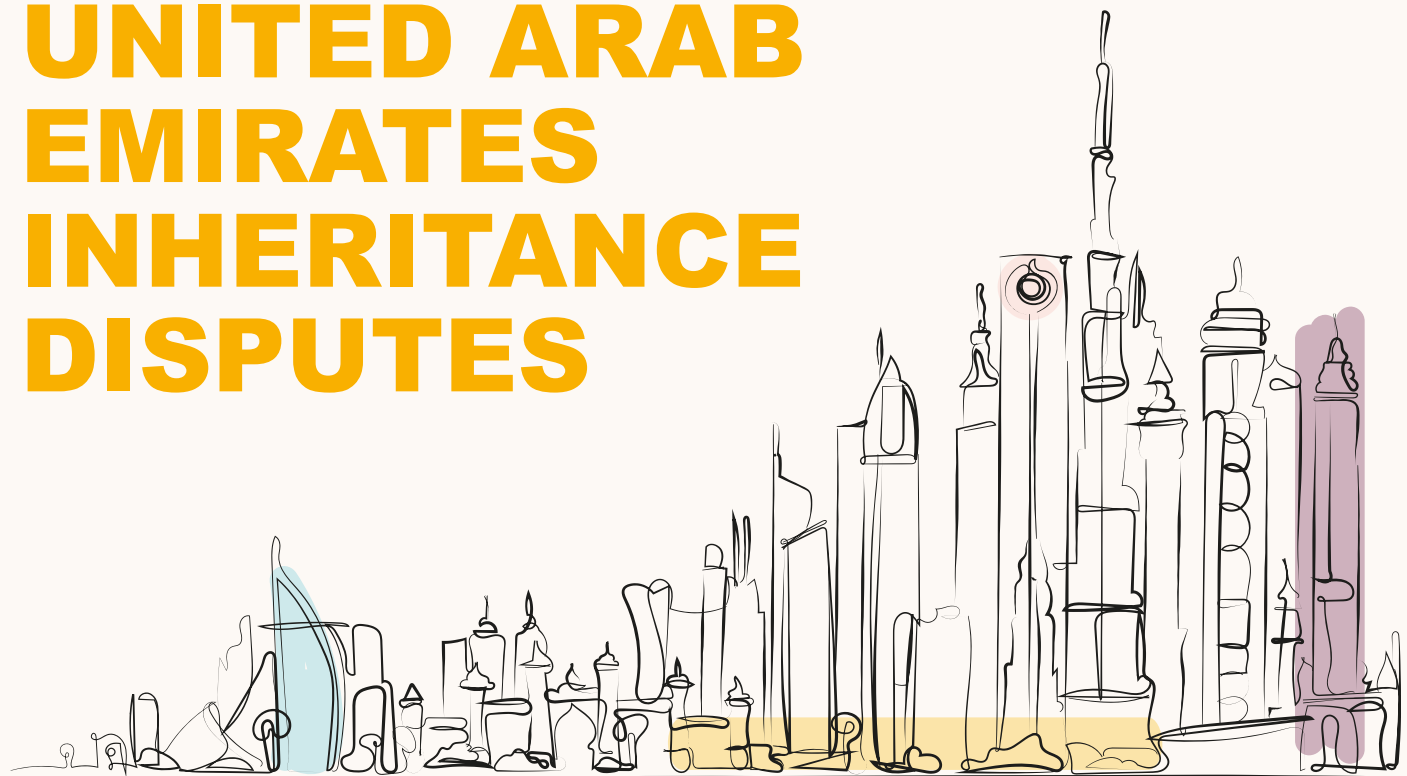


UNITED ARAB EMIRATES INHERITANCE DISPUTES



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A new Court in the United Arab Emirates will serve as the single authority to settle inheritance lawsuits. The Court, which will be situated in Dubai and which will be the first of its kind to preside in the Emirates, was announced earlier this year by His Highness Sheikh Maktoum bin Mohammed Al Maktoum as part of an initiative to develop the Emirati judiciary with the ultimate goal of creating 'the best litigation system in the world.'

The laws of inheritance which will apply to an individual in the UAE depend upon whether the deceased was Muslim. Where a non-Muslim foreign national dies with assets in the UAE, then 'the law of the deceased' (which we understand to mean the law of the jurisdiction in which the deceased was a national) will apply to the devolution of their assets. This essentially provides that any Will which they have made will be recognised as materially valid in the UAE on the condition it is valid in their home state. However, the law of the UAE shall apply to Wills made by foreign nationals to the extent that they dispose of real property situated in the UAE. The Courts in the UAE will therefore make a decision on that real property in accordance with Sharia law.



In addition to applying Sharia law in the above circumstances, the rules of inheritance under Sharia law will of course also apply to the succession of Muslims. Broadly, Muslims can make a Will (if they so wish) in which they enjoy testamentary freedom over one third of their assets. The Sharia rules of inheritance will apply to the remaining two thirds, or to the estate as a whole if the deceased had not made a Will.

There are three classes of heirs:

1. Those with fixed shares in the estate of the deceased (known as Ashab Al-Furudh).

These heirs are essentially first in priority to receive a share in the estate of the deceased. The class includes the deceased's wife or husband, their father and mother, their grandparents, and several other female relatives or

relatives to whom the deceased was related by virtue of their mother.

2. The substitute or residuary heirs (known as Asabat).

To the extent that there are proportions of the estate which have not been distributed to the Ashab Al-Furudh (above), the heirs of the Asabat will inherit. This class includes various male relatives (or relatives to whom the deceased was related by virtue of their father or uncle) and, subject thereto, females who would otherwise have been Ashab Al-Furudh had male relatives not inherited instead.

3. Other blood-related heirs (known as the Dhawu al Arham).

This class includes a number of heirs who may have already inherited as Ashab Al-Furudh or Asabat. The purpose of this class is to deal with any remaining or residuary shares which have not already been claimed or distributed as above. The class includes two males (maternal grandfather and maternal uncle) as well as various relatives including the deceased's daughter, granddaughters, female cousins and aunts.

The heirs, or potential heirs, must put forward their claims to the succession and they must not be precluded from inheriting by virtue of their being a non-Muslim (a Muslim cannot inherit from a non-Muslim and vice versa) or their having been involved in the murder of the deceased.

The new UAE Court will deal with any disputes which arise as to the division of assets, the formal or material validity of Wills, expulsion of heirs and inventory lists, among other inheritance-related issues.

Although the laws of England and Wales enable individuals to leave their property to whomever they so wish on their death, the intestacy rules will naturally apply where someone has died without a Will. The succession of real estate situated in England and Wales will of course always be governed by the laws of England and Wales, irrespective of where the individual has died domiciled.

Where a Muslim dies intestate with real estate in England and Wales, therefore, there will almost invariably be a 'mismatch' between the English intestacy rules and those which would otherwise apply under Sharia law.

Provided the heirs under both sets of rules are all in agreement, Deeds of Variation can be a simple way of rectifying the position. Where the deceased was a UAE national, and if a Deed of Variation cannot be agreed upon, a question arises as to whether the UAE Courts or the English Courts will be the more favourable forum in which to settle any such dispute. Certainly the English Courts will be competent in determining the proper



devolution of any real estate situated here, but to the extent that Sharia law applies to the estate as a whole (and to Muslims worldwide) the heirs may instead seek to have any such case heard by a Court which will make a ruling in accordance with Sharia law.

Other inheritance disputes may arise in the context of the estate of a Muslim UAE national where, for example, those responsible for administering the estate are considered to have failed in their duties or where there are disagreements as to the identity of the heirs.

In September 2022, the UAE Courts confirmed that they would now be prepared to enforce UK Court judgments.

They had previously been reluctant to do so on the basis that no bilateral treaty exists between the UAE and the UK in relation to the recognition and enforcement of judgments. However, following the recent recognition by the UK Courts of the enforceability of a UAE

judgment in the case of *Lenkor Energy Trading DMCC v Puri* [2020], the UAE is set to recognise UK judgments similarly on the basis of reciprocity. It will be interesting to see whether this revolutionary step will extend to cases heard by the new UAE Court in the context of inheritance cases.

