

# Arbitration Clauses: Resolving conflicting jurisdictional clauses in the same agreement

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Article 203 of the UAE Civil Transactions Law allows parties to agree to seek arbitration for any dispute that arises between them in a given contract, and sets the rules for such agreement. However, since the agreement to arbitrate includes giving up the right to seek court review of the essence of the dispute, the legislators required for it to be expressed in writing.

Additionally, the Court of Cassation has stated that “the agreement to arbitrate is not established unless the common intent of the contracting parties is set on it.” We take a look at one of the cases where the parties had both an arbitration clause and a clause given Dubai Courts jurisdiction, and how the Court of Cassation resolved the dispute.

## **Facts of the case**

Two Dubai trading companies (the “Claimants”) filed a commercial action with the Court of First Instance against another local company (the “Defendant”). The Claimants requested the Court to order the Defendant to pay them the amount of AED 2,765,253.82 as compensation for breaching a services contract which they had executed.

The Claimants argued that on 1 March 2008 they had concluded a services contract with the Defendant to prepare and carry out interior design works, and to develop the Claimant’s private hotels. The Claimant further submitted that the Defendant had failed to adhere to its obligations as stipulated in the contract, delivered the assigned work late and delivered a defective work product which was below the standards recognized by the hotel industry. As a consequence, the Claimants terminated the contract.

Due to the fact that the contract contained in Article 13 an arbitration clause (“the Arbitration Clause”), the Defendant requested the Court to dismiss the case for lack of jurisdiction. The Claimants argued the same contract contained in Article 14 (“the Dubai Courts Clause”) a clause which allowed either party to seek an order from the Dubai Courts for any dispute that arises out of the contract.

## **Court of First Instance**

The Court of First Instance ruled in favor of the Defendant and dismissed the case for lack of jurisdiction. The Claimants subsequently appealed the decision.

## **Court of Appeal**

The Court of Appeal upheld the lower’s court decision. The Claimants appealed to the Court of Cassation.

## **Court of Cassation**

The Claimants argued that the Court of Appeal had erred in its decision to uphold the lower court’s decision in that reliance had been placed on the Arbitration Clause of Article 13 of the services contract instead of the Dubai Courts Clause of Article 14 of the same contract. The Claimants

submitted that the Dubai Courts Clause gave Dubai Courts the jurisdiction to oversee any dispute arising out of that contract.

The Court of Cassation interpreted Article 203 (1) and 203 (5) of the Civil Procedure Law (CPL) to mean that if parties agreed to arbitrate a dispute it shall not be possible to initiate an action before the Court. If, notwithstanding the arbitration clause, one party did file an action in Court and the other party did not object at the first hearing, then the Court would consider the arbitration clause as void and take jurisdiction of the case. However, if the other party did raise an objection at the first hearing, the Court should dismiss the case for lack of jurisdiction.

The Court held also that arbitration is a final and binding form of dispute resolution which is conducted outside the usual forum (i.e. the local courts). The Court clarified however, that what the parties intended to be meant by “dispute” should be clearly specified in the arbitration deed.

With regards to the conflict between the two clauses the Cassation Court stated that the court looking at the essence of the dispute has the authority to ascertain the facts of the case, the agreements of the parties and the common intent of the parties. Any decision taken by such court, as long as it is supported by sound reasoning based on evidence provided, is not subject to review by the Court of Cassation. The Court then proceeded to review the factors considered by the lower courts as follows:

- The lower court had found that the Arbitration Clause was written in a very detailed manner, whereas the Dubai Courts Clause was very short.
- The Court found that the recourse to the Dubai Court as stated in Article 13 could be sought only to explain the contract and have a binding decision in relation to this explanation, whereas the adjudication of disputes arising out of the contract was to be dealt with by arbitration as per Article 14 of the contract. The Court of Cassation held that any explanation to the contrary would result in conflict between the two Articles. If the Articles were viewed to be contradictory, then the Court held that the clearer clause and the more detailed clause should be applied rather than the ambiguous clause as it did not need any explanation or clarification from the Court.
- Additionally, the Court reasoned, the Arbitration Clause came right before the Dubai Courts Clause which shows that the parties clearly intended for the Arbitration Clause to be binding. Furthermore, the Dubai Courts Clause came under the subheading of “Legal Procedure” whereas the Arbitration Clause was under the general heading of “Disputes” which shows that the Dubai Courts Clause was meant to be used in very limited situations.

Given that these factors were supported by the evidence and the lower courts relied on them in their determination, the Court of Cassation upheld their judgment and the Arbitration Clause.