Compensating the Void: UAE Tortious Liability for Unauthorized Arbitration Agreements and the Revival of Set-Aside Awards

September 7, 2026

The annulment of an arbitral award due to a strict procedural defect is often a frustrating experience for a prevailing party. A common scenario arises when a counterparty successfully sets aside an unfavorable award by arguing that their legal representative lacked the explicit authority to agree to arbitration or its specific terms. However, a profound judgment by the Dubai Court of Cassation (Challenge Nos. 1262 and 1282 of 2016 Civil) has established a robust remedy. The overriding theme of this ruling is the absolute right to claim compensation for an unauthorized agreement to an arbitration clause in cases where an award has been set aside, partly or fully.

The Factual Matrix and the Court's Pronouncements In the dispute before the Court, the claimant secured a commercial arbitration award that included a substantial sum for legal costs. The respondent company subsequently applied to the courts to partially set aside the award concerning those legal costs. The company argued that its legal agents signed the Terms of Reference, granting the tribunal the power to allocate costs, without possessing the explicit, special authorization required under UAE law.

Refusing to accept this loss, the original claimant filed a civil lawsuit against the respondent company and its legal agents, seeking tortious compensation equal to the exact

amount of the nullified legal costs. The Dubai Court of Cassation firmly upheld the lower courts' rulings in favor of the claimant.
The Court laid down the foundational principle of this liability, stating:

> *"Arbitration is a mutual agreement between contracting parties, i.e., an agreement on mutual obligations to submit to the judgment of arbitrators, and the nullity of agreements is a relative nullity."*

Crucially, the Court determined that the nullification of an award does not absolve the at-fault party from the financial consequences of their bad faith, establishing that:

> *"Once nullity is established, it is permissible, according to general rules, to seek compensation from the party in the contract who caused the nullity, provided its cause came from their side and as a result of a fault attributed to them, while the other party believed in the validity of the contract and built their dealings on the basis of this belief. The basis for compensation in this case is the fault of the responsible party to whom the nullity is attributed and resulting from a cause coming from their side."*

The Court found that the respondent company had acted with deliberate bad faith to exploit the procedural defect. The judgment affirmed:

> *"the establishment of the Appellant's fault by intentionally concealing the issue of its authorization to the Second and Third Respondents regarding the signing by the Second Respondent of the Terms of Reference for arbitration in her capacity as a legal agent for the Appellant and authorizing the arbitral tribunal to adjudicate the legal costs… and the Appellant's silence in objecting to that until the issuance of the arbitral tribunal's decision based on these Terms of*

Reference."

The Court emphasized that *"good faith dictates that it should inform the First Respondent of its non-approval of this condition and that it does not bind it, in a manner contrary to what it clung to in the lawsuit for the nullification of the arbitration award."* This wrongful conduct caused harm *"represented in the loss of opportunity to collect the legal costs in the adjudicated amount, which is the basis of the Appellant company's liability requiring it to pay appropriate compensation to redress the damage."*

Allocating Liability: Shielding the Agent, Penalizing the Principal When addressing whether the legal representatives themselves should be jointly liable for acting without authority, the Court protected agents acting within the apparent scope of their relationship unless personal wrongdoing is proven. The Court ruled that *"if the agent or representative concludes, within the limits of his agency, a contract or transaction in the name of the principal, its provisions and the rights and obligations arising from it are added to the principal."*

Dismissing the claims against the agents, the Court noted that *"The agent is not liable if the transaction they concluded with a third party in the name of the principal is void or voidable, unless a personal fault is proven on their part. Thus, the agent is not liable towards third parties unless they commit a fault warranting their liability; if they do not commit a fault, they are not liable even if a third party suffers damage from the execution of the agency."* Because the company permitted the agents to proceed and intentionally concealed the authorization defect internally, liability fell squarely on the corporate principal.

Global Perspectives on Procedural Bad Faith It is worth noting in passing that the posture adopted by the UAE courts shares conceptual DNA with legal mechanisms in other global jurisdictions designed to combat bad faith in proceedings. In common law jurisdictions, such as the United States, the United Kingdom, Hong Kong or Australia, courts frequently address unauthorized representation through the doctrine of breach of warranty of authority, allowing an injured party to claim wasted costs from an agent who acted without proper backing, or from a principal whose deceitful conduct caused the reliance under principles of ostensible authority. Meanwhile, in civil law systems like Germany and France, courts regularly utilize the doctrine of *culpa in contrahendo* (fault in contracting) to award damages against parties who negotiate or participate in agreements in bad faith while knowing they lack the legal capacity to be bound.

A New Recourse to Revive Set-Aside Awards Under UAE Law This judgment answers a critical question for practitioners and businesses: Does this ruling grant parties who have previously had awards set aside a new avenue of recourse against companies or agents to effectively "revive" the values of those nullified awards?

The general answer is yes; through the mechanism of tortious liability rather than contractual enforcement. Historically, the annulment of an arbitral award due to a lack of signatory capacity left prevailing parties assuming their financial victory was permanently extinguished. However, this Cassation judgment confirms that the procedural death of an award does not extinguish the underlying economic entitlement if the annulment stems from the opposing party's fault.

The Court explicitly endorsed this bypass, clarifying that the prior annulment judgment *"does not preclude the First Respondent from filing the current lawsuit requesting compensation for the very same legal costs of the arbitration against the Appellant based on its causation of this nullity, and that judgment does not hold any res judicata that precludes the First Respondent from requesting compensation for the fault committed by the Appellant which caused the First Respondent not to obtain the legal costs of the arbitration."*

The Court noted a clear distinction: *"this nullity adjudicated* *in the lawsuit for the nullification of the arbitration award relates to the agency relationship between the principal and its agent and the limits of that agency, whereas the current lawsuit is about the First Respondent's request for compensation for the legal costs of the arbitration for which the issued arbitration award was ruled null."*

Therefore, aggrieved parties can now pivot to file a tort claim under UAE law, successfully arguing that a company's intentional concealment or strategic silence regarding its agent's authority constitutes an actionable harm (and equally, against the agents themselves if personal fraud or deceit can be proven). Through this, a party can claim the exact financial value of the annulled award as compensation.

One procedural caveat remains regarding delay interest. Because this revived value is awarded as tortious damages rather than a fixed contractual debt, the Court noted that *"this adjudicated amount was not of a known amount in the court's estimation and was subject to its estimation even if it matches the value of the legal costs in the arbitration case which was ruled nullified… so this similarity does not make it of a known amount."* Consequently, *"if the judge has discretion in estimating it, the interest is not due except from the date the judgment issued for the adjudicated amount becomes final."*

Ultimately, this judgment acts as a formidable deterrent against guerrilla arbitration tactics. It ensures that the strict structural rules of arbitration cannot be exploited to evade financial liability, providing a robust pathway to fully resurrect the value of an annulled award through civil compensation.

Wasel & Wasel advises on complex commercial disputes, UAE domestic and international arbitration, and cross-border enforcement litigation within the UAE courts and the broader GCC. The firm advises financial institutions, investors, technology companies, and commercial entities in high-stakes proceedings before the UAE Federal and Emirate-level Courts. Our practice includes navigating complex set-aside *applications, managing multi-jurisdictional arbitral disputes, and enforcing arbitral awards and alternative legal remedies, such as tortious claims regarding arbitration awards, to safeguard our clients' rights.*

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The First UAE and Middle East Judgment on AI Liability: Institutional Accountability and Global Perspectives

September 7, 2026

In what stands as potentially the first judicial decision in the United Arab Emirates, and potentially the broader Middle East, addressing institutional liability for the failure of artificial intelligence (AI) and automated systems, the Abu Dhabi Commercial Court has established a direct precedent on corporate accountability. Financial institutions deploying AI for risk management, fraud detection, and advisory services cannot rely exclusively on standard security protocols, such as a One-Time Password (OTP), to avoid liability when those systems fail. The ruling establishes that an institution will be held liable for consumer losses if its automated risk assessment model is fundamentally flawed. This judicial precedent works in tandem with the UAE Securities and Commodities Authority (SCA) regulations, the UAE's September

2024 AI policy, and an emerging global consensus: algorithmic complexity does not absolve financial institutions of their legal duty of care, and structural failures in AI models will result in direct institutional liability.

The First Regional Precedent: Abu Dhabi Commercial Court Case No. 762 of 2026

In a case of first impression regarding AI and automated risk models (Case No. 762 of 2026), the Abu Dhabi Commercial Court of First Instance ruled on a dispute involving digital fraud, consumer liability, and the failure of a bank's automated monitoring systems. The claimant was the victim of a phishing scam in which an OTP was intercepted and used to activate Apple Pay on an unrecognized device. Within minutes, multiple high-value transactions were processed, consuming a large portion of the claimant's credit limit.

Although the claimant reported the incident to the bank within two minutes, the bank allowed the settlements to process, delayed the investigation, and ultimately rejected the claim. The bank relied on its standard terms and conditions, arguing that because the transactions were authenticated via an OTP, the liability fell squarely on the consumer.

The Court appointed a banking expert and adopted their findings, ruling that the bank had breached its duty of care. The Court determined that strict reliance on procedural authentication terms is legally insufficient when the institution fails to implement functional safeguards capable of recognizing abnormal transaction patterns.

Addressing the bank's automated monitoring capabilities, the Court stated verbatim:

"…as the real-time fraud detection system at the bank 'failed' to read the three consecutive red flags (abnormal chronological sequence, speed of transactions, depletion of 67% of the credit limit within seconds), which constitutes a fundamental error in the design of the risk assessment model."

The Court further highlighted the discrepancy between the standard of care expected from institutions utilizing advanced technologies and the bank's actual security measures, noting verbatim:

"Furthermore, the bank's reliance on the OTP code alone without establishing strict and comprehensive auditing scenarios when receiving a request to add a card to a digital wallet constitutes a clear banking shortcoming that contradicts the level of due diligence expected from a financial institution claiming to possess advanced artificial intelligence systems."

Based on these findings, the Court cleared the claimant of the disputed debt and ordered the bank and the fraudulent merchant to pay compensation for the material and moral damages incurred.

UAE Financial Regulation: The SCA Framework on AI Risks

This first-of-its-kind judicial finding in Abu Dhabi is closely aligned with the regulatory groundwork previously laid by the UAE Securities and Commodities Authority (SCA). Under the Decision of the Chairman of the SCA Board of Directors No. (13/R.M) of 2021 concerning the Rulebook for Financial Activities, the UAE regulator proactively defined the operational standards and specific liabilities associated with AI in finance.

The SCA Rulebook explicitly defines "AI Risks" (مخاطر الذكاء الاصطناعي) as hazards arising from the use of AI systems or algorithms in providing financial services. Crucially, the SCA identifies several technical failures that trigger institutional accountability, including:

- **Model Drift (انحراف النماذج):** Variations caused by changing input data or data imbalances.

- **Hallucination (القرارات غير المنطقية أو غير المتوقعة):** Illogical or unexpected decisions generated by the system.
- **Explainability Loss (فقدان القدرة على تفسير المخرجات):** The inability to interpret or explain the outputs generated by the AI.
- **Algorithmic Bias (التحيز الخوارزمي):** Flaws leading to unfair or inequitable results for certain consumer categories, often due to inappropriate or outdated training data.

Furthermore, for automated systems such as Robo-Advisors, the SCA mandates rigorous “Stress Testing” (اختبار الجهد) to simulate extreme scenarios, ensuring the accuracy and stability of these algorithms. The Abu Dhabi Court’s penalization of the bank for a “fundamental error in the design of the risk assessment model” directly reflects the legal consequences of failing to mitigate the AI risks codified by the SCA.

The UAE’s Stance on AI Policy (September 2024)

This intersection of judicial oversight and financial regulation is further reinforced by the UAE’s broader national policy. In September 2024, the UAE published its “Position on Artificial Intelligence Policy at the International Level.” The policy outlines six core guiding principles for AI development: Progress, Cooperation, Society, Ethics, Sustainability, and Safety.

For financial institutions, the principles of *Ethics* and *Safety* are paramount. The UAE has adopted an 8-principle ethical framework designed to ensure fair and safe treatment for all members of society. When AI systems unfairly penalize consumers for sophisticated fraud that the institution’s own algorithms failed to detect, as ruled in Case No. 762, it directly contravenes this mandate. The judgment demonstrates that the UAE views AI innovation as inseparable from robust governance, ethical deployment, and strict consumer protection.

Global AI Considerations: The Institutional Liability Landscape

This inaugural UAE judgment is not an isolated development; it represents the localized application of a growing international regulatory shift regarding institutional liability for the use of AI.

- **The European Union:** Under the EU Artificial Intelligence Act, AI systems used to evaluate creditworthiness or assess risks in financial services are classified as “high-risk.” This classification requires financial institutions to implement rigorous risk management systems and maintain continuous human oversight. The framework creates a direct line of accountability, meaning institutions are liable if their AI models exhibit systemic flaws.
- **The United States:** The Consumer Financial Protection Bureau (CFPB) has issued guidance emphasizing that the deployment of complex or “black-box” AI models does not exempt financial institutions from consumer protection laws. If an automated system fails to protect consumers or violates regulations, the institution bears direct liability. The CFPB maintains that institutions cannot use technological complexity as a defense for operational failures.
- **The United Kingdom:** The UK’s Financial Conduct Authority (FCA) approaches AI liability through existing frameworks such as the Consumer Duty, which requires firms to proactively deliver good outcomes and avoid foreseeable harm. If an automated fraud-detection system fails to identify obvious anomalies, the FCA considers this a breach of the firm’s overarching regulatory duties, holding senior management directly accountable.

Conclusion

The first judgment on AI liability in the UAE sets a clear and operational standard for the Middle East: the integration of AI and automated decision-making into financial operations requires a highly elevated legal duty of care. As evidenced by this precedent from the Abu Dhabi Commercial Court, supported by the SCA Rulebook's codification of AI risks and the UAE's September 2024 AI policy, judiciaries and regulators will evaluate the actual operational effectiveness of algorithms rather than deferring to traditional contractual defenses.

Wasel & Wasel advises on complex commercial disputes, international arbitration, and cross-border financial litigation within the UAE courts and the broader GCC. The firm represents financial institutions, investors, technology companies, and commercial entities in high-stakes proceedings before the UAE Federal and Emirate-level Courts. Our practice includes navigating emerging technology and AI liability claims, managing multi-jurisdictional financial disputes, and enforcing regulatory and contractual rights amidst a rapidly evolving digital economy.

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Data Center Warfare and the Evidentiary Threshold for

Financial Force Majeure – Applying the 2026 Dubai Cassation Court’s Banking Disruption Precedent to the Iran War

September 7, 2026

Introduction: Data Center Warfare, AI Targeting, and the Cross-Border Liquidity Squeeze

The 2026 Iran War, initiated by joint U.S.-Israeli airstrikes under Operation Epic Fury on February 28, 2026, has fundamentally altered the risk profile of commercial operations across the Middle East. Beyond traditional geopolitical and economic risks, the current conflict has escalated into “data center warfare,” directly impacting the physical digital infrastructure that underpins international banking networks and cross-border liquidity.

As extensively documented in recent months, kinetic strikes on hyperscale cloud infrastructure have transitioned the risk of “banking disruptions” from a theoretical geopolitical issue to a tangible commercial crisis. This targeting is driven by the increasing commingling of civilian tech infrastructure with military intelligence. With U.S. and allied forces utilizing commercial AI models, such as Anthropic’s Claude embedded in Palantir’s Maven Smart System, for military targeting, commercial data infrastructure has been treated as a dual-use battlefield asset. Consequently, on March 1, 2026, Iranian Shahed drones struck Amazon Web Services (AWS) data centers in the United Arab Emirates and Bahrain.

According to *Responsible Statecraft* ("Why Gulf data centers became deliberate targets in Iran War"), these strikes "knocked out banking apps across a region of 50 million people." *TechPolicy.Press* further reports that the attacks critically impaired the UAE's ME-CENTRAL-1 cloud availability zones, causing immediate outages for major regional financial institutions, including Abu Dhabi Commercial Bank, Emirates NBD, and First Abu Dhabi Bank. The broader financial impacts were immediate: while the GCC's Islamic banking sector demonstrated structural resilience, maintaining 17.1% Tier 1 capital ratios with zero Fitch-rated sukuk defaults, cross-border liquidity tightened severely, and new dollar-denominated GCC sukuk issuance collapsed to zero in March 2026.

This disruption is both reciprocal and systemic. As noted by Georgia Tech, retaliatory strikes on March 11 targeted a Tehran data center operated by Iran's state-run Bank Sepah. The Modern War Institute highlighted that this emerging doctrine of targeting data centers deliberately disrupts digital services to banks and payment platforms to exert coercive economic leverage.

As these infrastructure disruptions choke international liquidity and delay wire transfers, commercial parties in the Gulf Cooperation Council (GCC) may seek to invoke these highly publicized "banking disruptions" and data center outages as a force majeure defense to excuse delayed payments or prevent the forfeiture of transaction deposits. However, as Dubai Court of Cassation Judgment No. 1004 of 2026 (Real Estate), issued on June 29, 2026, demonstrates, invoking the conflict as a blanket excuse for financial non-performance requires meeting a strict legal standard.

The Factual Matrix: The Real Estate Default and the "Regional Tensions" Defense

The dispute in Dubai Cassation Judgment No. 1004/2026 involved a high-value real estate transaction. On April 24, 2025, the appellant (the buyer) entered into a contract to purchase a plot of land in Dubai's Wadi Al Safa 3 for AED 22,000,000. Upon signing, the buyer issued a security cheque of AED 2,200,000 as earnest money (*Arboun*), with the remaining AED 19,800,000 due by June 24, 2025.

When the deadline arrived, the buyer had not transferred the remaining funds. Consequently, the sellers filed a lawsuit to terminate the contract and liquidate the AED 2.2 million *Arboun* cheque.

In their defense before the UAE courts, the buyer argued that the failure to pay was not a voluntary breach, but rather the result of force majeure circumstances. Pointing to the well-documented strikes on regional cloud infrastructure, the buyer asserted that the "regional tensions and the war" had directly affected international bank transfers, creating a circumstance completely beyond their control that prevented them from remitting the balance from abroad. The buyer further relied on electronic correspondence demonstrating their serious intent to close the transaction, noting they had explicitly requested an extension until the international banking disruptions subsided, which the sellers had refused.

The Court's Ruling: Piercing the Blanket Defense of Wartime Disruption

The Dubai Court of Cassation rejected the buyer's defense, ruling in favor of the sellers and affirming their right to terminate the agreement and retain the AED 2.2 million deposit.

Relying on Article 137 of the UAE Civil Transactions Law (Federal Decree-Law No. 25 of 2025), the Court reaffirmed that an *Arboun* payment makes a contract binding; if the buyer subsequently withdraws or fails to perform, the deposit is forfeited. The Court ruled that general claims of "regional tensions” and widely reported cloud banking disruptions do not automatically equate to a legal impossibility to perform.

The Court’s strict stance on financial obligations provides a stark contrast to how regional commercial entities handle physical trade disruptions. For example, following the closure of the Strait of Hormuz in March 2026, QatarEnergy successfully declared force majeure on its LNG supply contracts. While a maritime blockade constitutes an absolute physical impossibility for shipping a localized physical commodity, the Dubai courts recognize that *money is fungible*. A localized cloud outage does not inherently extinguish the ability to source funds globally. The Court found that the buyer was effectively attempting to use macro-level digital and infrastructural instability as a blanket excuse without proving a direct, insurmountable impediment to their specific transaction.

The Implied Evidentiary Threshold for Financial Force Majeure

Crucially, even though the Dubai Court of Cassation rejected the force majeure argument in this specific instance, its reasoning explicitly identified the exact evidence that would have been required to successfully substantiate a defense based on wartime banking disruption.

The Court noted that the defense failed because the buyer *“did not submit any document from a banking entity proving the impossibility of the transfer or its rejection, or anything indicating the existence of a legal ban or freezing of accounts, or an actual impediment preventing payment by any alternative means.”*

Despite highly publicized AWS data center outages and physical strikes on regional tech hubs, the definitive threshold for proving financial force majeure during the 2026 Iran War requires a party to produce:

1. **Official Banking Documentation of Rejection:** Citing

reports from *TechPolicy.Press* or global news outlets about targeted strikes on cloud infrastructure is legally insufficient. A litigant must present authenticated documentation issued directly by their specific financial institution explicitly proving the absolute impossibility of the transfer or its outright rejection due to these outages.

2. **Proof of Legal Bans or Frozen Assets:** Administrative delays caused by compromised AWS availability zones do not constitute force majeure. A successful defense requires evidence of a formal legal prohibition, such as wartime capital controls, international sanctions, or official documentation proving that the remitting accounts were frozen by regulatory authorities directly due to the conflict.
3. **Exhaustion of Alternative Payment Methods:** This establishes the highest evidentiary hurdle. Under UAE civil law, financial obligations are rarely extinguished by external events because money is fungible. The Court explicitly required proof of an "actual impediment preventing payment by any alternative means." A party must demonstrate that they were entirely blocked from utilizing alternative financial routing, third-party liquidity, local assets, or localized credit facilities to fulfill the obligation, even when primary cloud or telecom routes failed.

Strategic Playbook for Cross-Border Financial Obligations in the 2026 Context

For commercial counterparties and foreign investors managing cross-border transactions amidst the infrastructural vulnerabilities of the 2026 Iran War, Judgment No. 1004/2026 offers critical tactical guidance:

- **Securing Immediate Institutional Evidence:** If data center attacks or wartime cyber measures block a transfer, counterparties must immediately demand formal written explanations from their banks. Official bank documentation explicitly linking the transaction's failure to the infrastructural outage is mandatory for GCC court litigation.

- **Structuring Redundant Payment Channels:** Because courts require proof that payment was impossible by any alternative means, corporate entities should structure transactions with contingency payment mechanisms in mind (e.g., GCC-based escrow facilities, localized credit lines, or secondary banking networks unaffected by specific AWS/cloud outages) to bypass cross-border bottlenecks.
- **Precision in Contract Drafting for Dual-Use Infrastructure:** Standard force majeure clauses often fail to protect against financial delays. Because commercial cloud platforms are increasingly targeted as dual-use military infrastructure due to AI integrations, contracts drafted during the conflict should explicitly define "data center outages," "cloud infrastructure attacks," or "banking network disruptions" as specific trigger events that warrant predefined grace periods, avoiding the draconian legal standard of absolute impossibility.

Takeaway

The technological and infrastructural turbulence generated by the 2026 Iran War cannot be used as a blanket legal shield for failing to meet commercial obligations. Dubai Court of Cassation Judgment No. 1004/2026 firmly establishes that while UAE courts recognize the severe realities of regional conflict, from drone strikes on AWS availability zones to crippled digital banking platforms, they require stringent, localized, and specific evidentiary standards to disrupt the sanctity of a contract. To successfully claim financial force majeure, parties must cross a high evidentiary threshold, transitioning from broad geopolitical and infrastructural arguments to producing highly specific, bank-issued proof of absolute impossibility and the total exhaustion of alternative payment methods.

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After Almost Three Decades of Strictly Upholding “Back-to-Back” Clauses, the Abu Dhabi Court of Cassation Provides a Reprieve

September 7, 2026

For nearly thirty years, the “back-to-back” or “pay-when-paid” clause has been a standard method for allocating risk in UAE construction contracts. Historically, UAE courts have upheld these provisions as binding conditional obligations, protecting main contractors but often leaving subcontractors with limited legal options during upstream insolvency. However, a recent ruling by the Abu Dhabi Court of Cassation, **Judgment No. 386 of 2026 (Commercial)**, issued on 18 June 2026, has shifted this approach, providing subcontractors with a notable reprieve.

By establishing a clear legal framework that allows subcontractors to bypass back-to-back clauses when upstream payment becomes demonstrably impossible, the Court has offered a practical solution for parties facing indefinite payment delays. At **Wasel & Wasel**, we analyze the implications of this judgment, tracing its historical context, examining the Court's precise legal reasoning, and detailing the new standards that construction professionals should consider.

The Historic Approach of UAE Courts

Over the past three decades, UAE courts have generally declined to bypass back-to-back clauses. Under the UAE Civil Transactions Law (the "Civil Code"), specifically Articles 420 to 427, contractual obligations can be made subject to a "suspensive condition" (*Shart Waqif*).

Relying on the legal principle that agreements must be honored (*pacta sunt servanda*), courts consistently interpreted "pay-when-paid" clauses as valid suspensive conditions. Consequently, if a subcontractor filed a claim for payment before the upstream entity had paid the main contractor, UAE courts would routinely dismiss the lawsuit for being filed "prematurely."

Courts rarely inquired into whether the upstream payment would ever actually materialize. This strict adherence meant subcontractors often faced indefinite delays, bearing the credit risk of a project's failure without a clear path to recover their dues.

The Factual Background of Judgment No. 386 of 2026

The dispute involved a subcontractor (the Respondent) seeking to recover a 10% retention sum, amounting to AED 2,078,742.93, from a main contractor (the Appellant).

Clause 11 of their subcontract contained an explicit back-to-back provision. It stated that the release of the retention monies was contingent upon the Appellant receiving its own retention funds from the principal contractor.

The project eventually encountered severe financial issues. The principal contractor was terminated and later entered formal bankruptcy proceedings in Dubai. The subcontractor had previously filed a lawsuit in 2024 to recover its dues, but the court applied traditional precedent and dismissed the claim as “premature” because the back-to-back condition remained unfulfilled.

The situation changed when the bankruptcy trustee issued the final, consolidated list of commercial creditors for the principal contractor. Crucially, the Appellant was **not** included on this list. Recognizing that the Appellant would not receive the upstream funds, the subcontractor refiled its lawsuit.

The Legal Development: The “Impossibility Test”

The Abu Dhabi Court of Cassation ruled in favor of the subcontractor. In its reasoning, the Court established what can be termed an “impossibility test” for bypassing back-to-back clauses.

The Court held that while a back-to-back clause is a valid suspensive condition, it cannot delay payment indefinitely if the condition becomes factually or legally impossible to fulfill. Establishing this legal boundary, the Court noted:

> *"However, in the event it is proven that the suspensive condition is incapable of being fulfilled, the effect of the suspension lapses, and the creditor is entitled to demand immediate payment from the debtor, as long as the debtor did not stipulate to the creditor that it would not lapse, and the debt remains an obligation owed by them, rendering the condition impossible to occur due to the expiration and cessation of the suspended obligation owed by the owner in favor of the debtor."*

Applying this principle directly to the facts of the case, the Court reasoned that the finalization of the principal contractor's bankruptcy proceedings, without the Appellant listed as a recognized creditor, created this legal impossibility:

> *"Consequently, it has become impossible for the employer […] to pay the Appellant's dues, as the creditors to whom the funds […] are to be distributed have been confined under the proceedings of that lawsuit, which renders the suspensive condition relied upon by the Appellant incapable of being fulfilled. Thus, the effect of the suspension lapses, and the Respondent is entitled to demand immediate payment from the Appellant in the present."*

Clarifying Procedural Rules: Addressing *Res Judicata*

The judgment also provided practical procedural clarity. The Appellant attempted to block the lawsuit by arguing *res judicata,* the principle that a matter has already been judged. They claimed that because the subcontractor's identical lawsuit was dismissed in 2024, the matter was legally settled and could not be litigated again.

The Court of Cassation addressed this defense by explaining the legal nature of a "premature" dismissal under UAE procedural law:

> *"Ruling that a claim is inadmissible for being filed prematurely means that the claimed right has not fulfilled a specific condition, or that the time for claiming it has not yet arrived. Therefore, the reality of a judgment of inadmissibility is merely a postponement of filing the lawsuit until its conditions are complete. Once those conditions are fulfilled, the claimant has the right to file the lawsuit anew and claim the very right that was never substantively adjudicated."*

Because the first judgment did not rule on the underlying debt itself, but merely paused the claim while the suspensive condition was still theoretically possible, the subcontractor retained the right to refile once the condition became legally impossible to fulfill.

Strategic Takeaways for the Construction Sector

Judgment No. 386 of 2026 represents a significant development in UAE construction law, balancing freedom of contract with commercial realities after a three-decade precedent.

- **For Subcontractors:** You are not necessarily expected to wait indefinitely for upstream solvency. If you can gather concrete evidence that the upstream flow of funds has been permanently cut off (such as through finalized insolvency proceedings or definitive exclusion from official creditor lists), the courts may set aside the back-to-back condition and enforce your right to payment.
- **For Main Contractors:** A back-to-back clause should not

be treated as a passive defense. If an upstream party goes bankrupt, you have a proactive legal duty to pursue your claims and register your debts. In this case, the Appellant's failure to secure its status on the final bankruptcy creditor list was the key factor the Court used to declare the condition "impossible." Failing to preserve your upstream rights may result in you having to pay your downstream supply chain from your own funds.

At ***Wasel & Wasel****, our construction and dispute resolution practices remain at the forefront of the UAE's evolving legal landscape. Whether you are managing supply chain disputes, navigating insolvency proceedings, or assessing conditional payment clauses, our team provides practical, precedent-backed counsel.*

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The Advocate Next Door Podcast: Mahmoud Abuwasel on the Future of Crypto Dispute Resolution

September 7, 2026

In a recent episode of *The Advocate Next Door*, Mahmoud Abuwasel, Partner at Wasel & Wasel, joined hosts Kelby Ballena and Margarita Rosa Arango to discuss the intersection of cryptocurrency, cross-border fraud, and dispute resolution. With the UAE serving as a global hub for digital asset adoption, Mahmoud shares exclusive insights into the region's crypto litigation landscape and introduces his latest book, *UAE Crypto Litigation*; a first-of-its-kind resource for understanding how local courts are adjudicating complex digital asset disputes. Listen to the podcast at this link and read the full transcript of their conversation below.

Kelby Ballena: Have you tried these on like a video call?

Mahmoud Abuwasel: Well, I have, but I would have to have the entire thing connected and then from here go into a video call. But I have, and it sounds amazing, but the problem with really good audio is that whoever doesn't have it, it sounds terrible.

Margarita Rosa Arango: How are you? Nice to meet you.

Mahmoud Abuwasel: It's a pleasure to meet you.

Margarita Rosa Arango: Margarita.

Mahmoud Abuwasel: Hello. I was just enthralled by the crispness of the sound. I've never heard myself…

Margarita Rosa Arango: Please tell me that you have it.

Kelby Ballena: I, I…

Margarita Rosa Arango: We're trying to be professionals here.

Kelby Ballena: I don't know if you've ever been on a phone call where the audio is bad or you can't hear them and after a while you, it gets frustrating.

Margarita Rosa Arango: You just stop trying.

Kelby Ballena: Yeah.

Mahmoud Abuwasel: You do.

Margarita Rosa Arango: Okay.

Kelby Ballena: Okay. So we're just checking levels, making sure you're okay.

Margarita Rosa Arango: Yes, I am.

Kelby Ballena: Okay. Perfect. Thank you. All right, so we'll go ahead and start.

Margarita Rosa Arango: Sure. Yes.

Kelby Ballena: Perfect.

Introduction & Guest Welcome

Kelby Ballena: All right, welcome back to another episode of **The Advocate Next Door**. My name is Kelby Ballena. We have a very special guest… and I'm here with my wonderful co-host.

Margarita Rosa Arango: Hello everybody. Welcome back to the show. My name is Margarita Arango.

Kelby Ballena: In the audience today, we have Mahmoud Abuwasel. Am I saying your name correctly? Am I pronouncing…

Mahmoud Abuwasel: Yes. Yes.

Kelby Ballena: So right now you're a partner at Wasel & Wasel.

Mahmoud Abuwasel: That's correct.

Kelby Ballena: You handle a lot of litigation, you're an arbitrator, you've been an expert witness, and you're in many different fields, but one of the fascinating areas that you're a thought leader in is cryptocurrency. Now, for a general audience who may not have any idea what cryptocurrency is because not everybody does have a crypto account or even realizes what this is, how would you kind of explain cryptocurrencies?

Understanding Cryptocurrency & Bitcoin

Mahmoud Abuwasel: As a firm, we decided to focus on crypto disputes 5, 6 years ago when crypto became mainstream. And the reason is that we saw a lot of talk in the market by industry professionals on the crypto industry and where it's going and so on, with no clear government guidance. This is back in 2020, 2021.

Kelby Ballena: Yeah.

Mahmoud Abuwasel: Even before COVID even. And I thought well that, that is unforeseeable. But what's foreseeable is the disputes, right? What forums they will be held in and the issues people will be looking at, what the evidence trail will likely facilitate or need to facilitate, and so on. I mean look, I can tell you, my exposure to crypto, back in 2012, 2013, I was messing around on the dark web.

Kelby Ballena: As we all like to do at night.

Mahmoud Abuwasel: And I'm seeing all this stuff happening. And I'm thinking how are these people transacting? And Bitcoin kept coming up. What the hell is this? What's Bitcoin? And I think after a few weeks of, you know, dark web it got too strange, too fast. I never used it again.

Margarita Rosa Arango: Too scary.

Mahmoud Abuwasel: Yeah, I mean it's just it's not natural to look at daily. Or anytime. But then I looked into Bitcoin and I started looking at mining capabilities and hash rates mean and all that. And I ordered a mining rig end of 2013. I was supposed to get it in a month or two. And it ended up getting delayed and I got it in mid 2014 and by that time, operating it would have been at a loss because the hash rates increased. I don't know if this makes any sense. But the more Bitcoin is mined, the more facilities you need to mine it so that it's worthwhile. Because the hash rates increase. And that company that sold me the miner back then was closed by the Federal Trade Commission.

Kelby Ballena: Okay.

Mahmoud Abuwasel: They were shut down. Because I guess a lot of people complained they weren't sending out their products in time. It was like 6, 7 months late.

Kelby Ballena: So the way I understand it then, Bitcoin is a type of cryptocurrency. It's one of… but you were talking about mining it. So is it like gold that has a value?

Mahmoud Abuwasel: The value of cryptocurrency increases with more transactions taking place because when you transact, the crypto doesn't move from A to B like on a bus. It dissolves in the sender's control and then a new set is created in the recipient's control. And so the more transactions, the more codes are created, let's say.

Kelby Ballena: Okay.

Mahmoud Abuwasel: As opposed to gold where if you're trading gold on paper, maybe some similarity there. But the crux of a gold trade would be me giving you gold and you giving me its amount, right?

Kelby Ballena: Yeah.

Mahmoud Abuwasel: And also for gold, geopolicy plays a part there and with respect to who protects the gold as opposed to crypto where that question is not so clear, who protects the crypto, right?

Kelby Ballena: That's true because it's not locked away.

Mahmoud Abuwasel: Well it's not so much protecting it and fencing it, but protecting its value. So there's a story during the Roman Empire, the Indus region in modern day India, would manufacture their gold and stamp it with the then current Roman emperor’s visage. And the interesting question is well why would they do that? Because it’s the same gold, it’s the same value.

Kelby Ballena: Yeah. Why wouldn’t you use your own…

Mahmoud Abuwasel: Well the reason was, is the value isn’t so much inherent in the critical mineral itself. It’s inherent in being able to protect its supply chain and flow and so on. Right. And so gold with the visage of the current empire at the time may be more stable, may have more continuity, and so would be more reliable for circulation. Now that question is a much more difficult question with crypto.

Kelby Ballena: Yeah.

Mahmoud Abuwasel: Who can protect its circulation and so on. And then you say, well, we don’t need to protect its circulation because the whole point of it is that it’s decentralized. Right, it’s outside the banking system. It’s outside any centralized system of control or protection. And that’s where the disputes get complicated.

The Complexities of Crypto Litigation

Kelby Ballena: Yeah, so that was my next question then this is where crypto litigation happens or dispute happens.

Mahmoud Abuwasel: Well that’s where they get difficult to navigate by methods of standard practice because you’re taking this item from supposedly outside the ecosystem and you want to bring it into the ecosystem to resolve your dispute, right? You want to bring it into the courts or into the arbitration forums and you want to utilize whatever legislation you want to utilize, the litigation act, the civil procedures law, the arbitration law, whatever it is. And then you get a judgment and you want to utilize the enforcement systems and the bank systems and so on to collect what you’re owed. And so it’s really interesting to see how different forums around the world have addressed many, many questions. There's been a recent judgment out of the UK in respect of servicing a party through NFT.

Kelby Ballena: Like giving service or like servicing them like court summons?

Mahmoud Abuwasel: Like a court summons.

Kelby Ballena: Yes. Via NFT?

Mahmoud Abuwasel: Yes.

Kelby Ballena: Wow. I'm trying to imagine what that must be like. Okay.

Mahmoud Abuwasel: You wouldn't manifest these questions until you're put into a situation, right? You're put into a situation while you're pursuing a dispute and you look at all the options and suddenly the Overton Window expands and you have these new options coming from this system that's been historically outside the standard ecosystem.

Discussing the Book: UAE Crypto Litigation

Kelby Ballena: So turning then to a book that just has been released, you wrote a book **UAE Crypto Litigation**. What was your inspiration to put this book together?

Mahmoud Abuwasel: Well, we've been covering crypto judgments from different jurisdictions since, like I said, when we started working on this five, six years ago, or when we started investing into crypto dispute practice. And the UAE, the United Arab Emirates, particularly Dubai and Abu Dhabi and their financial free zones, the Dubai International Financial Centre and the Abu Dhabi Global Market, they've had an exponential adoption of cryptocurrency. And right now the UAE is at the latest statistics, we're at 32 or 33% adoption rate. The highest in the world.

Kelby Ballena: Yeah.

Mahmoud Abuwasel: Almost double or more than double of the United States. And so there’s a lot of economic activity that ends up in the courts with a lot of interesting questions. And every time we’ve covered a particular item, a development in the courts or so on, a lot of times it goes viral or has more viewership and interest than some of the other items that we’re covering. And so you have this jurisdiction that acts as a sort of gap analysis, as a case study for other jurisdictions to look at. But the information isn’t that accessible. Either language wise or because you need to have the law research tools. Your general person, your layman does not have.

Kelby Ballena: Right.

Mahmoud Abuwasel: And so is there enough information out there that it could be read intelligibly as a whole? And so the first thing I did was I took out all the crypto judgments I can find, not all, but let’s say 90%. And the really difficult part was seeing if that information could be parameterized into a particular journey for someone looking at the information or whether it’s haphazard; is the only way to read it in a silo, each information item has to be read on its own or can it be read in a holistic manner? And that’s really what took a lot of work is structuring the information for someone reading these, and ended up with over 100 judgments, but the difficult part was whether someone reading these 100 plus judgments can do so in a way where if they go from start to finish, they have a holistic view of a particular journey.

And then the question is well what is that journey? And the journey, for being thematic for the book is the litigation journey, right?

First you want to characterize what you’re bartering, what you’re trading with.

Then you want to characterize the underlying agreement, right? I bartered this or I traded this, is it actually an agreement? Is there an agreement at all? Is it a partnership agreement, a management agreement, an investment agreement?

And then looking at the appropriate forum, then looking at liability, establishing who could be liable and then the evidence to establish that liability.

And then enforcement and collection, and then if there's any fraud and so on.

And so that made sense and the judgments and the subject matter and the court rationale and so on could be distributed in a way that it's the life cycle of a dispute, you journey through the dispute through these chapters and so you could read it holistically in that manner. But then there was another problem. The first problem is can you read this as a journey, right?

Kelby Ballena: Yeah.

Mahmoud Abuwasel: You want to read a book, you want to go from start to finish. The second problem was well if you don't, what if you don't want to? Right? You got 600 pages here. You're a busy professional. Maybe you don't have time to sit down and read…

Margarita Rosa Arango: As much as we would want to. Everyone wants to, but you know…

Mahmoud Abuwasel: Yes. Time is a finite resource. And so well maybe they want to use this as a resource model, right? And so is there enough variation in the issues brought to courts and the courts rationale and so on that it could be topically variable enough that you would look at it for different sets of problems and then it would be worth the money to buy. Because you may buy it and put it on the shelf, not read it immediately and say, there's enough there that I can have this on the shelf for a year or two or three and refer to it every now and then because there's enough topical variation in there. And so if you go through the chapter titles you'll get an idea of how everything's in there.

Margarita Rosa Arango: But that will make it very helpful for students and professionals. Like for you to be able to have this source where you can get everything you need from, you know, that makes it easier to teach a class, to learn… I mean either students that want to learn about crypto or professors that want to teach about crypto and don't have cases or might need ideas.

Kelby Ballena: Or even a lawyer. I mean you should you should hear some of these chapters. We have like the burden of proof for wallet ownership. There's already so many questions I would have there on what enforcing unlicensed management agreements, theft, innovation in crypto trading. I mean you're going into very interesting topics and cases. Coercion and robbery using crypto assets.

Margarita Rosa Arango: Cases that are also not easy to find.

Kelby Ballena: I think this would be relevant and helpful to us. I would like to know malicious prosecution in mining disputes. That'd be really fascinating to know more about all of these topics. So I think there's a lot of great areas, a lot of great things that you've covered in this book so I hope that some people find something that they're actually interested in. And not only that like learn a little bit more about this type of litigation because up until I had met you, I didn't even know there was crypto litigation that was out there.

Mahmoud Abuwasel: It's a growing market. Many disputes are resolved in arbitration.

Kelby Ballena: Are most of these disputes though in the UAE or are other countries handling these kind of disputes?

Mahmoud Abuwasel: Oh well no, they're all over. I mean Singapore, Hong Kong, London. The UAE is unique because of the high adoption rate.

Kelby Ballena: Okay.

Margarita Rosa Arango: And that's why you chose the UAE for your book?

Mahmoud Abuwasel: Well, that's one of the reasons, right? The other reason is if someone else wanted to look at the information, then it's not as accessible because of the language barrier or the usual tools. Like I mean if you have a Westlaw subscription in the US, you can easily expand it to include the UK. You can easily expand it to include Australia, right? Westlaw may not do that for UAE court judgments. They're issued differently. LexisNexis has a system. Now I'm promoting others. But, but the point is, it's a different resource database and they're even better ones that are grassroots from the country or the region for that information. So for the outsider, even if you're a practitioner on the outside, it's not as easy to extract the information. And then there's the actual subjective understanding of these judgments. This is civil law jurisdiction and so you need to understand the predisposition of the adjudicator, of the judge. When reading the judgment, dozens or hundreds of pages long, there's a philosophical explanation to the rationale. And these are civil law based on the statutes. So you need to know what the statutes mean. To know what the statutes mean, you need to know the legislator's legislative intent behind the statutes and so on. So you need also to have that market experience to be able to translate the information for the average reader.

Margarita Rosa Arango: That's very interesting. Because he's translating civil law, UAE civil law to common law. That makes it easier for people who are commonly working in common law to get access to that information.

Kelby Ballena: Yeah. Yeah, I think I see some great value in it. Um so congratulations on releasing this book.

Mahmoud Abuwasel: Thank you.

Kelby Ballena: I'm sure it's going to be very useful.

Career Background & Technology

Margarita Rosa Arango: When you were younger, what did you want to be? A lawyer?

Mahmoud Abuwasel: I don't, I can't remember. I don't think I… I thought things would work themselves out.

Margarita Rosa Arango: Sometimes it's even better not to have a plan. Let life go its course.

Kelby Ballena: Yeah.

Mahmoud Abuwasel: Yeah, I mean I had fun, I was having a good time and things would work out. I did well in school, right? I did well.

Kelby Ballena: You went to school in Canada?

Mahmoud Abuwasel: Oh different places.

Kelby Ballena: Yeah.

Mahmoud Abuwasel: But when I started practicing, I had a good feel for TMT at the time. I don't know if that's still the common practice area name. Technology, media, telecommunications. I think now it's a lot more diverse. Now you have AI practice areas and Web 3.0 practice areas and so on. But 15 years ago TMT did a lot of work, did work for Snapchat, for Amazon, for unique things like geolocation and geotagging and all the social media apps.

Margarita Rosa Arango: So you've always been very involved with technology?

Mahmoud Abuwasel: At the time, I wasn't a decision maker, but I had a feel for this. I would bill good hours and clients were happy and so I did more of that work.

Tracing Crypto Frauds & "Pig Butchering"

Margarita Rosa Arango: My understanding is that crypto, it's untraceable. Then if it's untraceable, how do you claim, like how do you know who to pay what it's owed?

Mahmoud Abuwasel: If you want to talk about arbitration, traceability wouldn't overlap with arbitration. Right. If you know who you're suing, because you have an arbitration agreement, then it's about proving your right. The traceability issue comes in scam, fraud, cross-border crime. Traceability in an arbitration dispute, there could be a situation where you are a user of one of the large exchanges and by virtue of being a user, you have an arbitration agreement. And aside from that fact, separately, you get scammed from someone completely unrelated. But then you trace the funds and coincidentally they're at the exchange that you are a user of, right? And so I imagine that would be a situation where there would be an overlap between scam and tracing and arbitration. Whether that situation would fall within the arbitration agreement, that's a different question. It's a fantastic question because you've identified the two sort of verticals in crypto disputes. One is quasi crime, right? Scams and fraud. And now in the US, the nomenclature for what's happening is pig butchering.

Margarita Rosa Arango: That's a terrible name.

Mahmoud Abuwasel: It's used by the judges and the courts. I have judgments that say pig butchering.

Kelby Ballena: Really? Pig butchering?

Mahmoud Abuwasel: Yeah.

Kelby Ballena: Interesting.

Mahmoud Abuwasel: That’s in the judgments. Everyone knows what the judge is talking about. What it is is when a victim is lured into making a minor investment and then they get a little bit back, they make a little bit more, they get a little bit more back and so on. So someone is asked to, told if you put a thousand, it’s a great investment. They put a thousand, they get 2000 back. Then they say, well, you did it, it was great. You put 5,000, they put 5, they get 10 back. And then they’re told, well, how about you put 50? Right? They put 50 and the money disappears. And it’s done, and it’s done through different mediums. I’ve got one of these cases in the book by the way, in the UAE, the United Arab Emirates. A case that happened in that sense where someone is told send money through WhatsApp and then do a YouTube tutorial, pay for it this much and then invest money here. And usually the end platform is some sort of fraud website, right? It’s a website that looks completely legitimate and so on, but the money goes into a black hole and the asset never shows up again. So there’s a lot of that happening. There are a lot of victims making their claims, winning their claims, because the defendants never show up. And the crypto technical experts who we work with a lot are able to trace those funds and find where they landed and at which exchange.

Kelby Ballena: Like a bank?

Mahmoud Abuwasel: No. It’s like crypto.com or Binance. So these are exchanges.

Margarita Rosa Arango: Yes, yes, yes, yes.

Mahmoud Abuwasel: Binance has like 300 million users. It’s like, it’s like the stock market exchange, but for crypto.

Margarita Rosa Arango: Yes, exactly. Exactly.

Mahmoud Abuwasel: But anyway, the crypto is traced and it’s found at a particular exchange or somewhere else. And an American judge in whatever district issues a judgment and says this victim has been scammed of a million dollars and we know the assets have landed here at this exchange or this company and you're instructed to either hold them in a constructive trust is established or to return the money. But the entity that's received the crypto assets, they're not in the US. They're somewhere abroad. And that's where a lot of the difficulty is in the cross border stuff. Now I haven't seen an ISDS claim related to crypto so far.

Margarita Rosa Arango: No, I haven't heard about it.

Kelby Ballena: I think it's never too late.

Margarita Rosa Arango: Yeah, well, I'm sure we will. We will find eventually.

Kelby Ballena: Yeah, I think so too.

Margarita Rosa Arango: Yeah. This crypto topic makes me think a lot. I have a lot of questions. I'm definitely reading your book by the way.

Navigating International Treaties

Kelby Ballena: Yeah. But I'm thinking, do you think there's any BIT that talks about crypto or understands crypto per se as an investment? I haven't seen one.

Mahmoud Abuwasel: They're making their way into tax treaties.

Margarita Rosa Arango: Ah, you see? Interesting.

Mahmoud Abuwasel: Information sharing or double taxation and so on, you will find language coming up more and more that addresses digital assets. Governments are looking at how they tax digital assets, whether it's crypto or whether it's NFTs or whichever. And so a lot of treaties are being renegotiated. As you know. Right. Netherlands is renegotiating everything.

India as well.

Margarita Rosa Arango: Yes.

Mahmoud Abuwasel: And so language is making its way into, from a tax perspective. Right. Not, not so much, not so much as a standard investment protocol, but investment perspectives, cover everything. But from a tax perspective, they are trying to identify or governments are trying to identify digital assets within the tax framework.

Advice for Students

Kelby Ballena: Generally, what advice would you give students who are interested in crypto litigation?

Mahmoud Abuwasel: The vernacular around the crypto industry is very noisy and the language is not very sophisticated most of the time. And so I would advise students to watch hearings, read transcripts and judgments from common law jurisdictions, London, the DIFC. That's the Dubai International Financial Centre. Their hearings are recorded and students can watch them. There was a recent five-day hearing in which my book was referenced. A student has five days worth of hearings where they can watch these very senior English barristers, King's Counsel, advocate before a very intelligent judge. And you can see there the vernacular being used in the crypto industry. It's very serious, very sophisticated. And that should be what populates a student's mind. As a student, that should be what populates your mind to help you create an inner monologue or an introspect towards the crypto industry. So that when you speak of it or think of it, you do so in a serious and intelligible manner. So there are live recorded hearings, there are transcripts, you have all the court set transcripts here. The judgments and so on. And from the common law jurisdictions as well, across the board. That should be the resource model. And because the discussions are advocacy, everyone's philosophizing. You bring your own philosophy into it, the judges bring their own philosophy into it, and so on. But what that does is for a student, it helps them create their own frame of reference. Not parrot what is being said or written or so on. But when that's the resource to an extent, it helps a student to develop their own unique perspective on things. To have their own voice and from there have their own clients and their own business and so on.

Kelby Ballena: Which case in your book would you say that someone like me who is new to crypto can read and have a good understanding on how crypto disputes work?

Mahmoud Abuwasel: If there was an answer to that question, the book would be one case. Right? There are seven years worth of cases here. Right? And so you're looking at the evolutionary life cycle. And we're still in the evolutionary life cycle. But then there are things that are topical. I mean now, there's a case where someone tried to get out of a crypto deal because of the Russia Ukraine war. And now we have much more severe geopolitical instability. And so we have some foresight into, well if you have some crypto transaction taking place and it's disrupted, what do you expect the court to say? What's your evidentiary threshold? How do you have standing? What grounds can you rely on and so on? So things are topical. And it could be either a macroeconomic issue that's topical or it could be micro. Just in your industry or in your particular service line and so on.

Conclusion & Where to Find the Book

Kelby Ballena: That's great. So anyone who's interested in the book, where could they actually find your book now?

Mahmoud Abuwasel: It's available on uaecryptolitigation.com and you can see a preview of the book. See a couple of chapters, you can order it, access the companion podcast for the book through the website as well. We have quizzes that will be available soon. And the purchase or delivery is available worldwide.

Margarita Rosa Arango: Thank you so much for coming Mahmoud. It was a pleasure to have you.

Kelby Ballena: Thank you for being a raw voice at this podcast.

Mahmoud Abuwasel: You're very welcome. Thank you.

Kelby Ballena: Thank you.

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

September 7, 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.

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

September 7, 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.

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UAE Crypto Litigation: When War Doesn’t Excuse Crypto Losses – A Dubai Court Judgment on Force Majeure, War, and the 2026 Iran War

September 7, 2026

The following is an excerpted analysis of topics discussed in the book ‘[UAE Crypto Litigation](http://www.uaecryptolitigation.com)‘, a treatise on the judicial evolution of digital asset disputes in the United Arab Emirates, [available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).

In the immediate aftermath of a geopolitical shock, such as the escalating conflict involving Iran, a frantic period of market panic and informal crisis management sometimes occurs. It is not uncommon that asset managers and OTC brokers trade WhatsApp messages with anxious clients, cite global instability, and may freeze withdrawals to avoid unforeseen losses. For the investor or legal practitioner, these crisis-driven communications present a complex contractual challenge: when does wartime market volatility excuse non-performance under the doctrine of *force majeure*, and when is it superseded by an informal guarantee?

The UAE courts have adopted a rigorous stance on this issue, prioritizing the specific substance of the parties’ communications over sweeping macroeconomic excuses. While traditional commercial contracts might readily invoke wartime disruption as an act of God, the digital asset sector faces a different legal reality. A landmark judgment from the Dubai

Court of Appeal (Case No. 406 of 2023) provides a definitive blueprint for how the judiciary approaches geopolitical market instability. In a dispute involving a massive informal digital currency investment, the defendant failed to return investor funds following a severe market crash. Attempting to shield himself from liability, the defendant invoked *force majeure*, attributing the impossibility of performance to the extreme market volatility precipitated by the outbreak of the Russian-Ukrainian war; a defense mirrors the potential arguments of citing the Iran conflict.

However, the courts are nuanced when a party has made absolute promises outside of a formalized risk allocation structure. The true battleground in such disputes is rarely the macroeconomic impact of the conflict, but rather the defendant’s own digital breadcrumbs. In assessing the aforementioned case, the court relied heavily on a court-appointed expert’s forensic analysis of the parties’ emails and messaging apps to pierce the veil of the informal arrangement. The evidentiary record revealed that the defendant had aggressively induced the claimants, affirming in writing that the investment was “100% guaranteed” and that the principal could be recovered “immediately upon request.” The defendant tried to sever his liability by pointing to a global conflict, hoping the court would ignore his own unqualified assurances.

The court refused to allow this *force majeure* defense. It held that by explicitly guaranteeing the return of funds “at any time,” the defendant had contractually assumed the risk of market volatility. Extreme price fluctuation, even when catalyzed by a major regional war, is an inherent and foreseeable feature of cryptocurrency markets; not an unforeseeable external event. Consequently, the burden of the market crash remained entirely on the defendant, transforming what might have been a speculative investment into an unconditional debt obligation. This serves as a stark warning to market participants and informal asset managers: you cannot weaponize the theater of war to excuse market losses if your communications vacant clear contractual exclusions have already guaranteed the preservation of your investors' principal.

For a detailed guide on managing force majeure claims, implementing objective "Market Disruption Event" clauses, and navigating VARA's strict prohibitions on guaranteed returns, see more in the contractual risk analysis in 'UAE Crypto Litigation'.

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The 2026 Iran War, Tax Audits, and Force Majeure: The UAE Supreme Court's Standard for Force Majeure in Tax Audits and Liabilities

September 7, 2026

The outbreak of the Iran War on 28 February 2026 has abruptly plunged the Middle East into profound operational disruption. Consequently, corporate boards operating within the United Arab Emirates are instinctively looking to the doctrine of *force majeure* and emergency circumstances (*thuroof tari'a*) as legal shields. Having acted in over 300 UAE tax dispute procedures, one of the most pressing questions we are now receiving is whether the friction of Iran War legally diminish underlying tax liabilities, excuse administrative penalties, or suspend Federal Tax Authority (FTA) audit procedures.

To answer this purely as a matter of law, we must detach from the immediate fog of conflict and examine the definitive jurisprudence of the UAE Federal Supreme Court. The seminal judgment in Cassation No. 958 of 2025 (Administrative) provides the exact legal architecture. In that dispute, the systemic crisis in question was the COVID-19 pandemic. By transposing the Court's rationale regarding the pandemic onto the 2026 conflict, we find a resolute and unyielding framework of administrative tax law.

The Statutory Accrual of Tax Liability

A question taxpayers make during wartime is whether the disruption of their administrative capabilities lawfully postpones their underlying tax liabilities. The Supreme Court systematically dismantled this assumption, establishing that the legal character of a tax debt operates entirely independently of the operational environment.

The Court ruled that tax obligations are rigidly attached to the statutory transaction date, irrespective of the taxpayer's ability to seamlessly file declarations during a crisis:

"The legislator did not make the acquisition of the status of 'payable tax' contingent upon the tax return, but rather bestowed this status upon the tax whose payment date has arrived."

Therefore, as far as matters stand, the geopolitical landscape does not alter the realization of a statutory tax point. Even if the Iran War prevents the timely filing of an administrative return, the underlying liability is not practically paused or legally dissolved. The war does not suspend statutory accrual.

Force Majeure: Transposing Covid-19 to the 2026 Conflict

During the COVID-19 pandemic, taxpayers attempted to utilize the global emergency as a *force majeure* event to excuse administrative delays, avoid late penalties, and invalidate tax assessments. In the petition for Cassation No. 958 of 2025, the UAE Federal Supreme Court considered *force majeure* in regard to tax audits. They highlighted a three-year audit delay, noting that the FTA itself admitted its operations were hindered by COVID-19.

In light of the legal maxim that “a party cannot benefit from its own mistake” the Supreme Court considered whether the FTA could not lawfully impose incremental “time-based penalties” while the government’s own pandemic-related disruptions stalled the audit process. Furthermore, the Supreme Court considered whether the FTA’s crisis-induced delay caused a compensable “loss of opportunity” to mitigate penalties under favorable Cabinet Decisions issued to provide relief during the pandemic.

Today, businesses are considering whether this exact legal theory would apply to the 2026 Iran War, and whether regional hostilities inherently frustrate audit procedures, trigger mutual *force majeure* exemptions, and legally dissolve the imposition of administrative fines.

The Federal Supreme Court, however, addressed the premise that a systemic crisis suspends tax obligations or shifts the legal burden. Addressing the attempt to use the pandemic to excuse compliance failures, the Supreme Court laid down a formidable standard that directly governs our current wartime reality:

“…its admission of its …-month delay places the burden of proof upon it despite the Corona pandemic that passed over everyone (the Appellant and the Administrative Authority).”

The Rationale: Crises That "Pass Over Everyone"

The jurisprudential rationale here is profound. Because a systemic crisis, whether a global health emergency like COVID-19 or the 2026 Iran War, impacts both the private sector and the state apparatus equally, its mere existence does not grant the taxpayer blanket legal immunity.

The fact that the crisis "passed over everyone" means the foundational rules of administrative litigation remain intact. The Court made it clear that a shared macroeconomic shock does not reverse the burden of proof:

"The burden of proof in an administrative dispute does not deviate in its origin, and as a general rule, from others, as the principle is that the creditor must prove the obligation and the debtor must prove getting rid of it…"

Taxpayers cannot use general claims of *force majeure* as a shield against statutory tax audits or potential government disruptions. To successfully challenge an FTA assessment during this conflict, general appeals to wartime hardship are legally insufficient; taxpayers must rely on pristine documentary evidence demonstrating exactly how the war rendered specific compliance materially impossible.

Conclusion

Does the 2026 Iran War diminish or dissolve UAE tax liabilities or audit procedures? The unequivocal legal answer from the UAE Supreme Court is not in a blanket manner. Guided by the rationale in Cassation No. 958 of 2025, the judiciary does not recognize systemic, shared crises as a *force majeure* that extinguishes tax debts or shifts the burden of proof. The machinery of UAE tax law does not halt for war. Taxpayers whose tax audits or liabilities are affected by the war must provide direct evidence, grounds, and standing to causation and nexus in approaching the FTA, the tax disputes resolution committees, or the courts.

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UAE Crypto Litigation: The "Man in the Middle" and the Duty of Delivery

September 7, 2026

The following is an excerpted analysis of topics discussed in the book UAE Crypto Litigation, a treatise on the judicial evolution of digital asset disputes in the United Arab Emirates, available at www.uaecryptolitigation.com.

A defining feature of blockchain transactions is their irreversibility. If an asset is sent to the wrong address, there is no central authority to reverse the transaction. This technical reality creates complex legal questions when a transaction is intercepted or misdirected by a malicious third party; a "Man in the Middle" attack. In China, the US, and the UK, courts have often placed strict liability on OTC desks to verify the identity of the recipient. The UAE courts, applying general principles of contract law, have allocated this risk strictly against the seller in the context of delivery obligations.

The Dubai Court of Appeal recently analysed a dispute arising from a Peer-to-Peer (P2P) sale of USDT. The buyer had paid for the assets, and the seller transferred the USDT to a wallet address provided by a third-party intermediary who was facilitating the deal. The intermediary, upon verifying the transfer, vanished with access to that wallet, leaving the buyer empty-handed.

The court held the seller liable for the buyer's loss. It established a high standard for the duty of delivery, ruling that the obligation to deliver sold goods is not met by merely dispatching them to a provided address. The seller must ensure the successful *receipt* of the assets into the buyer's effective control. By relying on an untrusted intermediary's instructions without verifying the wallet's ownership with the buyer directly, the seller assumed the risk of fraud.

This judgment reinforces the "perfect tender" rule in the context of digital assets. It serves as a caution to OTC traders who rely on brokers on platforms like Telegram. The legal duty is result-oriented: the contract is only performed when the buyer has the tokens, not when the seller has sent them. If the intermediary provides a fraudulent address, the party sending the funds bears the loss.

To navigate the risks of P2P transactions and intermediary liability, see more in [‘UAE Crypto Litigation’ book publication available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).

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