department that collaborates with both private launch operators and a state defense ministry, and a space research center that hosts both commercial payload integration and command-and-control infrastructure for a state constellation are all, under the targeting logic now being applied in practice, facilities whose protected status is genuinely uncertain.

For commercial operators with supply chains, personnel

exchanges, or data-sharing arrangements that touch state-affiliated aerospace programs in conflict-prone jurisdictions, the exposure is a test. Insurance underwriters are already reviewing war-risk exclusion clauses in light of the recent strikes. Technology transfer counterparties face renewed scrutiny from export control authorities examining whether components supplied to ostensibly civilian programs ultimately served infrastructure now treated as a military objective. Foreign academic institutions that maintained research partnerships with IUST, a university that appears in multiple government proliferation-concern registries while simultaneously ranking among the top technical universities in Asia, now confront the uncomfortable possibility that their cooperation agreements linked them, however indirectly, to infrastructure that has been bombed.

The lesson the commercial space industry must draw from March 2026 is this: civilian designation is not self-executing. It must be earned, maintained, and verifiable through a facility’s actual function, not merely its stated purpose. In a conflict environment where space is an active warfighting domain and dual-use infrastructure is a recognized and contested military objective, the burden of demonstrating civilian character has, in practice, shifted toward the operator. Companies, universities, and research institutions that have not yet audited their institutional relationships with state-affiliated space programs should do so now as a matter of legal caution and institutional survival.

Author: Abdulla Abuwasel
Title: Partner – Transactions
Email: awasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/abdulla-abuwasel/

Geopolitical Tensions and Force Majeure in the Commercial Space Economy

May 4, 2026

The commercial space industry operates at the precise intersection of private enterprise and state sovereignty. It is therefore uniquely vulnerable when those sovereignties come into direct conflict. The escalating geopolitical tensions between the United States and the Islamic Republic of Iran present a case study in how diplomatic friction translates, with considerable legal consequence, into force majeure events across commercial space contracts. As practitioners advising operators, investors, and institutions in this sector, it is necessary to examine this phenomenon not as a distant geopolitical abstraction but as an active and pressing contractual reality.

The Legal Architecture of Force Majeure in Space Commerce

In commercial space agreements, force majeure clauses typically enumerate government actions, export license denials, sanctions regimes, and regulatory prohibitions as qualifying triggering events. The breadth of such clauses matters enormously, because in the space industry, performance is invariably conditioned upon a layered web of regulatory approvals.

The commercial space industry is structurally more susceptible to geopolitically induced force majeure than most other sectors, for three reasons. First, performance under space contracts requires regulatory approvals from multiple sovereign jurisdictions, any one of which may be revoked for reasons entirely unrelated to commercial conduct. Second, the

technology involved is dual-use by nature; the same propulsion system that services a commercial telecommunications satellite may fall within the scope of munitions controls. Third, insurance and financing arrangements in the sector are often conditioned on export compliance clearances, such that a sanctions escalation can trigger defaults across an entire capital structure simultaneously.

When geopolitical tensions intensify, as they have periodically, the United States government has expanded the scope of secondary sanctions, tightened technology transfer controls, and revoked or withheld export licenses for satellite components, launch services, and ground station technology.

The AsiaSat Precedent: Geopolitics as a Contractual Trigger

The most instructive case study currently before the industry is the AsiaSat dispute with India. India’s National Space Promotion and Authorisation Centre decided to withdraw authorization for AsiaSat’s AS-5 and AS-7 satellites beyond March 31, 2026, citing national security concerns stemming from AsiaSat’s significant Chinese government ownership through CITIC Group Corporation. The decision was not a commercial judgment, but a sovereign geopolitical act directed at the ownership structure behind the operator.

The downstream contractual consequences were immediate. AsiaSat’s current permission expires at the end of March, forcing broadcasters to migrate to other satellites or face channel blackouts. Without this approval, AsiaSat cannot legally provide satellite capacity in India, effectively forcing broadcasters to look for alternative transmission arrangements. Broadcasters including Zee Entertainment Enterprises and JioStar, part of Reliance Industries, must now move their services; Zee has already switched to Intelsat and ISRO’s GSAT satellites.

The contractual dispute that followed is where the case becomes jurisprudentially significant. AsiaSat has issued a “trigger notice” to the Indian government under a bilateral investment treaty, formally signaling a potential legal challenge, and has simultaneously sent arbitration notices to broadcasters including JioStar and Zee, initiating dispute-resolution proceedings. AsiaSat’s commercial position is that its agreements were not India-specific as its contracts were not limited to India and customers could continue to use the same bandwidth to provide services elsewhere. The broadcasters reject that framing entirely.

India’s 2024 guidelines further require foreign satellite operators to operate through Indian entities and factor in geopolitical ties, while limiting service approvals to a satellite’s operational life or five years, whichever is earlier. The regulatory architecture, in other words, was designed to give geopolitical considerations dispositive weight over commercial continuity. AsiaSat’s decision to pursue a bilateral investment treaty claim presents a significant legal hurdle, as India does not have a direct BIT with Hong Kong for investment protection beyond tax matters, and enforcing BIT claims against governments is known to be difficult and lengthy.

The Iran Parallel: An Active and Unfolding Crisis

The AsiaSat dispute illustrates what happens when geopolitics terminates a satellite operator’s market access. The U.S.-Iran tensions present the same structural risk, with broader contractual exposure across the entire space value chain.

Since the tensions between the U.S. and Iran commenced, a number of oil and commodities companies have invoked force majeure. QatarEnergy, which operates the world’s largest liquefied natural gas export facility, declared force majeure to avoid penalties for missing contracted deliveries. Aluminium Bahrain similarly suspended deliveries to some

customers, citing risks of shipping through the Strait of Hormuz. The contractual mechanisms being invoked across these commodity sectors are identical to those embedded in commercial space agreements.

For the space industry specifically, the pathways of exposure are distinct from commodities but no less severe. U.S. export control law, principally the Export Administration Regulations and the International Traffic in Arms Regulations, imposes comprehensive restrictions on the transfer of space technology to designated adversary nations. Iran remains among the most heavily sanctioned jurisdictions globally. Common triggering events such as “acts of war,” may capture Iran-related disruptions, but the more difficult question will arise for supply chain failures that are not directly caused by war or government-mandated embargo but are instead the downstream economic consequence of regional conflict. Launch service agreements, satellite manufacturing contracts, spectrum coordination, and orbital insurance arrangements are all vulnerable to this secondary contagion.

Sanctions and export controls relating to the Iran conflict may independently prohibit performance and may or may not qualify as force majeure under the governing law. A sovereign ban that is itself a breach of sanctions does not automatically become force majeure. This creates a compounded risk for operators: the very act of attempting to invoke force majeure may expose them to sanctions liability if the performance they are excusing was already legally prohibited.

A deterioration of U.S.-Iran relations, whether manifesting as a military confrontation in the Persian Gulf, a further Iranian nuclear escalation, or a fresh round of maximum-pressure sanctions designations, would predictably generate force majeure claims across several categories of space commercial agreement: satellite manufacturing contracts involving Iranian-backed investment entities; launch services agreements where trajectories or ground stations fall within

OFAC-designated operational theaters; orbital slot licensing disputes where spectrum coordination through the International Telecommunication Union implicates sanctioned state entities; and, as the AsiaSat case demonstrates, capacity lease agreements where the nexus to a geopolitically disfavored ownership structure supplies the regulatory trigger.

Drafting Against Geopolitical Risk

Competent space counsel should treat geopolitical risk as a drafting imperative rather than a boilerplate contingency.

Force majeure clauses in commercial space agreements should specifically enumerate sanctions regime changes, export license revocations, and government-mandated service terminations as qualifying events, while simultaneously specifying the notice obligations, mitigation duties, and termination rights that flow from each. The AsiaSat dispute has illustrated that an operator’s failure to anticipate and contractually allocate this risk can leave it in the position of asserting arbitration claims against counterparties who have no commercially viable choice but to comply with the regulatory mandate they have been issued.

The commercial space sector has long prided itself on its capacity to transcend political borders. The legal realities of geopolitics suggest that this aspiration, however worthy, must be balanced against rigorous contractual foresight.

Author: Abdulla Abuwasel
Title: Partner – Transactions
Email: awasel@waselandwasel.com
Profile: https://waselandwasel.com/about/abdulla-abuwasel/

Universal Jurisdiction and the Situs of Centralized Digital Assets: An Analysis of Crypto Server Location in Iakovlev v. Epayments Systems Ltd. (Ontario Superior Court of Justice)

May 4, 2026

Introduction

In the rapidly expanding world of digital finance, courts face a novel challenge: determining the legal location, or *situs,* of supposedly borderless crypto assets. When a digital asset is lost or stolen on an international platform, where exactly does the legal harm occur? The Ontario Superior Court of Justice recently addressed this critical issue head-on in *Iakovlev v. Epayments Systems Ltd.*, 2026 ONSC 1296.

In a decision that will undoubtedly resonate across global legal frameworks, Associate Justice R. Frank granted a motion by the defendant, ePayments Systems Limited, “for an order dismissing the plaintiff’s claim as against it on the basis that this court has no jurisdiction over it.”

The ruling firmly rejects the notion that the residency of a crypto owner dictates the jurisdiction of the digital asset. More importantly, it tackles the technological realities of centralized crypto custody, providing much-needed clarity and a formidable defense against judicial overreach in cross-border crypto disputes.

The Dispute and the Question of *Situs*

In this action, "the plaintiff seeks damages for alleged misrepresentation and civil conspiracy," claiming that "due to the bankruptcy of DSX Global, the plaintiff has been deprived of the six bitcoins he purchased." The plaintiff attempted to establish assumed jurisdiction in Ontario by arguing that "his retirement savings, an Ontario-based asset, were the source of the funds invested on the platform," and therefore, he suffered financial loss in his home province.

Under Canadian common law, "an actionable conspiracy occurs in the jurisdiction where the alleged harm is suffered, regardless of where the wrongful conduct occurred." Therefore, the Court had to determine exactly where the legal harm involving the loss of the digital assets took place.

Paragraph 47: Defining the Location of Digital Assets

Associate Justice R. Frank systematically dismantled the plaintiff's argument that localized financial impact equates to localized legal harm. In paragraph 47, the Court provided a profound analysis of the location of digital assets, prioritizing the physical infrastructure and the custodial entity over the domicile of the investor:

> *"[47] Further, even if some or all of the funds used by the plaintiff to purchase the allegedly lost crypto assets had originated in Ontario – which is not supported by the evidence – the plaintiff's digital assets were held on servers in the European Union. Those crypto assets were never held on servers in Ontario or anywhere in Canada, nor were they held by or through an entity located in or with any connection to Ontario or Canada. As such, the alleged harm and loss did not occur in Ontario."*

The Court highlighted the extreme danger of adopting the plaintiff's logic, warning that it would effectively subject

global platforms to litigation everywhere simply because their users are distributed worldwide:

> *"If the plaintiff's position were accepted and taken to its logical conclusion, then damages would occur in Ontario whenever an Ontario resident suffers a loss of one of their assets located outside Ontario, regardless of whether the asset has any connection to Ontario other than its ownership by the Ontario resident. In my view, the fact that an Ontario resident suffers a loss of or damage to an asset located outside Ontario does not, on its own, mean that the harm occurs in Ontario. That would be akin to universal jurisdiction, a result that the Supreme Court has cautioned against in Van Breda."*

The Technical Reality vs. The "Borderless" Myth: Anchoring Crypto to Servers

To fully appreciate the weight of the Court's ruling, one must understand the technical tension at the heart of the digital asset industry. In the mainstream consciousness, cryptocurrencies like Bitcoin are frequently championed as strictly "borderless", built on decentralized, globally distributed public ledgers where the underlying assets theoretically exist everywhere and nowhere simultaneously.

However, *Iakovlev* introduces a vital technical distinction by piercing this "borderless" myth in the context of centralized platforms and payment gateways. When an investor purchases cryptocurrency on a centralized platform like DSX Global or uses a service like ePayments, they are not usually holding the private keys directly on the decentralized public blockchain. Instead, they hold a custodial right, an IOU, recorded on the platform's proprietary, centralized internal databases.

Justice Frank acutely recognized this technical reality. By explicitly observing that "the plaintiff's digital assets were

held on servers in the European Union" and "never held on servers in Ontario," the Court established a tangible, physical nexus based on the technological hardware managing the platform's internal database. The court brilliantly bridged the gap between decentralized technology and traditional legal geography by tethering the *situs* of the asset to these physical servers, and the fact that they were never "held by or through an entity located in" Ontario. It aligned legal jurisdiction with the technical reality of centralized digital asset custody infrastructure, rather than the abstract, borderless nature of the blockchain protocol.

Global Ramifications and Effects on Common Law Jurisdictions

The global ramifications of *Iakovlev* are immense. By ruling that a platform's "presence in Ontario was virtual only, and passive," and by anchoring the *situs* of digital assets to the jurisdiction where they are "held on servers" or "held by or through an entity," the Court has erected a powerful shield against forum shopping across the digital asset industry.

Because the legal geography of cryptocurrency is still actively being mapped, this physical infrastructure-based precedent will heavily influence other major common law and international financial hubs:

- **The United Kingdom (UK):** English courts have frequently grappled with the *lex situs* of crypto assets. In earlier rulings, UK courts have suggested that a crypto asset is legally located where its owner is domiciled. *Iakovlev* introduces a compelling counter-approach. By stating that "the fact that an Ontario resident suffers a loss… does not, on its own, mean that the harm occurs in Ontario," the Canadian court directly challenges the domicile-based model. UK litigators defending foreign Virtual Asset Service Providers (VASPs) will undoubtedly cite *Iakovlev* to argue that the true *situs* of custodial assets lies with the centralized server infrastructure

and the hosting entity, not the claimant's residence.

- **Singapore and Hong Kong:** As premier crypto hubs in Asia, Singapore and Hong Kong have definitively recognized cryptocurrencies as property capable of being held in trust. However, identifying the geographical nexus for cross-border torts remains highly contested. *Iakovlev* provides the legal certainty that centralized platforms operating in these regions desire. If an exchange incorporated in Singapore or Hong Kong stores client assets on local servers, *Iakovlev* provides highly persuasive authority that foreign plaintiffs cannot easily sue these exchanges in their home countries just because the "borderless" assets were accessed globally.

- **DIFC and ADGM (United Arab Emirates):** The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) operate under English common law principles and have enacted bespoke, entity-focused digital asset property laws to attract Web3 businesses. The *Iakovlev* judgment inherently strengthens their jurisdictional appeal. By reinforcing that digital assets are tied to where they are "held by or through an entity located in" a specific region, digital asset firms licensed within the DIFC or ADGM can be confident that international courts will respect these hardware and corporate boundaries, preventing foreign users from bypassing UAE forums based solely on localized economic harm.

- **Australia:** Australian courts apply strict "real and substantial connection" tests for assumed jurisdiction and are highly cautious regarding extraterritorial overreach. In dealing with class actions or individual claims against international crypto exchanges, Australian courts will find the *Iakovlev* reasoning highly persuasive. The judgment provides a technologically grounded metric, the location of the

servers, for dismissing claims where the only domestic connection is the plaintiff's residency, preventing Australian courts from exercising what "would be akin to universal jurisdiction."

Conclusion

Iakovlev v. Epayments Systems Ltd. represents a triumph of established jurisdictional principles and technological pragmatism in the face of decentralized finance. By decisively ruling that the physical location of servers and custodial entities dictates the legal location of digital assets, the Ontario Superior Court of Justice has successfully blocked a backdoor to "universal jurisdiction." As common law courts around the globe continue to navigate the complexities of the crypto industry, this judgment stands as a vital reminder: while the blockchain network may be borderless, the corporate infrastructure and servers that hold these assets remain firmly tethered to physical reality.

Author: Abdulla Abuwasel
Title: Partner – Transactions
Email: awasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/abdulla-abuwasel/