

# Liability For Changing Boarding Gate

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This article gives an overview of a recent lawsuit that was brought by a passenger (“Plaintiff”) in the UAE courts, against an Airway Company (“Defendant”) where the Plaintiff was denied boarding an aircraft by the Defendant’s staff.

The judgment of the Court of First Instance was issued in favour of the Plaintiff but it was then reversed by the Appeal Court in November 2013. Al Tamimi & Company represented the Appellant in the successful appeal.

## Background

The Plaintiff was scheduled to depart from Doha to Venice on the Defendant’s aircraft. However, the Plaintiff arrived at the check-in counter late and with excess baggage. Once the Plaintiff had reduced his baggage, he was directed by the Defendant’s staff to proceed to the check-in counter and Boarding Gate 7, as was stated on his boarding card.

Due to operational reasons, the boarding gate was amended at short notice to Boarding Gate 11. So the Plaintiff proceeded to complain that the boarding gate was changed and that the Defendant had attempted to charge him for his excess baggage. The Plaintiff began to shout, despite the fact that he was advised that if he persisted he would be denied boarding. The Plaintiff did, however, persist and he also raised his grievance with a police officer. The Plaintiff was denied boarding on the aircraft by the Defendant’s staff and his baggage was offloaded.

## The Nature of the Claim

The Plaintiff brought an action against the Defendant seeking damages in the sum of AED 20,000 and AED 1,700 as a refund of the ticket price. The Plaintiff claimed that he bought a ticket from the Defendant to travel from Doha to Venice and was directed by the Defendant’s staff at the airport to proceed to Boarding Gate 7. Hence, the Plaintiff had been waiting at Boarding Gate 7, as he was directed and as was stated on the boarding card.

The Plaintiff claimed that, despite the change from Gate 7 to Gate 11, the Defendant’s staff did not direct him to Boarding Gate 11. When the Plaintiff asked the Defendant’s staff about the reasons for amending the gate number, he was denied boarding on the flight. Therefore, the Plaintiff said, he bought another boarding card in the sum of AED 1,700.

## The Court of First Instance

The Court of First Instance found that there was fault (negligence) on behalf of the Defendant. The Court reached its decision on the following grounds:

1. The boarding card was issued by the Defendant’s staff;
2. Boarding Gate 7 was stated on the Plaintiff’s boarding card; and
3. The Defendant’s staff did not direct the Plaintiff to the right boarding gate.

Accordingly, the Court of First Instance rendered its judgment in favour of the Plaintiff and ordered the Defendant to pay damages to the Plaintiff in the amount of AED 10,000, in addition to all expenses and fees.

## **The Court of Appeal**

The Defendant filed an appeal to challenge the Court of First Instance's Judgment on the basis that there was a lack of evidence to support the findings of the Court of First Instance and that, in any event, an alteration of the boarding gate is not the responsibility of the Airline. The Court of Appeal accepted the Defendant's appeal, cancelled the Court of First Instance's judgment and dismissed the Plaintiff's case.

The Court of Appeal ruled that the amendment to the boarding gate is not the responsibility of the company that owns the aircraft rather it is the responsibility of the company that provides services to the airport. Moreover, the Court pointed out that, in principle, the staff of aircraft companies do not arbitrarily deny passengers boarding aircraft. Furthermore, the Court found no evidence that the Plaintiff/Respondent was unjustly denied boarding.

## **Comment**

Although this judgment is not issued by the Cassation Court, it should in our view be regarded as an approach that can be relied on and referred to in similar cases. It seems, in this case, that the Court of First Instance made a decision that the Appeal Court reversed with no difficulty, given the obvious position in law and the lack of evidence presented by the Plaintiff/Respondent.

It is worth mentioning that the Court of Appeal's judgment should be final and not appealable, by virtue of Article 173 of the UAE Civil Procedures Law, as the total amount of claims before the Court of First Instance did not exceed AED 200,000.