

The dualism judicial system in the United States & United Arab Emirates - Comparative study -

ثنائية النظام القضائي في الولايات المتحدة الأمريكية والإمارات
العربية المتحدة - دراسة مقارنة -

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Abstract:

The dualism of the judicial system in states raises many legal problems. This dualism, which presupposes dual legal rules and duplication of courts in two federal and local jurisdictions, raises issues related to conflict of jurisdiction and its distribution and conflict of judgments. The duality of the judicial system in the United States of America arose as a legacy of the colonial period, whereas for the first time in 1789 a federal judiciary was established, at the same time all thirteen British colonies had their own comprehensive judicial system based on the English model, so the federal judicial system developed alongside the local judiciary.

Pursuant to the tenth amendment to the US constitution, powers not vested in the Constitution by the United States as a whole and not withheld from the States (individually) are reserved for each of these states or for the people. Accordingly, the United States of America has

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the right to establish a local judiciary which considers matters that do not fall within the jurisdiction of the federal judiciary. The judiciary in the UAE has been influenced by the Anglo-Saxon system based on the dualism of the judicial system where there are two types of judiciary, either the federal presidency of the federal Supreme Court on the one hand, or the local judiciary at the level of local governments' members of the Union. Each of the seven emirates has the right to choose either to participate in the federal judiciary, or to maintain its own local judicial system. Accordingly, the emirate of Sharjah, Ajman, Fujairah, and Umm Al Quwain follow the federal judicial system. While the Emirate of Abu Dhabi, Dubai and the tents retained local jurisdiction. The UAE constitution regulates the two types of judiciary and explains its origins in general, while its details are left to the local judiciary without contradicting the overall principles laid down by the constitution. and each of the seven emirates has the right to choose whether to participate in the federal judiciary, or to maintain its own local judicial system. Accordingly, the Emirate of Sharjah, Ajman, Fujairah and Umm Al Quwain follow the federal judicial system, while the Emirate of Abu Dhabi, Dubai and Ras al Khaimah retained local jurisdiction. Keywords: judicial system, United States of America, United Arab Emirates, Federal court, Local court.

Keywords: judicial system, United States of America, United Arab Emirates, Federal court, State court.

المخلص:

تثير ثنائية النظام القضائي في الدول العديد من المشكلات القانونية، فتلك الثنائية التي تفترض ازدواج القواعد القانونية وازدواجية المحاكم في قضاءين أحدهما اتحادي والأخر محلي يثير مسائل متعلقة لتنازع الاختصاصات وتوزيعها وتضارب الأحكام.

نشأت ازدواجية النظام القضائي في الولايات المتحدة الأمريكية كإرث للفترة الاستعمارية، حيث إنه في الوقت الذي أنشأت لأول مرة عام 1789 سلطة قضائية اتحادية، كانت في ذات الوقت لكل المستعمرات البريطانية الثلاثة عشر نظام قضائي شامل خاص بها يستند إلى النموذج الإنجليزي، ومن ثم نشأ النظام القضائي الاتحادي جنباً إلى جنب مع القضاء المحلي. وبناءً على التعديل العاشر للدستور الأمريكي فإن السلطات التي لا يوليها الدستور للولايات المتحدة ككل ولا يحجبها عن الولايات (فردياً) تحفظ لكل من هذه الولايات أو

للشعب, وبموجب ذلك يكون من حق الولايات إنشاء قضاء محلي ينظر في المسائل التي لا تتدخل في اختصاص القضاء الاتحادي.
وقد تأثر القضاء في دولة الإمارات العربية المتحدة بالنظام الانجلوسكسوني المعتمد على ثنائية النظام القضائي حيث يوجد نوعان من القضاء, إما الاتحادي برئاسة المحكمة الاتحادية العليا من جهة, أو القضاء المحلي على مستوى الحكومات المحلية الأعضاء في الاتحاد.
ينظم الدستور الإماراتي نوعي القضاء ويشرح أصولها بشكل عام, بينما يترك بيان تفصيلاتها للقضاء المحلي دون أن يخالف أو يتعارض مع المبادئ الكلية التي وضعها الدستور. ولكل إمارة من الإمارات السبع الحق في اختيار إما المشاركة في السلطة القضائية الاتحادية, أو الحفاظ على النظام القضائي المحلي الخاص بها, ووفقاً لذلك, تتبع كل من إمارة الشارقة, وعجمان, والفجيرة, وأم القيوين, النظام القضائي الاتحادي, بينما احتفظت إمارة أبوظبي ودبي ورأس الخيمة بقضاء محلي.
الكلمات المفتاحية: النظام القضائي الولايات المتحدة الأمريكية, الإمارات العربية المتحدة, القضاء الاتحادي, القضاء المحلي.

1. INTRODUCTION

According to Article 45 of the UAE Constitution,"the federal judiciary is one of the five bodies that make up the federal authorities of the UAE government. The independence of the UAE judiciary supports the country's stability and well-being. The UAE judiciary is completely independent and judges are subject to no authority other than the rule of law and their conscience. The cases are handled by the UAE courts fairly and without interference from any authority whatsoever".

In United States of America, we can return the assets of the applicable law in the United States to the founding fathers in the British colonies who ruled on the basis of English law and the principles of justice, absolute, and the law of legislative prevailed in the mother country (United Kingdom) and has been applied in the colonies, and also ratified the country's constitution in 1789 was Establish a new federal system of government, federal laws and courts.

In 1791, Congress approved ten amendments to the Constitution, known as the Bill of Civil Rights. Based on the tenth Amendment, which states The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people, So, the right of the formation of local governments in the United States on a similar format to form a federal government

which under a written constitution, and the Senate of the State of Society National state, elect a state governor, and establish a state high court.

So, the following study will explain the dualism judicial system in the United States of America and United Arab Emirates by using the comparative approach, and it will be divided into two chapters, first one for judicial system in United Arab Emirates, and the second for Judicial system in the United States.

Chapter one

Judicial system in United Arab Emirates

The judicial system in the UAE operates within a bilateral framework that encompasses both the local and federal jurisdictions.

"The relationship between these two systems is governed by constitutional articles 94 to 109, explaining the overall origins of this relationship while detailing its left to the local judiciary without contravening or contradicting the overall principles established, by the constitution. In all emirates there are courts of first instance and appellate courts, federal or local, as well as Shari'a courts dealing with personal status issues, such as marriage, divorce, inheritance and others. The main source of legislation in the UAE is Islamic law, which derives its laws and laws from the Qur'an and Sunnah" (<https://u.ae>).

The UAE Constitution stipulates that everyone, regardless of their race, nationality, religious belief and social status, is equal before the law. It also guarantees human rights and prohibits torture and degrading treatment of dignity in all its forms, arrest, search, seizure, imprisonment and unauthorized access to homes, except in accordance with the provisions of the law (<https://u.ae>).

Over the past few years, "the UAE judiciary, in its local and federal form, has succeeded in developing its structures, enhancing the security and safety of society, achieving the economic and social stability of the State, and establishing the principles of responsibility, transparency and efficiency in the various organs of the State. The UAE is now the most transparent Arab country in its judicial system."(<https://u.ae>)

Federal judiciary in accordance with the UAE Constitution:

According to article 94 of the constitution, "Justice is the basis of rule. In performing their duties, judges shall be independent and shall not be subject to any authority but the law and their own conscience. All

defendants, whether Emiratis or expatriates enjoy the right to a fair trial and this right is clearly protected in the UAE's laws".

"The federal judiciary is fully independent, and the Constitution does not allow any interference from anyone.

This independence benefits everyone, enhances the security, stability and well-being of the state, and wins the trust of the judicial system and its justice"(http://ejustice.gov.ae).

The UAE Constitution provides for the equality of all before the law, guarantees human rights, and prohibits degrading treatment of dignity in all its forms. It also guarantees the right of all citizens and expatriates to a fair trial(https://u.ae; for extra information:Al-Serhan, 2018). According to the UAE Constitution,"the federal judiciary is fully independent and justice is the basis of its authority. Everyone is equal before the law, regardless of race, nationality and religion. The constitution does not allow arbitrary detention, inhuman treatment, and illegal infiltration of private property".

"The federal judiciary in the UAE includes 3 types of federal authorities:

- Federal Supreme Court;
- Federal Courts;
- Public Prosecution".

Federal Supreme Court:

"The first mention of the Federal Supreme Court was in 1968 when the late Sheikh Zayed bin Sultan Al Nahyan and Sheikh Rashid bin Saeed Al Maktoum concluded an agreement on a federal union between them. The Federal Judiciary in the United Arab Emirates began by Federal Law No. 10 of 1973, establishing the Federal Supreme Court."

Appointment and duration of judges of the Federal Supreme Court:

The Supreme Court has five judges appointed by the President of the United Arab Emirates, with the approval of the Federal Supreme Council.

According to art. 97: "the president and judges of the Supreme Court cannot be dismissed and their services can only be terminated for the following reasons:

- The death.
- Resignation.

- Completion of contract period for individuals on contract or completion of loan period.
 - Retirement.
 - Permanent inability to shoulder the burden of their duties due to ill health.
 - Disciplinary evacuation based on the reasons and procedures stipulated by law.
 - Appointment in other offices, by agreement
- Competencies of the Federal Supreme Court
Exclusively, the Supreme Court:
- Disputes between member Emirates, or between any one or more emirates and the federal government.
 - The constitutionality of federal laws and the constitutional legitimacy of legislation enacted by the local emirates if they challenge federal laws or the constitution.
 - Examine the constitutional legitimacy of laws if such a request is referred by any state court.
 - Constitutional interpretations if requested by a federal entity or any Emirate.
 - Interrogate ministers and senior federal officials at the request of the Federal Supreme Council.
 - Crimes directly affecting the interests of the Union, such as crimes related to internal or external security, falsification of official records or seals.
 - Conflict of jurisdiction between federal and local jurisdictions.
 - Conflict of jurisdiction between the judicial authority in one emirate and the judicial authority in another emirate and the classification of the relevant principles in a federal law" (Official translation of UAE constitution, available on <http://ejustice.gov.ae>).

Federal Courts:

The United Arab Emirates shall maintain one or more first instance federal courts in the permanent capital of the Union or in the capitals of certain Emirates in order to exercise jurisdiction within its jurisdiction in the following cases:

- Civil, commercial and administrative disputes between the Federation and individuals, whether the plaintiff or the defendant.

- Crimes committed within the borders of the permanent capital of the Union.
- Personal status, civil, commercial and other interpersonal procedures established in the permanent capital of the Union.

"The law shall regulate all matters relating to the federal courts of first instance with respect to their organization, composition, administration, local jurisdiction, the procedures to be followed before them, the section performed by the judges before them, the conditions of service of their judges and the means of challenging their judgments"(http://ejustice.gov.ae; for extra information: Shehata, 1990).

The levels of court:

To achieve the full extent of justice, the UAE adopts three levels of courts for litigation purposes. This system enables the affected party to appeal the case and provide further evidence within the provisions of the law."Court certificates in the UAE are:

- Court of First Instance (Federal and Local).
- Court of Appeal (Federal and Local).
- The Federal Supreme Court (at the federal level) and the Court of Cassation at the local level of the Emirates with independent judicial administrations".

"If the decision of the Court of First Instance is unsatisfactory, it can be appealed before the Court of Appeal and then the Court of Cassation in accordance with the provisions of Federal Law No. 11 of 1992"(For extra information about UAE judicial system see: <https://u.ae>).

Court of first instance:

"The Court of First Instance is the first instance of lawsuits and has jurisdiction to hear all civil, commercial, administrative, employment and personal status lawsuits. Its competence includes the examination of claims, the documentation of documents and all urgent matters relating to conflicts between people and the protection of their rights. It is also responsible for enforcing acts of judicial execution, as well as executions by assignment or referral" (Previous information and more available on <https://u.ae/en/>).

Court of Appeal:

According to federal Law No. 11 of 1992, art. 158-159: "The litigant parties, in other than the circumstances excepted by the law stipulation, may appeal the decisions of the courts of first instances before the authorized court of appeal. It shall be possible to appeal the decisions issued within the framework of the final quorum from the court of first degree because of the breaching the jurisdiction rules related to the public order or because of the occurrence of an invalidity in the decision or an invalidity in the procedures which has affected the decision. The time-limit of the appeal shall be 30 days unless the law stipulates otherwise, and the time-limit shall be 10 days for the summary matters".

Court of Cassation:

According to art. 173-174 of the law above: "The opposing parties may appeal with a cassation in the decisions issued from the appellate courts if the action value was more than Two Hundred Thousand Dirham or was not evaluated. The attorney general may, sua sponte or upon a written request from the Minister of Justice, file an appeal in cassation against any final judgment regardless of the court that has issued it, should such judgment be based on a breach of the law or an error in its application or interpretation". (For extra information about UAE judicial procedures see: Maligi, 1986).

Chapter Two

Judicial system in the United States

The U.S. court system is divided into two administratively separate systems, the federal and the state, each of which is independent of the executive and legislative branches of government.

Such a dual system of court is the legacy of the colonial period. By the time the US Constitution of 1789 first authorized the establishment of a federal judiciary, each of the original 13 colonies had their own comprehensive court system based on the English model. Thus, the two systems developed working side by side.

"Before the Revolution, individual colonies had separate court systems that varied considerably from one colony to the next. By and large, these systems were not particularly respected: they were, as one observer noted, "more pompous than learned. The idea of separation of powers was not well developed, and the idea of an independent judiciary was not part of the intellectual furniture of the colonial mind. Decisions of the local courts were typically appealed either to the governor or the

legislature, and then to London, to the Privy Council. The Privy Council combined the judicial authority to review all judgments by colonial courts with the legislative power to overturn colonial statutes on grounds, essentially, of public policy. Historians mostly agree that these combined functions of legislative veto and judicial review were part of the background of the establishment of judicial review in the U.S. Supreme Court. At the same time, however, the lack of a neutral judicial authority was one of the complaints against the colonial system.". Baude said. (Baude, 2007)

Also he said that: "courts of admiralty in the colonies were necessary to resolve disputes concerning navigation, seizures, and, to some extent, the laws regulating maritime trade. These courts in the colonies were at first reviewed by the High Court of Admiralty in London, a respected court of some independence, rather than the more political Privy Council. And at the end of the colonial period, admiralty courts were more involved in the unpopular business of trade regulation, and, ultimately, appellate jurisdiction over them was moved to Privy Council. It seems likely that the admiralty courts would have declined in public respect if the Revolution had not interrupted this decline.

Even during the revolutionary war itself, the colonists saw the need to create admiralty courts. One key function of admiralty is to award prize money to ships' crews for the capture of enemy shipping, and the individual states gave their own courts the power to hear such cases, with appeal to a court of appeals in Cases of Capture, sanctioned by the Continental Congress and supported by General Washington.

As the war continued, however, the state admiralty courts displayed many shortcomings, especially in-state bias by allowing local privateers to seize ships of neutral nations, in doing so, rejecting congressional oversight and risking the loss of support from the international community".(Baude, 2007). For more details about Privy Council, see: Beauchamp, *The Jurisprudence of the Privy Council*, 2016; Howell, *The Judicial Committee of the Privy Council 1833-1876: Its Origins, Structure and Development*, 2009

The provisions of confederation:

The Articles of Confederation and Perpetual Union was the first written constitution of the United States. Written in 1777 and stemming

from wartime urgency, The Articles of Confederation and Perpetual Union was the first written constitution of the United States. Written in 1777 and stemming from wartime urgency, its progress was slowed by fears of central authority and extensive land claims by states. It was not ratified until March 1, 1781. Under these articles, the states remained sovereign and independent, with Congress serving as the last resort on appeal of disputes. Significantly, The Articles of Confederation named the new nation “The United States of America.” Congress was given the authority to make treaties and alliances, maintain armed forces and coin money. However, the central government lacked the ability to levy taxes and regulate commerce, issues that led to the Constitutional Convention in 1787 for the creation of new federal laws under The United States Constitution. (Information available on, <https://www.history.com/topics/early-us/articles-of-confederation>)

The Constitutional Convention:

in U.S. history, convention that drew up the Constitution of the United States. Stimulated by severe economic troubles, which produced radical political movements such as Shays’s Rebellion, and urged on by a demand for a stronger central government, the convention met in the Pennsylvania State House in Philadelphia (May 25–September 17, 1787), ostensibly to amend the Articles of Confederation. All the states except Rhode Island responded to an invitation issued by the Annapolis Convention of 1786 to send delegates. Of the 74 deputies chosen by the state legislatures, only 55 took part in the proceedings; of these, 39 signed the Constitution. The delegates included many of the leading figures of the period. Among them were George Washington, who was elected to preside, James Madison, Benjamin Franklin, James Wilson, John Rutledge, Charles Pinckney, Oliver Ellsworth, and Gouverneur Morris. (More details available on, <https://www.britannica.com/event/Constitutional-Convention>).

"The Philadelphia Convention began its substantive discussion by adopting the plan put forth by Edmund Randolph. Randolph was a Virginia lawyer who favored the interests of the big states. His plan first called for the creation of “one or more supreme tribunals.” The notion of more than one federal “supreme” court seems odd now but drew upon English practice of separate courts for the different systems of law, equity, and admiralty.

Second, Randolph's plan called for the creation of a system of lower federal courts. The delegates initially approved this proposal without debate or dissent. The next day, however, South Carolina's John Rutledge moved to reconsider the creation of lower federal courts. This time there was a sharp debate, with James Madison vigorously defending the Randolph plan, describing Rutledge's proposal as the "mere trunk of a body without arms or legs to act or move." In a closely divided and inconclusive vote (five states for, four against, two undecided), the delegates adopted Rutledge's plan to eliminate the lower federal courts. But Madison then proposed a compromise: to give Congress the discretion to create, or not, tribunals inferior to the Supreme Court." (Baude, 2007. For more explanation about US constitutional convention see, Neubauer, 2016).

The First Congress:

The 1st Congress (1789–1791) finished what the Founders started: filling out the U.S. Constitution's skeletal framework by addressing concerns raised during ratification and by creating the federal architecture—a revenue system, the first executive departments, and the judiciary. Congress also assumed state Revolutionary War debts and decided the location of the future capital. Under the leadership of Representative James Madison of Virginia, this Congress authored the constitutional amendments which eventually became the Bill of Rights. Amid this activity Congress moved from New York to Philadelphia in 1790.(More details available on, <https://history.house.gov/Congressional-Overview/>).

In the matters of amendements, Badue said: "Among these amendements, the Sixth Amendment adds greater specificity to the jury in criminal cases, and the Seventh Amendment adds a new provision guaranteeing trial by jury in civil cases. Those amendments have superseded any possible effects from Article III (the interested reader should turn to the separate volumes on each amendment in this series). These courts were given jurisdiction in admiralty cases and in diversity and alienage cases where more than \$500 was in controversy. Notably lacking from the jurisdiction of the trial courts was any general provision for hearing cases involving federal legal or constitutional cases. Federal courts could try criminal and statutory penalty cases and suits by aliens

for certain violations of international law, but they could not otherwise hear a case simply because it was one “arising under this Constitution, the Laws of the United States . . .” as specified in Article III. That general power over federal questions was not vested until the Judiciary Act of 1875, consolidating the constitutional transformation wrought by the Civil War. Even before 1875, various particular statutes adopted after 1789 sometimes gave jurisdiction to enforce one or another limited federal statute. Second, the 1789 Act conferred a general appellate jurisdiction on the Supreme Court, limited however in two respects: (1) the Supreme Court could hear appeals within the federal system but not in criminal cases; and (2) the Court could only hear appeals from state courts in cases in which an alleged federal right had been denied by the state courts. There was, for example, no power to hear an appeal in a diversity case and no power to hear a complaint by the losing party when the state court was alleged to have erred in extending too far a claimed federal right. Like the federal question jurisdiction of the trial courts, the limited scope of Supreme Court power to review state courts was significantly expanded by the Judiciary Act of 1875. Probably the most famous section of the 1789 Act, however, was to become section 13. The second paragraph of Article III, section 2, had conferred upon the Supreme Court" (For more details see, Baude, 2007).

State Courts

The courts of the United States are closely linked hierarchical systems of courts at the federal and state levels. The federal courts form the judicial branch of the US government and operate under the authority of the United States Constitution and federal law (en.wikipedia.org/)

Farnsworth said that: "The great bulk of all litigation comes before the state courts. Each state by constitution and statute has established its own system, and the lack of uniformity from state to state makes it impossible to give a detailed description to fit all states. Too often, the state courts bear the stamp of conditions and concepts belonging to the time of their origins, which are now changed or outmoded. In the late eighteenth century, when the first court systems were established, travel was difficult, and communication was slow. The response was to create a number of courts of general jurisdiction to bring justice close to the people, who soon came to regard the state court in their locality as their own particular possession. (For more information see, Farnsworth 2010)".

"In recent years, however, considerable progress has been made in the simplification of state court systems and in the improvement of judicial administration. This is perhaps best illustrated with the growth of electronic records of the courts, allowing litigants, lawyers, and others to observe the work of the state courts without travelling to each courthouse." "In each state, there are trial courts of general jurisdiction, which are called by such names as the superior courts, circuit courts, or courts of common pleas. A single judge presides, whether there is a jury or not, and is generally competent to hear all cases, civil and criminal, that are not restricted to special courts or divisions. (Farnsworth, 2010). (Farnsworth, 2010. For more details see Neubauer & Meinhold, 2016).

Farnsworth also said "Such special courts or divisions with limited jurisdiction may include criminal courts, domestic relations or family courts, juvenile or children's courts, and probate or surrogates' courts for decedents' estates. In addition, there are courts of inferior jurisdiction that handle petty matters. These were traditionally the justice of the peace courts, which are now often called justice courts, but they have often been supplanted by county, municipal, small claims, police, and traffic courts. At the top of the state judicial system is the highest appellate court of that state. In most states, it is called the supreme court; in some it is known by another name, such as the New York Court of Appeals or the Massachusetts Supreme Judicial Court. The number of judges ranges from five to nine, with seven the most common number, including a chief justice and associate justices. "In most states, there are intermediate appellate courts, usually called courts of appeal or appellate courts, which are between the courts of general jurisdiction and the highest court and which are sometimes divided into specialized courts, such as a court specially tasked to hear criminal appeals" (Farnsworth, 2010).

Generally, The Constitution and laws of each state establish the state courts. A court of last resort, often known as a Supreme Court, is usually the highest court. Some states also have an intermediate Court of Appeals. Below these appeals courts are the state trial courts. Some are referred to as Circuit or District Courts. States also usually have courts that handle specific legal matters, e.g., probate court (wills and estates); juvenile court; family court; etc. Parties dissatisfied with the decision of the trial court may take their case to the intermediate Court of Appeals. (<https://www.uscourts.gov/>)

The federal court system and many state court systems have three levels of courts trial courts, intermediate courts of appeal, and a supreme court. Some states have no intermediate courts of appeal. The trial courts in some states are divided into special courts that deal with specific issues, such as family courts, juvenile courts, probate courts, and limited courts that deal only with lesser crimes, such as misdemeanors, or with civil cases involving limited amounts of money. Each state has trial courts of general jurisdiction that may decide all disputes not assigned to other courts, or disputes barred from the courts by valid federal or state law. At the trial court level, the applicable law is determined, and the evidence is assessed to determine the facts. The applicable law then is applied to those facts. It is the judge's role to determine what the law is. If there is a jury, the judge instructs the jury as to the law, and the jury determines the facts and applies the law. If there is no jury, the judge not only determines what the law is, but also determines the facts and applies the law. In either case, the determination of the facts must be based on the evidence properly admitted during the trial, so the facts as heard by the decision maker may not necessarily be what actually happened" (Roach, 2006. For more details see, Neubauer & Meinhold, 2016).

Farnsworth said: "In some cases, everyone agrees on the facts, and the only issues presented to the court concern what the law is. In other cases, everyone agrees what the law is, but there is disagreement over the facts. To determine the facts for purposes of deciding the case, the credibility of any witnesses and the weight to be given to other evidence must be determined. Many cases involve both questions of law and questions of fact. The judge has significant control over the trial even when a jury is involved. If the judge finds that insufficient evidence has been presented to establish a factual issue for the jury to resolve, the judge can dismiss the case or, in civil cases, direct the jury to decide the case in a specific way. In civil cases, even after the jury has decided, the judge can rule in favor of the other side (Farnsworth, 2010).

Roach said: "Most state court systems have an intermediate appellate court. Usually, this court decides only appeals from trial court decisions. In some states, there are a few issues that can be taken directly to the intermediate appellate court. When an appellate court decides an appeal, it does not accept additional evidence. It uses the evidence presented in the record from the trial court. Appellate courts almost

always accept the factual determinations of the jury or judge in the trial court because the trial court saw the witnesses and therefore can judge their credibility more accurately. Usually, the appellate court bases its decision on whether proper procedures were followed in the trial court and whether the trial court properly interpreted the law. However, an appellate court occasionally will find that a jury verdict is so clearly contrary to the evidence that the appellate court will either reverse the decision or order a new trial. Each state has a single court at the highest level, usually called the supreme court. In some states, the name is different. For example, in New York, the highest court is the Court of Appeals, while trial courts in New York are called supreme courts. The highest level court in each state decides appeals from the intermediate appellate courts or, in states without such courts, from trial courts. The highest level court frequently has other duties, including adopting rules of procedure for the state court system and determining who may practice law in the state, which includes disciplining lawyers for improper conduct"(Roach, 2006).

Federal Courts

"Federal courts were established under Article III of the Constitution. The decision of the framers of the Constitution to leave to Congress the power to create the lower federal courts, if it chooses to do so, has given flexibility and the opportunity for experiment within the federal judicial system. This system has three principal levels: the district courts, the courts of appeals, and the Supreme Court. There are also such special courts of limited jurisdiction as the U.S. Court of Federal Claims, the U.S. Court of International Trade, and the U.S. Tax Court. Although there is no special system of administrative courts, there are many federal administrative tribunals that have adjudicatory functions within the various departments and agencies but that are not properly courts" (Farnsworth, 2010)

According to Farnsworth, congress has three basic responsibilities under the Constitution that determine how the federal courts will operate. "First, it authorizes the creation of all federal courts below the Supreme Court, defines the jurisdiction of the courts, and decides how many judges there should be for each court.

Second, through the confirmation process, the Senate determines which of the President's judicial nominees ultimately become federal judges. Third, Congress approves the federal courts' budget and appropriates money for the judiciary to operate. The judiciary's budget is a very small part—about two-tenths of one percent of the entire federal budget". (Farnsworth, 2010. For more details see, Schubert, 2014).

1- District court

in the United States, any of the basic trial-level courts of the federal judicial system. The courts, which exercise both criminal and civil jurisdiction, are based in 94 judicial districts throughout the United States. Each state has at least one judicial district, as do the District of Columbia and Puerto Rico, and a populous state may have as many as four districts. The number of judges varies widely from district to district. (<https://www.britannica.com/topic/United-States-District-Court>)

In addition to district judges "bankruptcy judges (who hear only bankruptcy cases) and magistrate judges (who assist the trial judge) are located within the district courts. The bankruptcy court has nationwide jurisdiction over almost all matters involving insolvency cases except criminal issues. Once a case is filed in a bankruptcy court, related matters pending in other federal and state courts can be removed to the bankruptcy court. The bankruptcy courts are administratively managed by the bankruptcy judges. "Two special trial courts within the federal judicial branch have nationwide jurisdiction over certain types of cases. The Court of International Trade addresses cases involving international trade and customs issues. The United States Court of Federal Claims has jurisdiction over disputes involving federal contracts, the taking of private property by the federal government, and a variety of other monetary claims against the United States". (Farnsworth, 2010).

District court proceedings are conducted by a single judge, sitting alone or with a jury of citizens as finders of fact. The Constitution provides for a right to trial by a jury in many categories of cases, including: (1) all serious criminal prosecutions; (2) those civil cases in which the right to a jury trial applied under English law at the time of American independence; and (3) cases in which the United States Congress has expressly provided for the right to trial by jury (Mecham, 2001).

2- Appellate courts

Appeal is "a legal procedure by which an unsuccessful litigant in a lawsuit requests a higher court to reverse the decision made by a lower court or agency".

"The term now refers to a superior court's examination of possible prejudicial error in a lower court proceeding. Potential errors that appellate courts examine may include, but are not limited to, a lower court's decision about motions, monetary awards or remedies, the admission or suppression of evidence, sentencing, the application of the law to the facts of the case, or the lower court's overall judgment. The aggrieved party who is displeased with a lower court decision and initiates an appeal is called the appellant or petitioner. The party who opposes the appeal and is usually satisfied with the lower court's decision is called the appellee or respondent." (Schultz 2002)

The losing party usually has the right to appeal a federal trial court decision to a court of appeals. Similarly, decisions made by most federal administrative agencies are subject to review by a court of appeals. Parties who contest decisions made in certain federal agencies – for example, disputes over Social Security benefits – may be required to seek review first in a district court rather than go directly to an appeals court. In a civil case, either side may appeal the judgment, whether it results from a jury verdict or bench trial. Parties that settle a civil case relinquish their right to appeal. (<https://www.uscourts.gov/>)

Appellate briefs *"are written documents that present legal questions about the proceedings and final decision in a lower court case and are intended to persuade an appellate court that an error was or was not made by the lower court"* (Abraham, 1998)

Appellate briefs assist an appellate court "(a superior court of review) in understanding the facts and legal questions presented in an appeal of a lower court case. The briefs must conform to formal stylistic requirements that are established by the appellate court (such as: restrictions on the length of the briefs, size and font of lettering, jurisdictional statement, table of contents, table of authorities, proper legal citations, a concise statement of the relative facts of the case, and an argument section with both headings and subheadings)".(Schultz 2002.

Appellate briefs are "usually written by attorneys who represent the appellant. A brief written by a litigant, rather than a licensed attorney, is called a pro se brief. Also, An appellant provides "the appellate court with a brief that consists of arguments about how the lower court decided a case inconsistently with the law, and it may include arguments that the lower court made erroneous findings of fact. Specifically, the appellant typically provides the legal question presented for review by the appellate court, the relevant facts of the case, arguments supporting reversal of the lower court decision, and legal authority supporting the arguments. The appellee, in turn, writes a brief that refutes the arguments made in the appellant's brief, discusses the deficiencies in the appellant's brief, and urges the appellate court to accept the decision of the lower court" (Schultz, 2002. Schubert, 2014).

So, U.S. appellate courts have jurisdiction over cases that allege violations of federal constitutional rights, regardless of whether the alleged violations involve federal, state, or local governments. Thus, appeals based on constitutional grounds permit federal court review of state and local laws, practices, and court rulings, not just direct appeals of federal cases. Constitutional cases include some of the most contentious issues considered by the federal Judiciary – freedom of speech and religion, the right to bear arms, search and seizure, right to counsel, and equal protection under the law, just to name a few. (<https://www.uscourts.gov/>)

Appellate jurisdiction: is "the authority of a higher court to review and revise a case that has already been decided by a lower court". Appellate jurisdiction is distinguished from "original jurisdiction" (the jurisdiction conferred on or inherent in a court to hear a case initially). "Appellate courts do not have the authority to hear every appeal presented to them. The federal Constitution and statutes, as well as state constitutions and statutes, create courts and designate the types of cases within the appellate jurisdiction of the courts. The structure of judicial systems, federal and in each state, provides a guide as to which court within a system has the authority to hear an appeal" (Schultz, 2002).

As mentioned before, United States has ninety four judicial districts are organized into twelve regional circuits, each of which has a United States court of appeals, eleven comprising geographical divisions of the

states and including a number of districts, a twelfth for the District of Columbia.

"Appellate jurisdiction includes the power to reverse or modify the the lower court's decision. Appellate jurisdiction exists for both civil law and criminal law. In an appellate case, the party that appealed the lower court's decision is called the appellate, and the other party is the appellee.

In order for an appellate court to hear a case, a party must typically file an appeal, in which it contests the decision of a lower court. There are typically two types of appeals:

* Appeal as A Matter of Right

An appeal as a matter of right refers to a party's right to appeal a lower court's decision, without needing approval from any court.

* Discretionary Appeal

- A discretionary appeal refers to a appellate court's discretion to decide whether it chooses to accept a party's appeal from a lower court decision.

- Typically for a discretionary appeal, the appellate party must file a writ of certiorari with the appellate court". More information available on, https://www.law.cornell.edu/wex/appellate_jurisdiction

Farnsworth said: "The courts of appeals typically sit in panels of three judges. They are not courts of cassation, and they may review a case only if one or more parties file a timely appeal from the decision of a lower court or administrative agency. When an appeal is filed, a court of appeals reviews the decision and record of proceedings in the lower court or administrative agency. The court of appeals does not hear additional evidence, and generally must accept the factual findings of the trial judge". (Farnsworth, 2010)

3- The Supreme Court

The power and prestige of the Supreme Court, as we view it today, were certainly not foreseen by the Framers of the Constitution.

"At its beginning, the Supreme Court had very little to do, and appointment to the Court was not regarded as a particularly great honor. One reason was that, in addition to performing their other duties, Supreme Court Justices were required to "ride cir-cuit." (This "circuit-riding" requirement was not fully eliminated until 1891.). Congress increased the number of Justices from six to seven in 1807, to nine in 1837, and to ten in 1864. In 1866, Congress reduced the number to seven

In 1869, Congress increased the number to nine, where it has remained ever since. (A quorum requires participation by six Justices.)" "The Supreme Court was first convened in February 1790 in the Merchants Exchange Building in New York City, then the nation's Capital. The Court heard and decided its first case in 1792" (Pollock, 2009)

Mecham said: "the United States Supreme Court is the highest court in the federal judiciary. It consists of the Chief Justice of the United States and eight associate justices. The court always sits en banc, with all nine justices hearing and deciding all cases together. The jurisdiction of the Supreme Court is almost completely discretionary, and, to be exercised requires the agreement of at least four justices to hear a case. As a general rule, the Court only agrees to decide cases where there is a split of opinion among the courts of appeals or where there is an important constitutional question or issue of federal law that needs to be clarified" (Mecham, 2001)

Federal Jurisdiction

"The determination of the jurisdiction of the state and federal courts is a part of the more general problem of the distribution of state and federal power. Under the Constitution, the federal government has only those powers that are granted to it, and the residual powers are left to the states or to the people. Whatever judicial jurisdiction has not been given exclusively to the federal courts remains in the state courts, and so by determining what jurisdiction is given exclusively to the federal courts, what jurisdiction is given nonexclusively to the federal courts (which is concurrent jurisdiction), or that has not been given to the federal courts, the jurisdiction of both systems may be understood. It is therefore customary to discuss the division of judicial power in terms of federal, rather than state, jurisdiction". (Farnsworth, 2010).

For a crime to be prosecuted in federal court there must be a basis for federal jurisdiction. The federal jurisdiction may be expressly stated in the statute itself, or it may be stated by Congress when the law is enacted. Many federal criminal statutes fall under the Interstate Commerce Clause of the constitution, which gives Congress the power to regulate any activity that effects interstate commerce and authorizes Congress to pass civil and criminal laws regulating interstate activity. Congress' power to regulate includes the channels of commerce such as

waterways, airspace, telecommunication networks and the boundaries with foreign countries. It can also includes the instrumentalities of commerce and the people and things that move in commerce - automobiles, planes, boats, goods being shipped, telephone lines – things that cross state lines. (<https://www.miamicriminaldefenselaw.com/federal-jurisdiction-versus-state-jurisdiction.html>)

The first category embraces not only criminal actions but also other actions brought “by the United States, or by an agency or officer thereof expressly authorized to sue by Act of Congress,” as well as certain actions against the United States in which Congress has conferred jurisdiction upon the district courts. Its reason is evident: actions in which the United States is a party, whether as plaintiff or defendant, are heard not in state courts but federal courts" (Mecham, 2001)

"The second category, cases under federal question jurisdiction, consists of controversies arising under the Constitution, laws, or treaties of the United States. The reasons for this category are also apparent. The federal courts are thus charged with the vindication of federally created rights and the settlement of federally recognized causes of action" (Geel, 2006).

Tarr said "In some cases, congress has made the jurisdiction of the federal courts exclusive. Thus, in cases under the federal criminal laws, in some admiralty (maritime) cases, in bankruptcy proceedings, and in cases under most patent doctrines and copyright laws, the matter cannot be brought before a state court.

In most matters, Congress has not given the subject matter exclusively to the federal courts, and the jurisdiction of federal and state courts in these matters is concurrent, which means that the plaintiff can bring the action in either court. Cases of diversity jurisdiction and many cases of federal question jurisdiction are instances of concurrent jurisdiction" (Tarr, 2012).

Thus, state-created rights may be enforced in the federal courts, and federally created rights may be enforced in the state courts. Where jurisdiction is concurrent and suit has been brought in the state court, however, the defendant usually has the right to have the case removed to

the federal district court. Under the Constitution, the Supreme Court itself has original (or trial) jurisdiction over a few categories of cases, the most usual being disputes between states or between a state and the federal government". One of the most important limitations on the work of the Supreme Court, as well as the lower federal courts, is that its jurisdiction extends only to "cases and controversies." It will decide lawsuits only between adversary litigants who have real interests at stake in a ripened controversy. Unlike some state courts, the U.S. Supreme Court will not give advisory opinions, even on constitutional questions, and even at the request of the president or Congress"(Farnsworth, 2010 . For more details see, Meador, 2000)

Trial by jury

Jury: refers to "*a group of citizens chosen from the community to decide a question of fact or to render a verdict in a criminal or civil case*". (Schultz, 2002).

The jury's role is to "hear and see the evidence presented by both sides during a trial in a courtroom open to the public, and then to make a decision by applying the law described by the judge to the facts of the case. A jury usually consists of 12 citizens, who must reach a unanimous verdict. Smaller juries and non-unanimous verdicts, however, are now allowed in some jurisdictions. The right to a trial by a jury of one's peers in both civil and criminal cases is "guaranteed by the Seventh Amendment to the U.S. Constitution, except in a few civil cases based on equity or admiralty rather than on common law, and in criminal cases involving minor or petty offenses". (Schultz, 2002).

The jury system is "a hallmark of American democracy. It represents a way in which ordinary citizens can participate directly in exercising part of the power of government decision making, bypassing by design the elected or appointed government officials in the judicial branch. The involvement of ordinary citizens as jurors allows the community to intercede in disputes between the state and its citizens, or between citizens". (Schultz, 2002).

Now, "in the United States, the role of the civil jury has been shrinking. this role still important in a few cases and as a framework for settlement bargaining, may have become more symbolic than real.

In criminal cases, by contrast, the jury has retained its vitality. Although most criminal cases are resolved by a guilty plea, the majority of the serious criminal cases that are tried are tried in the United States by a jury" (Schultz, 2002. For more details see, Johns &Perschbacher, 2016)

In criminal proceedings, "the notion of being tried by a jury of 'one's peers' is frequently regarded as an article of faith in the common law system. And certain civil law jurisdictions also employ juries to determine the guilt or innocence of the accused. In France, for example, the judges sit together with the jury, who are also involved in determining the sentence to be imposed. Jurisdictions differ in respect of the availability of juries. Some restrict them to criminal, and not civil, trials (e.g., France); others prescribe juries for trials of serious crimes (e.g., Canada); while in some countries (e.g., England and Wales) they are used in criminal cases and limited to a few specific civil cases (e.g., defamation). Most conspicuous are the jury trials in the United States, where juries are available for both civil and criminal proceedings. Critics of the jury, on the other hand, normally express unease about the fact that juries, unlike judges, are not required to give reasons for their decision, thereby opening the door to emotion and prejudice, especially when the race of the defendant may be a factor Doubt is also voiced in respect of the ability of the average juror to comprehend complex scientific or other technical evidence" Complex commercial trials, for example, "generate an enormous quantity of highly specialized information. This has led to controversial proposals in Britain and elsewhere to abolish juries in these trials" (Wacks, 2008).

Compared to the judicial system in the UAE, the jury system does not exist within the judicial system in the United Arab Emirates, where judges rule between the parties to the lawsuit without the presence of an external body that he consulted as a jury in the United States of America.

Hence, in the Emirates, the judge / judges will be the only person who has the right to express his opinion on the dispute after each party has made its defense, rulings and implemented in the name of the head of state.

This may be due to the judicial system being satisfied with the pluralism that exists of the judges in some courts, such as the courts of first instance and appeals issued by three judges, and the Federal Supreme Court, which issues rulings of 5 judges.

Judges of courts

Judge: refers to "*a public official appointed or elected to decide questions of law and to manage trials and other proceedings in a lawsuit that is pending in a court*" (Schultz, 2002)

Common law judges are, with the conspicuous exception of the United States, appointed from the ranks of senior barristers. The position in the United States is complex. The federal courts are divided into three tiers: the Supreme Court, the Circuit Court of Appeals, and the District Court. (Wacks, 2008)..

Under the US Constitution, "the president has the power to nominate and, in conjunction with the Senate, appoint judges of all three courts. He nominates candidates to the Senate after receiving recommendations from the Department of Justice and White House staff. The Department of Justice screens prospective nominees, followed by an investigation of the candidate by the FBI. Views are sought on the nominee's suitability from the American Bar Association. The White House Counsel's Office also plays a role; it works together with the Department of Justice and members of the Senate, and considers recommendations by members of the House of Representatives, state governors, bar associations, and other bodies. The Senate Judiciary Committee scrutinizes the credentials of candidates. Should it reject a nomination, it is returned to the president to produce another name. Nominations by the Senate Judiciary Committee are considered by the Senate in executive sessions. Non-controversial candidates tend to be unanimously confirmed". (Wacks, 2008).

"When a contentious nomination is made, however, a debate ensues. An adverse recommendation by the Senate Judiciary Committee inexorably results in rejection of the candidate by the Senate. A successful nominee is formally appointed by the president. The protracted nature of the process, including filibustering by senators, as well as the predictable ideological dimension of the system, has attracted considerable criticism. Its detractors contend that it undermines the independence of the judiciary" (Tarr, 2012).

"Dissatisfaction with the method of judicial appointment, based largely on the unrepresentative nature of appointees (few women or members of racial minorities), has led to the adoption of judicial appointments commissions which seek to bring to the process greater transparency and fairness. The commission is charged with responsibility for selection. They exist in some states of the United States, as well as in Canada, Scotland, South Africa, Ireland, and in a number of other European countries, including England and Wales, where since 2006 it functions as an independent non-departmental public body. Applicants for judicial office are required to submit a nine-page application form; short-listed candidates are interviewed. They are evaluated according to five criteria: intellectual capacity; personal qualities (integrity, independence, judgement, decisiveness, objectivity, ability, willingness to learn); ability to understand and deal fairly; authority and communication skills; and efficiency" (Wacks, 2008).

The appointment of judges in the Emirates is different from that in the United States of America, in the judicial system in the Emirates the appointment differs depending on whether the judge who will be appointed will be in the federal or local court.

If the candidate judge is to join the federal judicial system, then his appointment will be from the Supreme Council of the Federal Judiciary, Whereas if the judge is to be appointed to the judiciary in the Emirates that have maintained their local jurisdiction and have not joined the federal judiciary, they will be appointed by the ruler of the emirate after the recommendation of the Judicial Council, An example of this is what was mentioned in the Dubai Judicial Authority Law No. 13 of 2016, which stipulated that he appoints a member of the judiciary by a decree issued by the ruler based on the recommendation of the council.

2. CONCLUSION

In USA each State has its own judicial system, but it is important for the Constitution to ensure the independence of the judiciary. In Article III, the US Constitution sets out the legal basis for the judiciary to appoint judges, their functions and obligations to serve them, the structure and structure of the courts, as well as the relationship of other courts to the Supreme Court.

The judicial system in the UAE is similar to that of the United States of America, where the judiciary in the United States consists of the federal court system at three main levels: District Courts (Trial Court), Circuit Courts representing the First Level of Appeal, the United States Supreme Court, and the Final Level of Appeal In the federal system. There are 94 District Courts, 13 District Courts and 1 Supreme Court throughout the country.

Courts in the federal system operate differently from state courts, as the main difference in civil cases (as opposed to criminal cases) is the types of cases that can be heard in the federal system. Federal courts are courts of limited jurisdiction, which means they can only hear cases permitted by the US Constitution or federal laws.

The Federal District Court is the starting point for any case arising under federal laws, the Constitution or treaties. This type of jurisdiction is called the "original jurisdiction". Sometimes the jurisdiction of state courts overlaps with that of federal courts, which means that some cases can be filed in both courts. The plaintiff has the primary option to bring the case to the state or federal court. However, if the plaintiff chooses the state court, the defendant may sometimes choose to "deport" to the federal court.

So, judicial system in the UAE differs from the judicial system in the United States of America, because in every State there is the federal court system and the state's court system, while in the Emirati system, there is either a federal judiciary only or a local judiciary only.

Under the US Constitution, the president has the power to nominate and, in conjunction with the Senate, appoint judges of all three courts: the Supreme Court, the Circuit Court of Appeals, and the District Court. But, The appointment of judges in the Emirates is different. If the candidate judge is to join the federal judicial system, then his appointment will be from the Supreme Council of the Federal Judiciary, Whereas if the judge is to be appointed to the judiciary in the Emirates that have maintained their local jurisdiction and have not joined the federal judiciary, they will be appointed by the ruler of the emirate after the recommendation of the Judicial Council in the emirate

In the Emirates Judicial system there is no jury, the judge / judges will be the only person who has the right to express his opinion on the dispute after each party has made its defense, rulings and implemented in the name of the head of state.

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