

# The Applicable Law on the International Freelancing Agreements: An Analytical Study on the UAE

Dr. Walaa- Eldeen Ibraheem<sup>1</sup>

## Abstract

Freelancing agreements are no longer limited and locked at the local level; freelancing agreements can even be negotiated, internationally. There is no doubt that the Internet has facilitated and provided a suitable environment for freelancers and clients to coalesce and sign agreements remotely. Such relationships on an international basis, whether between nationals or residents, calls for an applicable law to govern their agreement, and this matter becomes more insistent when disputes that may result from the agreement need. The paper is concerned with presenting and analyzing the legal provisions in the UAE that resolve the issue of applicable law on the international freelancing agreements. Meanwhile, whenever it seems useful, comparative law will also be brought.

## Keywords

freelancing – self-employed – independent contractor – applicable law – characteristic performance

## Introduction

Interest is increasing in the way that the process of globalization affects the economic, civic, and educational conditions of disadvantaged communities around the world. Concerns have arisen about globalization and its attendant impact on labour markets, which are the basis of any economy. The term ‘Gig Economy’ has recently been coined. It operates concurrently simultaneously with the mainstream economy and progresses so rapidly, that it can compete with the latter and outrun it. This has been especially clear since the digitalization revolution and labour markets began to interact. The digitalization revolution is not limited to real events, but has also affected the virtual market, especially in creating the wealth of job opportunities that depend on using the Internet. The Internet provides platforms where the job applicant and the employer coalesce a freelancing contracting relationship.

Freelancing relationships are not new, but have a growing trend in the world,<sup>2</sup> especially after the widespread of the Internet all over the globe. This growth has been created by the advantages of the Internet. To put it more explicitly, the Internet is the best environment to display job opportunities as well as to find careers. Furthermore, the Internet has enabled people to manage, supervise, and monitor the careers through developed mechanisms. As opposed to the

<sup>1</sup> Assistant professor in private law at Zayed University, UAE & Expert in private law at the National Center for Social and Criminological Research, Egypt.

<sup>2</sup> The growth of freelancing cannot be denied because according to statistics, 56.7 million Americans freelanced in 2018. This number is 3.7 million more compared to 2014. In other words, more than one out of three persons freelance. See, <https://www.flexjobs.com/blog/post/pros-and-cons-of-freelance-jobs/15/6/2020>.

casual monitoring mechanisms that have rigid restrictions, these developed mechanisms are flexible in the workplace. This is why both freelancer and client prefer virtual work to the casual form of business relationship that is restricted by labour laws. At the same time, freelancers attempt to unite with one another, such that they defend their rights in relation to the client. Take the Freelancers Union in the United States by way of example. Through advocacy, education and services this union tries to promote the interests of the independent contractors.<sup>3</sup>

Freelancing agreements are not only signed at the local level, but extend to the international level, and are signed by individuals with different nationalities, laws and cultures. To regulate and organize these relationships, there are no legislative or international agreements such as are necessary to solve legal problems, and these may arise as a result. This lack of regulations is referred to as the conflict of laws and is regarded as the most serious legal problem that may be met when dealing with freelancing agreements in all their stages; formation, performance and termination.

The United Arab Emirates, which is regarded as a developing country, relies in its economy on a workforce, which represents about 200 nationalities. This workforce is involved in the UAE's physical labour market and its virtual one, – which is also somehow a real one. Freelancers in the UAE have become an important group that companies and governmental entities invite them to accomplish projects and tasks. These projects and tasks should be better done by freelancers than by commercial entities because the employer can benefit more from the former than the latter. For one thing, freelancers charge lower rates and give a better return than the organized companies. Since the UAE wishes to become a developed country, it cares about freelancer status only from an administrative standpoint, and like most countries, has not yet reached the point of legislation.

This paper is concerned with presenting and analyzing the legal provisions in the UAE that resolve the issue of the applicable law on international freelancing agreements. Meanwhile, comparative law will also be discussed where it seems useful.

The present paper addresses the following questions:

1. What is the meaning of the term “International Freelancing Agreement”?
2. What are types of freelancers exist?
3. What is the legal nature of the freelancing relationship?
4. What efforts have the Emirati made to deal with freelancers?
5. What are the main characteristics of an international freelancing relationship?
6. What are the choices of laws that would apply on international freelance relationship?
7. What is the scope of the applicable law on international freelancing agreement?

This paper consists of two Chapters. After the Introduction, chapter one 2 addresses the following questions regarding International Freelancing Agreements: (1) How can we define and characterize Freelancing Agreements? (2) What types of freelancer are involved? (3) What is the legal nature of a freelancing agreement? (4) How are the Emirates supporting freelancers? While chapter two will discuss the choice of laws that apply in freelancing agreements, presents the

<sup>3</sup> See, Freelancers Union, <https://www.freelancersunion.org/about/> 20/6/2020. Freelancers Union was founded by Sara Horowitz in the USA in 1995. In 2008, the union launched Freelancers Insurance Company, the first portable benefits model for freelancers that provided independent workers with high-quality, affordable, portable health insurance. The union's National Benefits Platform, launched in 2014, helps freelancers across America enjoy insurance benefits, including retirement, life, liability, treatment of dental and disability problems.

scope of the applicable law on freelancing agreements, with special regard to the subject matter and legal form of a freelancing agreement. The paper offers a conclusion and recommendations.

## Chapter one: International Freelancing Agreement

### Section.1 *Definition and Characteristics*

#### 1.1.1 Definition:

Unfortunately, the researcher failed to find any legislative definition of an International Freelancing Agreement, or an agreed legislative definition of the term 'freelancer' despite admitted existence of such workers in labour markets around the world. This gap may have resulted from the lack of unified legislation about the organized process of undertaking freelance work in most countries. Note that an increased number of people seek such agreements, so they can receive services or products rather than financial return. Therefore, the process of working as a freelance appears to be critical.

According to the statistics, the number of freelancers may double, especially since Covid-19 pandemic, has become spread all over the world. Governments and businesses are currently resorting to remote working as an alternative means of propelling the economic cycle, and of adapting to the new lifestyle, which will follow.

Freelancing refers to an arrangement whereby the worker is self-employed, and bids for temporary jobs and projects under one employer or more. Freelance employees, also known as independent contractors, work independently and thus sign up to no long-term contractual commitments to any employer. Such employees usually offer services or carry out work assignments under short-term contracts with several employers or clients, who have the right to control only the final output of the individual's work, but not the specific means of getting the work.

The OECD considers that such jobs, especially the matter of self-employment, may be seen either as a survival strategy for those who cannot find any other means of earning an income, or as evidence of entrepreneurship and a desire to be one's own boss.<sup>4</sup>

This new type of job accrues advantages to both parties involved in the agreement, such that business owners finds employing freelancers to be efficient and economically pragmatic. Moreover, this kind of career allows individuals to actualize their numerous potential talents that are needed for business. At the same time, the agreement gives the freelancer more freedom than an employee of a firm would have more flexibility in terms of job hours and commitments.

Freelancing has, however, many disadvantages, in practice. For one, freelancers cannot be sure of a continuous job. In addition, they are responsible for attracting clients, and managing bills and returns. In some cases, employers treat them unfairly. They may, for instance, punish and then rehire them with no employee benefits<sup>5</sup>.

The two terms that denote the same meaning as freelancer are 'self-employed' and 'independent contractor'. Either term relies on the legal adaptation, of the relationship between the freelancer and the client. But the term 'freelancer' remains the most common term in the labour market especially on the Internet.

<sup>4</sup> OECD, *Women and Men in OECD countries* (2007), p.18, available at: <http://www.oecd.org/sdd/womenandmeninoecdcountries.htm>, accessed 20 June 2020.

<sup>5</sup> Fishman, Stephan. *Working with independent contractors*, fifth edition. Nolo Press (2005), p. 24.

In searching for a legislative definition for freelancing as a job, we found the definition for the in the Spanish law, which states that ‘self-employed workers are those workers who are older than 18 who exert an economic activity on their own account under no labour contract, irrespective of whether or not they hire employees and regardless of the type of business’<sup>6</sup>

Emirati legislator do not define the term ‘freelancer’, but the government considers freelancing as the model of self-employment and describes it as non-traditional, independent, and flexible. In freelancing, projects or tasks are carried out temporarily and skillfully. It goes against the conventional trend of an employee receiving a fixed salary from the employer’.<sup>7</sup>

The International Freelancing Agreement can be defined as a legal relationship between two or more persons residing in different territories. In this relationship, one person provides a product or offers a service to the other, independently and flexibly. By contrast, in conventional forms of employment clients reimburses others with a standardized and agreed financial return.

### 1.1.2 Characteristics and Types of Freelancers:

1.1.2.1 The International Freelancing Agreement can be characterized as follows:

1. The parties involved in the agreement may be two or more persons. The first person is often an individual, a natural person, and, sometimes a project in the form of a legal person. Both forms are called, ‘the freelancer’. The second, called the client, may be a natural or a legal person.
2. The process of working is such that the freelancer delivers goods or products and/or provides services to the client. Most of the services are related to professional activities.
3. The client reimburses the freelancer with an agreed financial return. This is done according to the method agreed in the contract.
4. The process of international freelancing agreements has flexibility. Another advantage is that the work remotely. Most of freelancing projects are completed at home and the working hours are determined by freelancers themselves.
5. The international freelancing agreement proposes that both parties may live and reside in different countries. Meanwhile, each of these countries has its individual laws.

### 1.1.2.2 Types of Freelancers

1. A ‘self-employed freelancer’ is usually a natural person. This person seeks a job to do for a client and when s/he finds one, they establish a business relationship resembling an employment relationship with an employer, by admitting some dependency and subordination. Finally, s/he completes the agreed project. In providing the services, such as IT programming, the freelancer uses his/her skills.
2. An ‘independent contractor freelancer’ is a person, who is treated as an economic project that provides services or produces products, with some control from an employer, but without dependency. This project proceeds as a small enterprise directed by a natural person or legal person, since the partnership may involve more than two persons. Moreover, s/he can assign sub-contractors.

<sup>6</sup> Jaime Cabeza Periro, Notes. *Debates and Communications: The Status of Self-employed Workers in Spain*, *International labour Review*, Vol, 147 (2008) No. 1, p.93.

<sup>7</sup> See, MOHRE, [AEFreelancer.ae](http://AEFreelancer.ae), 15 June 2020.

## Section 2: *Legal Nature of the Freelancing Agreement*

After introducing the two key terms related to the freelancing agreement – *i.e.*, self-employed freelancer and independent contractor – we should next introduce two perspectives in adapting the legal nature of the freelancing agreement to the condition of, organizing labour contracts in the UAE. The Civil Transactions Law under Chapter 3; Labour contracts, provides two forms of contract. The first is the Contract for work, and the second is the Employment contract. In this regard, we discuss Freelancing agreement in these two legal types.

### 1.2.1 Contract for Work

The Emirati law defines the contract for work as ‘*muqawalah*.’ It is a contract whereby one of the parties, in return for remuneration, is obligated to produce a commodity, or to perform a task.<sup>8</sup> The legislator used the term ‘parties,’ which either refers to individuals or moral persons, who are also either employers or contractors. In addition, the provisions of the contract for work either obligate a party to produce a commodity or to offer a service. Hence, a contract for work in the Emirati law takes two forms: a **contract for production and a contract for service**.

Both forms falls under one of the following headings: either, the contractor is to accomplish something for which the employer provides the materials required for carrying out the work or the contractor provides the materials, and carries out the work.<sup>9</sup>

The most important features that distinguish the Contract for Service Agreement (*muqawalah*) from the Employment Contract are the following:

1. The contractor is independent from, and not subordinate to, the client. This means that the contractor has almost full control of the way that the task is to be accomplished.
2. The task, whether is to produce a product or to offer a service, is to be assigned explicitly. Moreover, to assess the compatibility of the task, and the degree to which it conforms to the agreed sample, the dimensions of the task should be indicated in advance.<sup>10</sup>
3. The contractor himself can do the work, or he can hire workers for this purpose. These workers work under the supervision of the contractor, not the employer. The contractor is also permitted to assign sub-contractors, unless the client provides that the contractor shall not assign a third party.
4. Although the client remunerates the contractor in return for the services, the latter does not depend on a single client in developing his resources.
5. The Civil Transactions Law has not provided any way of concluding contracts for work. However, a ministerial decree<sup>11</sup> provides that the contract for work, or the sub-contract for work, shall be concluded in a written form and in Arabic. If a foreign language is used beside Arabic, the latter supersedes the former.

<sup>8</sup> - See art 872, Law No.5 of 1985 for the Civil Transaction Law.

<sup>9</sup> See art. 873, Law No. 5 of 1985 for the Civil Transactions Law.

<sup>10</sup> - Omar El-Tom, *The Emirates Law In Practice: Case Law Study, 100 Legal Issues*, Dubai, (Future Bookshop, 2009) p.182.

<sup>11</sup> - See Ministerial decree No, 496, in 2002, on contracts of work and Sub-contracting.

### 1.2.2 Employment Agreement

There is an approach supported by judgments<sup>12</sup> that consider freelancers as employees, especially the self-employed type of freelancer. This is because the definition of the employment contract it states that, 'in any definite or indefinite agreement reached by an employer and an employee, the latter serves the employer and works under his management and supervision for a certain wage that the employer is to pay'.<sup>13</sup> This provision denotes that the employee will not necessarily be employed for a long time. Rather, s/he may be hired temporarily to carry out a certain task—a condition referred to as 'casual work'.<sup>14</sup>

In this regard, the employment contract should be analyzed and the degree to which it is compatible with the freelancing agreement should be assessed. By doing so, one can be sure about the proper legal nature of this kind of employment agreement or can decide to reject this adaptation and seek another.

The Emirati Civil Transactions Law defines the employment contract as, 'a contract whereby one of the parties carries out a job for the benefit of the other under the supervision or management of the latter. The person for whom this work is carried out is to remunerate the employee'.<sup>15</sup> The Labour Law considers other features of the employment relationship when it defines the employment contract as 'any agreement, for a definite or indefinite term, reached by an employer and an employee, whereby the latter is to serve the employer and be under his management and control, in return for a certain wage that the employer is to pay'.<sup>16</sup>

According to this law, the worker is defined as 'any male or female working for any kind of wage, in the service or under the management or control of, and yet out of the sight of, an employer.' Moreover, this law defines a wage as, 'any in cash or in kind incentive given to a worker in return for his service that he has provided under an employment contract. Such a wage is given on a yearly, daily, hourly, output or commission basis'. The latter law, as a specific law, is concerned with organizing labour relations and, like most comparative laws, gives a detailed definition of employment contract and wage.<sup>17</sup>

Characteristics of the employment contract are as follows:<sup>18</sup>

<sup>12</sup> See cassation court decision, which states that 'the business relationship may be temporary or for one-time', Rule No. 135, Vol. 10, 1999, p.912. in *Al-Mabadaea Al Kanouniah Al Mukarrah Min Mahakam Tameeaz Dubai, Fe El- Amal, Al-gouza AlAwal*, p.234. The decided legal principles from Cassation Courts in Dubai regarding work, Part 1. P.234.

<sup>13</sup> See, art.1, para. 4, Law No. 8, in 1980, on regulation of labor relations.

<sup>14</sup> M. Wooden & D. Warren, *The Characteristics of Casual and Fixed-Term Employment: Evidence from the HILDA Survey*, (Melbourne Institute of Applied Economic and Social Research, University of Melbourne, 2003) p. 12.

<sup>15</sup> See art. 897, para. 1, Law 5 of 1985, for civil transactions law.

<sup>16</sup> See art.1, Law No. 8, of 1980, on regulation of labour relations.

<sup>17</sup> See art.1.b, definition of worker 'Any male or female working for wage of any kind, in service or under the management or control of an employer, albeit out of his sight. This term applies also to labourers and employees who are in an employer's service and are governed by the provisions of this Law'. And defines wage, in art. 1.I 'Any consideration, in cash or in kind, given to a worker, in return for his service under an employment contract, whether on yearly, monthly, weekly, daily, hourly, piece meal, output or commission basis. The wage shall include the cost of living allowance, it shall also include any grant given to a worker as a reward for his honesty or efficiency, provided such amounts are stipulated in the employment contract or in the firm's internal regulations or are being so customarily granted that the firm workers regard them as part of their wage and not as donations.'

<sup>18</sup> S. Deakin, *The Contract of Employment: A study in Legal Evolution* (Centre for Business Research, the University of Cambridge, 2001) p.42.

1. The employment contract, which is signed by the employer and the employee, includes the rights and obligations of both parties to each other. This contract is assumed to be written, and signed either by hand or electronically. Otherwise, to prove that such a contract exists, all proofs must be taken to the court so that the latter can pass a judgement in this regard. When reaching an agreement, the employer and the employee must conform to a standard contract recently drawn up by MOHRE<sup>19</sup> and, subsequently, the employee must refer the contract to the relevant ministry so that it can be registered.<sup>20</sup>
2. There are two main types of employment contract; the short-term contract, which specifies a duration for the contract by marking its start date and end date. On the end date, the contract expires, unless it is extended. According to the recent amendments in the UAE's labour market, contracts can last for two years at most. The second type of employment contract is the unlimited term contract. This type is open-ended, more flexible and commonly used in the UAE. It terminates when both parties reach a consensus or when one party notifies the other 1 to 3 months before its termination. Parties must honour their obligations throughout the period after the notification.<sup>21</sup>
3. Any human activity that aims to generate profit is regarded as a piece of work, however, such an activity must be legal and moral. The employee himself, not others, must carry out the work and must use the tools, materials and equipment provided for it by the employer.
4. The employer periodically remunerates the employee for performing the work. This remuneration can be provided hourly, daily, weekly or monthly. The remuneration is known as economic dependency, whereby the employee is dependent on the employer. Meanwhile, it should be noted that remuneration refer not only to the payment of cash money, but payment in kind or in both forms. The appropriate form is determined according to the custom of the market.
5. The employment contract must conform to the legal provisions. To put it another way, the employee works under the supervision and control of the employer, even if the latter is absent. In this regard, the employer is entitled, by setting out the work strategy, to determine the place, time and method of performing the work and the employee must follow, and conform to, this strategy. The employer is also entitled to enforce binding rules, according to the following labour laws: Regulation of Organization and Functioning, and Internal Rules and Instructions. These rules must be applied to the performing of work and achievement of objectives.<sup>22</sup>

Finally, it can be said that the two most important differences between the Employment Contract and Contract for Work (*muqawalah*) are the following: first that the employee, as a party in the employment contract, must be a natural person, whereas the party in the contract for work may

<sup>19</sup> - Ministry of Human Resources and Emiratization.

<sup>20</sup> - see Ministerial decree no: 764 of 2015, Standard Employment contracts.

<sup>21</sup> - see art.1 in the Ministerial Resolution vo.765 of 2015 on the Termination of Employment Relations.

<sup>22</sup> - Brindusa Vartolomei, *The Subordination of the Employee to the Employer- The Fundamental Legal Characteristics of the Individual Employment Contract And its Consequences on Labor Law*, (Perspective of Business Law Journal, Vol. 3, 2014) pp. 209- 211.

be a natural person or a moral person. The second difference is about meeting the two main criteria—‘subordination’ and ‘dependency.’<sup>23</sup> If these criteria are met, the contract is considered an employment contract but if not, the contract is regarded as a contract for work (*muqawalah*).

### 1.2.3 Special Legal Nature

There are two criteria that distinguish employment contract from a work contract. At the same time, there are two groups called either ‘self-employed freelancers’ or ‘independent freelancers who do not fully meet these criteria.’ The self-employed freelancer is dependent on the employer and works under his supervision. The independent freelancer, however, to some extent works under the supervision of the employer without full dependency. This represents a third category, or a special case when the relationship fulfills only one of the two criteria, or part of it. The first party, for example, may deliver services to the second party according to the latter’s orders and instructions, and complete his/her work by a definite time. However, the first party does not depend on this work as a source of income. As a result, the latter person is regarded neither as an employee nor as an independent contractor. In a continuum with two extremes, the employment agreement is placed at one extreme, while the contract of work agreement is placed at the other. Another party that takes a position somewhere in between these two extremes, is referred to as ‘an employee and independent contractor’ who is also named ‘the freelancer’.<sup>24</sup> This new category needs legal protection not only at the local level but also at the international level, since there is no specific legal international organization for this category, and it has to be assessed by a domestic court. The court must go through this assessment on a case-by-case basis because the court of cassation in the UAE has adopted the following rule: ‘in the Emirati courts a decision has been made to shed light on work relations, determine their duration, and arrange their effect at the court’s discretion. The authority can collect and understand what goes on and evaluate pieces of evidence and documents’.<sup>25</sup>

In this regard, the French Labour Law points to the legal treatment of freelancers.<sup>26</sup> According to this law, when freelancers are registered in the commercial and companies’

<sup>23</sup> See, The Federal Supreme Court Decision, No. 83/22, 28/4/2002, among other decisions issued by the Federal Supreme Court, regarding the civil, commercial and personal affairs, 2002, Vol. 2, p.1016. The court decided that ‘the core point in adapting the labor relationship and distinguishing it from partnership or other agreements rest on the fulfillment of the subordination element in the relationship between the worker and his employer in which the later supervises and controls even remotely. This can be achieved through organizational or administrative subordination’.

<sup>24</sup> M. Freeland, *Application of Labour and Employment Law beyond the Contract of Employment* (International Labour Review, Vol.146, 2007) No. 1-2, pp.3-20.

<sup>25</sup> Court of cassation decision, workers’ circuit, No 84/ 2008, 21/12/2008, in *Al-Mabadaea Al Kanouniah Al Mukarrarah Min Mahakam Tameeaz Dubai, Fe El-Amal*, Chapter 1, p. 53. The decided legal principles from Cassation Courts in Dubai regarding work, Part 1. P.53.

<sup>26</sup> See L120-3 in the French Code du travail, ‘*Les personnes physiques immatriculées au registre du commerce et des sociétés, au répertoire des métiers, au registre des agents commerciaux ou auprès des unions de recouvrement des cotisations de sécurité sociale et d’allocations familiales pour le recouvrement des cotisations d’allocations familiales ou inscrites au registre des entreprises de transport routier de personnes, qui effectuent du transport scolaire prévu par l’article L. 213-11 du code de l’éducation, ou du transport à la demande conformément à l’article 29 de la loi n° 82-1153 du 30 décembre 1982 d’orientation des transports intérieurs, ainsi que les dirigeants des personnes morales immatriculées au registre du commerce et des sociétés et leurs salariés sont présumés ne pas être liés avec le donneur d’ouvrage par un contrat de travail dans l’exécution de l’activité donnant lieu à cette immatriculation. Toutefois, l’existence d’un contrat de travail peut être établie lorsque les personnes citées au premier alinéa fournissent directement ou par une personne interposée des prestations à un donneur d’ouvrage dans des conditions qui les placent dans un lien de subordination juridique*

registry, or in the commercial agents' registry, this law will not apply to them. The registers of these registries are not regarded as employees, unless they establish a permanent legal relationship of subordination with the client. This situation turns freelancers as semi-employees, or semi-independent contractors, supporting the view that different types of freelancing must be treated in a way that makes them conform to the nature of the freelancing agreements.<sup>27</sup> Therefore, different types of freelancing should be assessed in court on a case-by-case basis, until the Emirati legislator issue a special law in freelancers as other European legislators, for instance, the Spanish have done. Fortunately, no disputes regarding freelancers' agreements have ever been introduced in the Emirati courts, but the tremendous increase of freelancing agreements that may give rise to disputes in the near future -has created- fear and the judges have no choice but to resort to the general rules of contracting in the Emirati law.

### Section 3: Emirati Efforts in Supporting Freelancers:

#### 1.3.1 Federal Governmental Efforts

The Ministry of Human Resources and Emiratization (MOHRE),<sup>28</sup> in co-operation and partnership with the Emirates Foundation (Youth) and the Federal Youth Authority, launched the 'National Self-Employment Platform', in 2018, to enable skilled Emiratis who were older than 21 to provide services for the government and private entities. These persons, who seek job opportunities, have found innovative and untraditional methods of working to earn more money. Launching the National Self-Employment Platform comes as part of a qualitative program implemented by the MOHRE as the first government interactive platform aimed at using the nation's skills as human resources for implementing public and private projects.

This platform links the skilled Emiratis, with the government and the private entities, which introduce and connect these skilled individuals with projects. To be recruited, they can register on the electronic platform to get the necessary license from the MOHRE. This license oversees the platform and provides the necessary support to the Emiratis registered on it during their training and qualifying period, honing their skills and guiding them to make the most of their opportunities.

The entities announce their projects through the platform and the skilled Emiratis use this to submit their technical and financial offers. The entities then exclusively entrust candidates, all Emiratis registered on the platform, with a project. Each worker is paid after the service has been delivered to, and approved by, the entity concerned.

The services of the platform also include marketing services such as brand development, content marketing, mobile advertising and presentation development in addition to consultation about, and management of, social media content, and advertisement by video clips. The platform also offers designing services, including designs for websites, smart apps, advertising banners, business cards, stationery, packing, packaging, flyers, brochures, posters and invitations. Other services include graphic design, graphic illustrations, interior design, designing logos, Photoshop services, and the designs of flyers and social media posts.

---

*permanente à l'égard de celui-ci. Dans un tel cas, il n'y a dissimulation d'emploi salarié que s'il est établi que le donneur d'ouvrage s'est soustrait intentionnellement à l'accomplissement de l'une des formalités prévues aux articles L. 143-3 et L. 320'.*

<sup>27</sup> - Acevedo, D.D, 'Regulating Employment Relationships in the Sharing Economy', Employee Rights and Employment Policy Journal, 2016, Vol. 20, p. 27.

<sup>28</sup> See, [www.aefreelancer.ae](http://www.aefreelancer.ae), accessed 20 May 2020.

Additionally, the platform enables Emiratis to provide translation, content creation and development services (in Arabic and English), as well as montage, legal translation services, guideline development, text/scenario writing and translation. The package of services provided by the platform also include digital services such as app development, electronic games, IT and network consultations, product management, product design and website development. Its services also pertain to photography and montage, such as animation, digital editing (photos and video clips), photography and videography as well as production, sound effect engineering and sound recording.

### 1.3.2 Local Governmental Efforts

One example of local governmental efforts was Abu Dhabi's support of freelancers in the Emirate; it organized a new trade license named 'Tajer Abu Dhabi' under decision No. 246 of 2017<sup>29</sup>. This license enables nationals who are licensed freelancers to deal with all governmental entities and private organizations, and to be engaged in certain types of economic activity wherever they live in the Emirate. This form of freelancing is referred to as sole-proprietorship, and the legislator gives the department discretionary authority to consider other legal forms for licensing.

In 2018, Abu Dhabi's Department of Economic Development (ADDED), expanded the scope of the license to include all GCC and UAE residents of other nationalities under three legal forms:

- Establishments for Emiratis and GCC nationals
- One-person companies for Emiratis and GCC nationals
- Limited liability companies for residents in partnership with Emiratis.

The validity of the license is limited to one year, but the freelancer may then extend it, though only for another year. Once the license is expired the freelancer has to go through the procedure of registering in an economic activity which is either a sole-proprietorship or some other legal form in this economy. About one-fifth of the trade licenses registered in Abu Dhabi, according to the 2019 statistics, were freelancer licenses (Tajer Abu Dhabi)<sup>30</sup>.

The Emirati governments have adopted the two types of freelancing. Meanwhile, self-employed freelancing follows the federal pattern, which is exclusive to nationals. The other type, namely independent contractor freelancing, has from the start been restricted to locals and the validity of the freelancer license expires after two years. After these two years, any business thus licensed turns into a normal business. In 2018, the local freelancing system allowed expatriates to freelance, however, though only in partnership with locals. The Abu Dhabi legislator believes with good reason, that independent licenses should be valid for two years only and their expiry should then be on the same footing as other businesses, subject to the same taxes and other obligations as theirs. This protects society from frauds and fronts, that may emerge from independent contractor projects.

Despite all these efforts, it would appear that the UAE, has to develop special rules for freelancing agreements, maybe formulated in separate legislation or under a new chapter to be

<sup>29</sup> See, <https://u.ae/en/information-and-services/business/ecommerce/tajer-abu-dhabi>, 10 June 2020.

<sup>30</sup> *Ibid.*

added to the Labour law. Given the present nationalization strategy on which the government relies, it must also have accurate statistics on the freelancers in the UAE, and the possibility of having more.

## Chapter Two: Choice of Law, Rules that apply in Freelancing Agreements

### Section .1 *International Character of the Freelancing Agreement*

It is important for courts to adapt the legal relationships, so that they can determine whether the disputed contract is international or not. This is the first step to assigning whatever law properly applies to an agreement. In order to regard a contract as international, two criteria must be met, as follow:

#### 2.1.1 The Legal Criterion

According to his criterion, the term ‘international contract’ refers only to a legally binding agreement between parties which are situated in different countries. In a freelancing agreement, if the freelancer resides in a different country from the client, the contract is considered international. Otherwise, it is regarded as national and is covered by the domestic law.

#### 2.1.2 The Economical Criterion

The approach here is to consider the transfer of goods and services from one country to another. If the freelancing agreement states that goods or services from the freelancer’s country are provided to the client in another country, the agreement is considered international rather than local or national.

#### 2.1.3 The Comprehensive Perspective

In each of the previous two perspectives, one element was taken into account. The first focused on the roles of the parties whereas the second type concerned the transferability of goods and services from one country to another. Most scholars agree opinion that these two criteria should be reconciled, such that an international contract is one which is signed by parties from different countries and at the same time refers to goods and services which one country provides to another. This view is supported by court judgments that rely on a comprehensive criterion, according to which the two perspectives are inseparable.<sup>31</sup> It can be concluded that if the parties who sign the contract are from different countries, and the services and commodities are provided from, and to, different then the contract is regarded as international. However, if the agreement does not meet both of these criteria it is regarded as a national contract.

In this regard, we can ensure that most of the contractual lobbyists of the freelancing process appear on the Internet where job seekers are searching for opportunities to work and earn money, and clients are searching for ways to meet their needs with work of the highest quality at a reasonable price. As a result, regardless of their nationalities and locations, freelancers and clients can meet one another, especially when remoteness does not detract the service. In such case, both criteria are met.

### Section:2 *Ascertaining the Proper Law in Freelancing Agreements*

<sup>31</sup> T. Appeal Court, 26/Oct/1982 ‘ces deux cerateres paraissent difficilement detaachables l’un de L’autre et c’est leur conjonction que cacaterise le mieux L’ extraneite’ in Okasha Abdulaal: *Tanazouaa Al- Kouaneen*, (Conflict of laws, Dubai Police Academy, Dubai, 2007) p. 705.

Most comparative legislations take into account the ‘party autonomy principle’ in determining the proper law for governing the international agreements. According to this principle, agreements incorporate and explicitly indicate the wills of parties, are explicitly, or court can infer their wills from the provisions of the contract.

### 2.2.1 Party Autonomy Principle

In governing international contracts, countries used in the past, to rely on rigid criteria with respect to the place where the contract was signed or applied. In other words, the construct and content of the contract were determined according to the local laws. But this approach changed in the sixteenth century as a result of the writings of Charles Dumoulin (1500-1566), a French scholar,<sup>32</sup> and the father of party autonomy. He argued, with reference to a specific case, that although spouses’ properties exist in different places, the financial values of these properties are governed by a unitary law. The spouses in this case opted to be governed by this law, referred to as the law of domicile. This view was also given credit by various scholars such as Savigny.<sup>33</sup> Furthermore, the principle of party autonomy has been developed and has now become the axis of international private law, especially in connection with contractual issues.<sup>34</sup>

Party autonomy is the main principle in dealing with the problem of the choice of law, in that it serves as the cornerstone of any given international agreement. In addition, this principle gives parties the freedom to choose and agree on the law that should govern their contracts and allows parties to choose the law of a particular country or sovereignty to govern their contracts when two or more jurisdictions are involved.<sup>35</sup>

By their choice, the better-developed body of law is usually; the one which serves to resolve any problematic issues that might result from the multinational forms of law. Therefore, this law satisfies all parties.

The Emirati law is in accordance with the party autonomy principle in determining which laws should apply to international agreements. In other words, this law states that if parties reside in different countries, the law of the country where the contract was signed should apply, unless the parties agree on applying another law or the circumstances require them to do this. This means that the Emirati law gives priority to the law that the parties chose in their agreement, unless this law contravenes public order and morality. The Emirati law is thus consistent with comparative bodies of law which adopt this principle, and is also consistent with international agreements, notably the Rome Convention 1980 on the law applicable to contractual obligations. It can be said that the applicable law that governs the contract and any disputes that may arise from this contract is chosen by parties which deliberately manage their relationship.

### 2.2.2 Theories in Exercising Party Autonomy

In jurisprudence and for the judiciary, there are two main theories in dealing with party autonomy. These two theories are applied in international practice.

#### 2.2.2.1 Monistic Theory

---

<sup>32</sup> *Ibid.*, p. 11.

<sup>33</sup> Ralf Michaels, Globalizing Savigny, *The State in Savigny’s Private International Law and the Challenging of Europeanization and Globalization*, (Duke law School, 2005) P78. Ahmed Abdul kareem salama, P. 368.

<sup>34</sup> Ahmed Abdul Kareem Salama, *Al- Kannon Al- Dawli Al-Khass Al-Emirati, Emirati International Private Law*, (UAEU Press, 2002) p.368

<sup>35</sup> Mo Zhang: *Party Autonomy and Beyond: An International Perspective of contractual Choice of Law*, (Legal studies research Paper series, Temple University,2008). P3.

This theory relies on the wills of parties in localizing their contract in one country in order to apply its legal system. The parties do this to avoid the application of the applicable law in the contract, even though they have already opted for this law in their agreement. They try to leave the choice of law to the forum, which is composed of the judiciary, or to the arbitral tribunal. In such cases the judge or arbitrator can opt for the applicable law and apply it in disputes, in accordance with what the parties agreed on in their contract regarding the place where the contract was implemented and applied.

#### 2.2.2.2 Dualist Theory

This theory rejects the monistic one which limits the wills of parties in localizing their contract. Nonetheless, it tends to give parties permission to choose a specific law for addressing the disputes that may arise from the contract, and for writing and formulating the contract. According to the dualist theory, the parties have the permission to opt for a law, but if they have not chosen any law, the contract will be localized under monistic theory. In other words, the judge will try to realize the parties' intent to choose which law should apply.<sup>36</sup>

The dualist theory is appropriate for the nature of international contracts, particularly since it takes account of transnational aspects and issues and respects the choice and free will of the parties. In this regard, one may give priority to the parties' implicit intent, as well as what they have made explicit. In other words, explicit intent has absolute priority, followed by implicit intent, and only then does the forum look for the applicable law from the rules that the parties used in localizing their contract.

#### 2.2.3 Theoretical Applicability on Freelancing agreements

More scholars prefer the dualist theory, despite its disadvantages, but in applying it to international freelancing agreements, another opinion should not be ignored. This opinion is that when it comes to applying these two theories self-employed freelancers and independent contractors are not the same.

##### 2.2.3.1 Agreements for the Self-Employed

In freelancing agreements, there is somehow an imbalance in the relationship between the client and the freelancer, while the agreement may in most cases be drafted by the client, and it seems to include all the provisions that benefit the other party – the freelancer. Both parties agree on the applicable law, which always favours the client. But in this regard, one question remains open; did the freelancer freely give his consent to choose the applicable law?

It must be admitted that the freelancer's consent, is in most cases, given under some moral duress, because the freelancer is seeking a job opportunity and he has only one choice; to seize the chance and sign the agreement, or not. Freelancers thus may not take any care over, or may not pay enough attention to, the condition of a foreign law and its particulars, even when they are asked to work in their own country. In this case, freelancers deserve the legal protection obtained by the court, regardless of its jurisdiction. To determine the proper law according to both wills in the agreement, the court must assess and localize a disputed agreement. Therefore, it can be seen that the monistic theory is close to justice in this regard.

##### 2.2.3.2 Agreements for Independent Contractor

---

<sup>36</sup> *Ibid.*, p. 382.

We can see that independent contractors are not hit so hard, as self-employed persons by a wrong choice of law because an independent contractor in their case concerns an economic project. Even if the contractor runs a small enterprise, it plays a significant role in the market and seizes an available opportunity. It can also prepare feasibility studies and has even more options. In most cases, the contractor aims to gain profit that is not in the form of salary or wage. He thus assesses the offers and negotiates with the client until a just agreement emerges.

Therefore, the legal protection for independent contractors may be provided through the expressed, determined and agreed applicable law that is included in their agreement; this chosen law takes priority and limits the role of the court. The dualistic theory might thus be applied to ensure justice for this type of freelancing. This view is supported by the legislature in Abu Dhabi; there independent contractors (*i.e.*, Tاجر Abu Dhabi) have a period of no more than 2 years to exercise as such in the market. At this point, contractors must register in the commercial registry under the name of a legal economic enterprise, then the enterprise is regarded either as a sole proprietorship or as an ordinary- company that performs like any other.

### Section 3: Applicable Law in the Absence of Choice

This law assumes that the parties have neither explicitly nor implicitly, included in their agreement an applicable law to govern any disputes that might arise between them. In this case, the judge plays an important role in assigning the applicable law, using the rules of choice which are stated in her/ his law.<sup>37</sup>

Emirati judges must apply Art. 19, in the civil transactions law, which states that ‘if the parties reside in one country, the law of that state will be applied, however, if they reside in different countries, the law of the state where the contract was agreed shall apply. The point should be made that, if the parties agree on the law of another state, or if it is obvious that they wanted to opt for another law, the law can be changed’.<sup>38</sup>

This means that the judge has to investigate the freelancing agreement to see what the original intent of both parties was when they signed the agreement. If he finds no clue to this, he is left with one of two assumptions:

1. The first is that both parties – the freelancer and the client – are resident in the same state. Therefore, the applicable law must be the law of the state in which they reside. In practice, such assumptions are very rarely valid in international freelancing agreements, where the parties by definition are residing in different countries.
2. The most frequent case in practice arises when both parties reside in different states, in which case the judge must apply the law of contract conclusion (*lex loci contractus*). This approach is applied in both schools of law, because it refers to the law which the parties desired and intended to govern their contract.<sup>39</sup>

Because it purports to determine the state where the contract was signed, adopting this assumption will cause difficulties. This is especially the case when the parties signing the freelancing agreement conduct their negotiations mostly through the Internet, which would make it difficult to determine the state in which the contract was agreed, and the state(s) in which the

<sup>37</sup> Hafizza El-Sayed Al-Haddad, *Al-Moujz fi Alkanoun Al-Douli Alkhas, Lights on International Private Law, (Manshourat El-Halbi Al-Houkukiah, 2005) p. 78.*

<sup>38</sup> This article resembles the article in the Egyptian civil law, art. 19 para. 1, which states ‘And in the absence of a common domicile for the parties the law of the country where the contract was agreed shall be applied.

<sup>39</sup> Richard Frimpong, *Private International law in Commonwealth Africa*, (Cambridge, 2013) p.142.

client and the freelancer are living in. This rather thorny dilemma is observed not only in Emirati law, but in all comparative bodies of legislation. Therefore, the solution calls for another means, such as the application by most European legislators of the Rome Convention 1980, in the form of the closest connection rule.

### 2.3.1 *Characteristic Performance Law*

The recent concept of ‘characteristic performance’ is considered one of the methods for choosing a set of laws to apply to international contracts. It is used to determine which country’s law applies when no express or implied choice of law has been made and has been incorporated in the Rome Convention 1980 as the law most closely related to the contract.<sup>40</sup> According to this law, in the absence of choice the court has to search for the law that is closest to the contract. Such a law would cover the performance and execution of the contract<sup>41</sup>. The place of the characteristic performance is then revealed to be either the place of habitual residence or of the central administration, or the principal place of business of the debtor owing the particular characteristic performance.<sup>42</sup>

In this regard, the European countries have adopted this principle to determine the applicable law when a choice of law is absent.<sup>43</sup> This rule is appropriate for cases where the contract is applied in a single country, however, a problem will arise if the contract is to be applied in more than one country, such that it must be determined which state’s legislation should be applied. The Rome Convention addressed the notion of characteristic performance, which is the most important part of the contract, and at the same time it relied on a set of operative facts.<sup>44</sup>

This is a proper and just solution for freelancing agreements and protects the freelancer more because most or all of the task is performed, according to the first option, in the freelancer’s country of habitual residence, however, some part of the work such as fixing, testing, etc. might need to be performed in the client’s country. The second option is the place of business of the debtor, who is the freelancer, who owes the characteristic performance in question<sup>45</sup>. Therefore, the domestic law, which is applicable here should be adopted, as more appropriate for the freelancer and closer to the place where the contract is to be applied. This is a preferable

<sup>40</sup> See art. 4, Rome convention 1980, ‘as long as the law applicable to the contract has not been chosen in accordance with art.3, the contract shall be governed by the law of the country to which it is most closely related.

<sup>41</sup> - Kurt Lipstein, *Characteristic Performance- A New Concept in the Conflict of Laws in Matters of Contract for the EEC*, 3 *Northwestern Journal of International Law & Business*, 1981, p. 402.

<sup>42</sup> *Ibid*, P. 404.

<sup>43</sup> See art.24, para. 4 in The Turkish International Private and Procedural law (Act No. 5718, enacted on 27th November 2007, ‘if the parties have not chosen any law, the relationship in the contract will be governed by the most connected law to the contract. This law is accepted to be the law of the habitual residence (at the moment of signing the contract) of the debtor of the characteristic performance; the law of the workplace or, in the absence of a workplace, the law of the residence of the abovementioned debtor in case the contract is concluded as a result of commercial and professional activities; in case the debtor has multiple workplaces, the law of the workplace which is most tightly related to the contract. Nevertheless, all aspects should be taken into account and if it was found that there is a more related law to the contract, this new law shall govern the contract’. <http://jafbase.fr/docAsie/Turquie/Private%20international%20law%20Turkey.pdf>, accessed date???. See Art. 117( b)(1) in the Switzerland’s Federal Code on Private International Law, 1987 which states ‘in the absence of a choice of law, the contract shall be governed by the law of the state which is closest to the contract’.

<sup>44</sup> - Nicky Richardson, *The Concept of Characteristic Performance and the Proper Law Doctrine*, *Bond Law Review*, 1989, Vol. 1, p.285.

<sup>45</sup> - Michael Joachim Bonell, *The Law Governing International Commercial Contracts and The actual Role of The Unidroit Principles*, *Uniform Law Review*, Volume 23, March 2018, P. 24.

solution, for all the categories of freelancers such as self-employed freelancers and small enterprise freelancers, in particular because these categories tend to operate closer to the place where the employment contract was made.

### 2.3.2 Individual Employment Contract

An attempt was made to correlate the freelancing agreements, especially the self-employed freelancing agreements with the employment contracts. Scholars tend to find this attempt acceptable by reasoning that it is correct to treat platform-accessed work as work which has a contract of employment.<sup>46</sup> This sheds light on the Rome Convention and its treatment of the applicable law regarding freelancing agreements. In treating choices of law on individual employment agreements, the Rome Convention states that, 'in accordance with article 3, in the absence of choice the contract is to be governed: a) by the law of the country in which the employee usually accomplishes his work provided in the contract, even if he is temporarily employed in another country; or b) if the employee does not usually accomplish his work in a given country, the law of the country where the business is established shall govern the contract; unless it is inferred from the circumstances that the contract is more closely related to another country, in which case the contract shall be governed by the law of that country'.<sup>47</sup>

It is thus clarified that the Rome Convention encompasses different forms of employment contracts and determines the applicable law for each set of conditions, as follows:

1. The parties may agree on the applicable law and the law of the country where the contract is applied. In this case, the agreed law should govern the employment contract, however, the employee must still adhere to the rules of the country where s/he is to accomplish the contracted task. These mandatory rules give the employee basic rights which are the same for all the citizens of the country.
2. If the parties do not choose an applicable law to govern their contract, they will conventionally employ the law of the country in which the employee habitually accomplishes his/her work. This condition is referred to as 'the Characteristic Performance Principle'. The term 'habitually' denotes that if the work is accomplished in more than one country, the law of the country in which most of the work is done will be employed as a default law.
3. In the absence of an agreed law and of the law of the country where the work is carried out, the applicable law of the country where the employee is engaged shall govern the contract.

In the employment contract the applicable law is not used under Emirati law as described. Rather, this country makes use of the classic choice of law rules, though the legislation, and particularly the employment law, of the UAE has developed significantly. This is surprising, given that employees of various nationalities work for the UAE, either inside or outside the country. This suggests that the legislation of the UAE needs more developed choices of law rules, such as the European Community and Swiss Private International Law have adopted.<sup>48</sup>

<sup>46</sup> -Miriam A. Cherry, Regulatory options for conflicts of law and jurisdictions issues in the on-demand economy, Conditions of Work and Employment Series No. 106, International Labour organization, Geneva, 2019, p. 19.

<sup>47</sup> See Art. 6, Rome Convention 1980.

<sup>48</sup> See art. 121, Switzerland's Federal code on the private international law, 1987, states that '1-an employment contract shall be governed by the law of the state in which the employee habitually carries out his work, 2- if the employee habitually carries out his work in several states, the employment contract shall be governed by the law of the state of the place of business or, in the absence of a place of business, at the domicile or place of habitual

## Section 4: Scope of the Applicable Law on Freelancing Agreements

This section discusses when the applicable law should be applied in freelancing agreements. The contract consists of two main parts; one related to the subject matter of the agreement, and the other regarding to the legal form that the agreement should take.

### 2.4.1 *Substance of the Freelancing Agreement*

An enforceable agreement comprises a number of elements that complement one another. They can be divided into two significant categories:

#### 2.4.1.1 The capacity of the Parties

Capacity is regarded as the basic element in contracts because it indicates the eligibility of each party as determined by their personal law to sign a contract. Capacity is even more important in most international freelancing agreements if they are reached remotely through the Internet. Having this capacity is important for both parties, especially for the freelancer. Legal systems differ in determining what someone's personal law is, but most of these systems adhere to the law of the person's domicile. Before modern codifications, the civil law system also adhered to the same law. However, for the last century the person's national law has been what Europe adheres.<sup>49</sup>

In discussing freelancing agreements, the self-employment contracts should be differentiated from independent contractor agreements. Independent contractors may appear either in the form of natural or juristic person, while 'Self-employed' persons always appears in the contract as natural person and thus, the applicable law must be personal law, which can be either of the following.

##### 2.4.1.1.1 *Law of Nationality*

This reasoning follows what is applied by the Latin school of law, which in turn, is inferred from French law and applied in most Arabian countries.<sup>50</sup> The Emirati law adopts the law of nationality<sup>51</sup> as the main law governing any issues or disputes that may arise regarding a freelancer's capacity. This means that the law of nationality shall govern the capacity for both parties "the freelancer and the client" in freelancing agreements. It is simple if both parties are

---

residence of the employer, 3-the parties may choose the law of the state where the employee habitually resides to govern their contract. To this end, they can alternatively choose the law of the country where the employer's place of business, his domicile, or his place of habitual residence is'.

<sup>49</sup> Pasquale Stansilo Mancini, (1817-1888) is primarily responsible for this shift and his name is identified with the proposition that the national law should govern status and capacity. In Kurt H. Nadelmann: Mancini's Nationality Rule and Non-Unified Legal Systems: Nationality versus Domicile, *The American Journal of Comparative Law*, 1969, VOL 17, No 3, Oxford university, p.420.

<sup>50</sup> See art. 11, para.1 on Egyptian civil law which states that 'the status and the legal capacity of persons are governed by the law of their country, etc.'

<sup>51</sup> See art.11 on the Emirati civil transactions law which states that 'the law of the person's own state shall apply to the civil status and competence of such a person. Nevertheless, in financial dealings transacted in the state of the United Arab Emirates the results of which materialize therein; It happens that one of the parties has a defective capacity and the lack of capacity is attributable to a hidden cause which the other party could not easily discover. Hence, such a cause shall have no effect on his capacity'

natural persons, but if they appear in the contract as juristic persons, this will be invoked other alternatives, especially the law of domicile.

#### 2.4.1.1.2 Law of Domicile

This law is a pivotal option for the Anglo-American school.<sup>52</sup> Domicile refers to the relation between a person and a particular territorial unit possessing its own system<sup>53</sup>. The Emirati legislator, like most Arabian legislators, adopts this law as an alternative choice in dealing with cases where the nationality of both parties “the freelancer and the client” presents problems. Thus, this law may be effective in dealing with cases of stateless freelancers and may also be efficacious when dealing with a freelancer who has more than one nationality. The applicable law will be applied to the nationality which is most closely related to the person. Such a relationship may be the residency of the person in a given country. The court has the full discretion to determine with no commentary the most closely related nationality. The case for the client is the same.

The Emirati law contains a unique provision for a specific case: if happens a self-employed foreigner claims that he suffers from a defective capacity, and yet does not reveal his problem to the other party and if the other party cannot discover this problem. The problem might be that the self-employed foreigner is defined as a minor by his law, or he may suffer from a mental disorder, etc. In these cases, the judge should resort to the applicable law (*lex fori*).

The independent freelancer`s name may be written in the contract as a natural or juristic person. If he is regarded as a natural person in the contract, the personal law “whether the nationality law or law of domicile” of the self-employed individual should apply to him. However, if the freelancer is deemed a moral person – *i.e.*, an enterprise – it may take the form of a partnership or company and hence the applicable law should be the law of its nationality, which is also the law of its headquarter, in other words the location where its business is managed, which is included in the MOA of the business of the parties in the freelancing agreement.

#### 2.4.1.2 Contract Content (Subject matter and Consideration)

It has been shown that the applicable law, whether determined by the parties and included in their agreements or determined by the court, should govern the contract with all its provisions and particulars. The applicable law is a legal means to address any discrepancies that may damage the contract. Furthermore, in determining the subject matter of the contract and the mutual obligations of both parties, many legal problems may arise that need to be legally addressed according to the contract. They include the interpretation of the terms and condition of the freelance work that is the subject of the contract such as, the terms of performance, location, specifications, Indemnity and Hold Harmless clauses, etc.<sup>54</sup> However, the applicable law can address these potential problems in the absence of solutions in the contract.

According to the assumption in the country where the contract was concluded, the applicable law also determines the legality of the agreement. Therefore, the nullification of the agreement should be determined by the rules in the applicable laws.

<sup>52</sup> Araya Kebede, Sultan Kassim: Conflict of Laws, Justice and Legal System Research Institute, Addis Ababa, 2009, p.340.

<sup>53</sup> William M. Richman, et al. *Understanding the Conflict of Laws*, (Carolina Academic Press, 2018, fourth ed.) P. 6.

<sup>54</sup> -J.G. Collier, *Conflict of Laws*, Cambridge University Press, 3<sup>rd</sup> ed, 2012, P. 32.

#### 2.4.1.3 Freelancing Agreement Performance

Moreover, the applicable law should govern the contractual liability for the breaches of contract by either party. Such breaches occur when the freelancer does not meet his obligations, when the subject matter of the contract causes a problem, or when the client does not pay the due salary or wage determined in the contract. In addition, the applicable law governs the contractual liability and helps prove the harm and damage to the other party in the agreement; moreover, the compensation should be governed and determined according to the applicable law and its rules.

#### 2.4.2 *Form of the Freelancing Agreement*

The applicable law should govern the form of the freelancing agreement. This means that the applicable law should specify the character of the contract; whether orally or written, simple or formal. According to Emirati law, because no organization exists to specify the nature of freelancing agreements, those involved must resort to general rules of proof. The Emirati law adopted the consensual principle in reducing contracts that formalities are not generally required in concluding contracts unless they are legally required, as marriage contracts, or unless the parties agreed. Even though freelancing agreements may be considered to exemplify a modern type of employment in their model of “self-employment”, the Emirati labour law does not require formality in concluding employment contracts. Nonetheless, the second model, that of contracts for “Independent Contractor Freelancers”, must always be in written form, because of a ministerial decree imposed on them, on the basis of their tendency to resemble contracts of work. In addition, the Emirati law of evidence requires that the contract must be in written form and signed by both parties, if its value is more than 5000 AED.<sup>55</sup> Meanwhile, most freelancing agreements are reached through electronic sites and platforms on the Internet, and the parties sign electronic agreements that entail the same enforcement as classical ones. Moreover, the enforceability of sending emails between the parties is also approved by the Emirati law.<sup>56</sup> This previous assumption obtains when the parties agree that they will follow the electronic method in their agreement, which is often the way that most of the freelancing agreements are concluded.

#### **Conclusion:**

- 1- Justice throughout one’s lifetime, is the highest human demand. Therefore, the pivotal function of courts is to use the law and maintain justice between people in every country, because people form relations that require contracting parties to meet their obligations and at the same time enjoy their rights. It is not so easy for a court to search for a specific law by which to try a dispute between two parties of the same nationality. Dealing with this issue in international relations is even more problematic since the judge has to understand the relationship between the parties. Moreover, s/he must search for the

<sup>55</sup> See art. 35, para. 1, in Law No. 10 of 1992 for Evidence Law, which states that ‘in the absence of an agreement or a law provision to the contrary, and excluding commercial matters, evidence as to the existence of an act or as its extinction may not be established by the testimony of witnesses where the value involved exceeds five thousand Dirhams, or is of undetermined value’.

<sup>56</sup> See art.11 para. 1, federal law No.1 of 2006, on e-commerce and e-transactions, which states that ‘a contract is not invalid or unenforceable solely because it was formed through electronic communication’.

- applicable law to apply to this relationship. Such a relationship may be governed by a foreign law that the judge has no information about.
- 2- When the subject matter of the agreement is about an employment relationship between parties who reside in different territories and who have different nationalities, languages, and legal systems, more legal organization is needed, to protect the weaker party from exploitation.
  - 3- In international freelancing agreements, legal problems between freelancers and clients have often been observed. The contribution made by the present paper in treating these problems is important, especially in its bearing on human resources. Furthermore, as a result of the current pandemic of COVID-19, some have lost their jobs, the wages others have been reduced, and others have found new jobs, having resorted to freelancing via the Internet. The latter group may not have taken the applicable law into account when reaching an agreement with the client. This paper may be of use of them.
  - 4- The paper shed the light on the role played in Emirati law by the applicable law in both types of international freelancing agreement the self-employed form and the independent contractor form.
  - 5- Like most comparative laws, Emirati law has no definite rule that the applicable law must be assigned to freelancing agreements. The present paper first investigated the legal relationship between the freelancer and the client, took into account both employees and contractors, and then differentiated between the two types of agreements.

#### **Recommendations:**

- 1- The study established that the self-employed form of agreement is to be considered as an employment relationship, while the second form, namely, that of the independent contractor, should be regarded as a contractor relationship to be treated according to the applicable law provided in the contract of work.
- 2- The study recommends that the judge be required to ensure the autonomy of parties. Nevertheless, the judge should not restrict her/himself to what the parties included in their agreement. In other words, if s/he finds a discrepancy in the agreement reached by the parties, especially the self-employed form of agreement, s/he should to recognize the parties` intent when they chose the law of the contract and the location where the contract was signed. If the parties have not exercised choice, the study recommends using the characteristic performance rule, as laid down in the Rome Convention, 1980.
- 3- The study recommends that the Emirati government has made administrative attempts to protect local freelancers. However, on the lines as most legislators in other Arabian countries and as opposed to the Spanish and British legislators, the Emirati legislator has not attempted to regulate these workers. According to the Spanish and British legislators, freelancers, especially the self-employed type, are protected under the social security law.
- 4- It is recommended that the Emirati legislator should be more concern over these workers. This is especially relevant to the Emirati economy, since large rests on expatriates, and will probably conclude more freelancing agreements in the future. Instead of bearing on their own shoulders the many legal responsibilities entailed in employing workers, many businessmen will get their work done by freelancers and the self-employed.

## References

### Books:

Accevedo, D.D, 'Regulating Employment Relationships in the Sharing Economy', Employee Rights and Employment Policy Journal, 2016, Vol. 20.

Ahmed Abdul Kareem Salama, *Al- Kannon Al- Dawli Al-Khass Al-Emirati, Emirati International Private Law*, (UAEU Press, 2002).

Araya Kebede, Sultan Kassim: Conflict of Laws, Justice and Legal System Research Institute, Addis Ababa, 2009.

Brindusa Vartolomei, *The Subordination of the Employee to the Employer- The Fundamental Legal Characteristics of the Individual Employment Contract And its Consequences on Labor Law*, (Perspective of Business Law Journal, Vol. 3, 2014).

Fishman, Stephan. *Working with independent contractors*, fifth edition. Nolo Press (2005).  
Hafizza El-Sayed Al-Haddad, *Al-Moujz fi Alkanoun Al-Douli Alkhas, Lights on International Private Law*, (Manshourat El-Halbi Al-Houkoukiah, 2005).

J.G. Collier, *Conflict of Laws*, Cambridge University Press, 3<sup>rd</sup> ed, 2012.

Jaime Cabeza Periro, Notes. *Debates and Communications: The Status of Self-employed Workers in Spain*, *International labour Review*, Vol, 147 (2008) No. 1.

Kurt H. Nadelmann: Mancini's Nationality Rule and Non-Unified Legal Systems: Nationality versus Domicile, *The American Journal of Comparative Law*, 1969, VOL 17. No 3, Oxford university.

Kurt Lipstein, *Characteristic Performance- A New Concept in the Conflict of Laws in Matters of Contract for the EEC*, *Northwestern Journal of International Law & Business*, 1981.

M. Freeland, *Application of Labour and Employment Law beyond the Contract of Employment* (*International Labour Review*, Vol.146, 2007).

M. Wooden & D. Warren, *The Characteristics of Casual and Fixed-Term Employment: Evidence from the HILDA Survey*, (Melbourne Institute of Applied Economic and Social Research, University of Melbourne, 2003).

Michael Joachim Bonell, *The Law Governing International Commercial Contracts and The actual Role of The Unidroit Principles*, *Uniform Law Review*, Volume 23, March 2018.

Miriam A. Cherry, Regulatory options for conflicts of law and jurisdictions issues in the on-demand economy, Conditions of Work and Employment Series No. 106, International Labour organization, Geneva, 2019.

Mo Zhang: *Party Autonomy and Beyond: An International Perspective of contractual Choice of Law*, (Legal studies research Paper series, Temple University, 2008).

Nicky Richardson, *The Concept of Characteristic Performance and the Proper Law Doctrine*, Bond Law Review, 1989, Vol. 1.

Okasha Abdulaal: *Tanazouaa Al- Kouaneen*, (Conflict of laws, Dubai Police Academy, Dubai, 2007).

Omar El-Tom, *The Emirates Law In Practice: Case Law Study, 100 Legal Issues*, Dubai, (Future Bookshop, 2009).

Ralf Michaels, Globalizing Savigny, *The State in Savigny's Private International Law and the Challenging of Europeization and Globalization*, (Duke law School, 2005).

Richard Frimpong, *Private International law in Commonwealth Africa*, (Cambridge, 2013).

S. Deakin, *The Contract of Employment: A study in Legal Evolution* (Centre for Business Research, the University of Cambridge, 2001).

William M. Richman, et al. *Understanding the Conflict of Laws*, (Carolina Academic Press, 2018, fourth ed.).

### Periodicals:

*Al-Mabadaea Al Kanouniah Al Mukarrarah Min Mahakam Tameeaz Dubai, Fe El- Amal, Al-gouza AlAwal*, The decided legal principles from Cassation Courts in Dubai regarding work, Part 1, Vol. 10, 1999.

Court of cassation decision, workers' circuit, No 84/ 2008, 21/12/2008, in *Al-Mabadaea Al Kanouniah Al Mukarrarah Min Mahakam Tameeaz Dubai, Fe El-Amal*, Chapter 1, p. 53. The decided legal principles from Cassation Courts in Dubai regarding work, Part 1. P.53.

<https://u.ae/en/information-and-services/business/ecommerce/tajer-abu-dhabi>, 10 June 2020.

MOHRE, Ministerial decree No, 496, in 2002, on contracts of work and Sub-contracting, , [AEfreelancer.ae](http://AEfreelancer.ae), 15 June 2020.

OECD, *Women and Men in OECD countries* (2007), p.18, available at: <http://www.oecd.org/sdd/womenandmeninoecdcountries.htm>, accessed 20 June 2020.

The Federal Supreme Court Decision, No. 83/22, 28/4/2002, among other decisions issued by the Federal Supreme Court, regarding the civil, commercial and personal affairs, 2002, Vol. 2.

**Laws and Legislations:**

French Code du travail, [www.aefreelancer.ae](http://www.aefreelancer.ae) , accessed 20 May 2020.

Law No.5 of 1985 for the Civil Transaction Law in UAE.

Law No. 8, in 1980, on regulation of labor relations in UAE

Switzerland's Federal Code on Private International Law, 1987.

Law No. 10 of 1992 for Evidence Law in UAE.

Federal law No.1 of 2006, on e-commerce and e-transactions.

**Contents:**

**Introduction P.1.**

**Chapter One: International Freelancing Agreement. P. 3.**

**Section 1: Definition and Characteristics: P. 3.**

**Section 2: *Legal Nature of the Freelancing Agreement.* P.4.**

**Section 3: *Emirati Efforts in Supporting Freelancers:* P.9.**

**Chapter Two: Choice of Law: Rules that apply in Freelancing Agreements. P.10**

**Section 1: International Character of the Freelancing Agreement. P.11.**

**Section 2: Ascertain the Proper Law in Freelancing Agreements. P. 11**

**Section 3: Applicable Law in the Absence of Choice. P.14**

**Section 4: Scope of the Applicable Law on Freelancing Agreements. P.16**

**Conclusions: P.19.**

**Recommendations: P.19.**

**References: P.20.**