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Civil Liability for Breach of Contract under the United Arab Emirates Civil Transactions Law: A Critical Legal Analysis

DR JASIM MOHAMED KHAMIS HAMZA*

ABSTRACT

Civil liability for breach of contract under the United Arab Emirates Civil Transactions Law has increasingly drawn scholarly attention within contemporary debates on private law, commercial transactions, and contractual justice. While contractual liability has been widely examined in relation to contractual obligations, breach, remedies, and damages, existing literature has not sufficiently explored the legal implications of Federal Decree-Law No. 25 of 2025, particularly within the United Arab Emirates. This study addresses this gap by critically examining the conceptual foundations of civil liability for breach of contract, analysing the statutory framework governing contractual obligations and remedies under the new legislation, and evaluating contemporary legal challenges affecting contractual liability, including digital commerce and international commercial practice. The study adopts a doctrinal legal research methodology through qualitative analysis, supplemented by comparative legal materials, peer-reviewed journal articles, and authoritative legal sources. All materials were subjected to rigorous thematic and comparative analysis guided by Corrective Justice Theory. The findings reveal that the UAE has established a coherent statutory framework governing contractual liability under Federal Decree-Law No. 25 of 2025. A further key finding is that technological innovation, digital commerce, and cross-border transactions continue to present interpretative challenges requiring judicial clarification and legislative refinement. The study recommends greater harmonisation with international contract law principles, contributing to contract law, comparative private law, UAE civil law, and future legal reform.

Keywords: *Breach of contract, Civil Transactions Law, Corrective Justice Theory, United Arab Emirates, Federal Decree Law No. 25 of 2025*

I. INTRODUCTION

Civil liability for breach of contract occupies a central place in contemporary private law because it supplies the mechanism through which contractual obligations are enforced and through which an injured party obtains a remedy for loss caused by non-performance.[1] As

* Author is affiliated with the Ministry of Interior Police College, Abu Dhabi, United Arab Emirates.

[1] G.H. TREITEL, THE LAW OF CONTRACT (Edwin Peel ed., 15th ed. 2020).

commercial transactions grow more sophisticated and more closely interconnected, effective rules of contractual liability become indispensable to legal certainty, commercial confidence and economic development. In civil law and common law jurisdictions alike, contract law holds two objectives in tension: preserving *pacta sunt servanda*, so that agreements voluntarily entered into are honoured, and ensuring that remedies remain fair and proportionate where an obligation cannot be fulfilled.[2] Civil liability has accordingly outgrown its purely compensatory origins and now operates as a framework that supports market stability, protects legitimate expectations and encourages responsible commercial conduct.[3]

In the civil law world, contractual liability has been shaped by Roman law, by the French Civil Code and, across the Arab jurisdictions, by the Egyptian Civil Code, each adapted to the legal, economic and social conditions of the receiving state.[4] The United Arab Emirates built its contract law upon that civilian inheritance while drawing on principles derived from Islamic jurisprudence, producing a distinctive system capable of serving domestic and international commerce alike.[5] Recognising the need to modernise its legislative framework in response to changing commercial practice and global investment patterns, the UAE issued Federal Decree-Law No. 25 of 2025 Promulgating the Civil Transactions Law on 1 October 2025.[6] The new Civil Code entered into force on 1 June 2026 and repealed Federal Law No. 5 of 1985, which had governed civil and contractual relations for four decades.[7] The reform is the most substantial revision of Emirati private law since the federation was founded, and it revisits the framework governing contractual obligations, civil liability and the remedies available for breach.

Legal scholarship has not kept pace with that change. Much of the available literature continues to analyse contractual liability under the repealed 1985 legislation, or addresses general principles of UAE contract law without examining the implications of the new statutory regime. At the same time, questions arising from limitation of liability clauses, force majeure, hardship, electronic contracting, smart contracts, cross-border transactions and international dispute resolution have intensified debate about the adequacy of traditional liability principles in the

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[2] JOHN CARTWRIGHT, CONTRACT LAW: AN INTRODUCTION TO THE ENGLISH LAW OF CONTRACT FOR THE CIVIL LAWYER (4th ed. 2023).
[3] EWAN MCKENDRICK, CONTRACT LAW: TEXT, CASES, AND MATERIALS (11th ed. 2024).
[4] Hafiz Gaffar & Saif Al Mamari, *From Roman Law to Sharia: Comparative Perspectives on the Evolution of Quasi-Contracts in Western and Islamic Jurisdictions*, 33 GRIFFITH L. REV. 209, 209-34 (2024).
[5] Iyad Mohammad Jadalhaq & Mohammed El Hadi El Maknouzi, *Reading UAE Contract Law Through the Lens of Islamic Jurisprudence: A Case Study on the 'Extraneous Cause' Exception in the UAE Civil Code*, 19 GLOBAL JURIST art. 20180045 (2019).
[6] Federal Decree-Law No. 25 of 2025 Promulgating the Civil Transactions Law, OFFICIAL GAZETTE No. 809 (Oct. 14, 2025) (U.A.E.).
[7] *Id.* promulgating decree art. 2 (repealing Federal Law No. 5 of 1985 in its entirety) and art. 4 (commencement on 1 June 2026).

face of modern commercial practice.[8,9] Contractual liability is no longer confined to conventional bilateral dealings; it must respond to commercial arrangements and technologies that change faster than the codes governing them.

Against that background, this article examines civil liability for breach of contract under the United Arab Emirates Civil Transactions Law. It begins with the conceptual foundations of contractual liability, turns to the statutory framework governing contractual obligations and remedies under Federal Decree-Law No. 25 of 2025, and then evaluates the contemporary pressures on that framework, including digital commerce and international commercial practice, before undertaking a comparative assessment of selected civil law jurisdictions and international instruments. Through this doctrinal and comparative analysis the article identifies the gaps in the current literature, weighs the strengths and limitations of the Emirati framework, and advances recommendations directed towards a coherent, predictable and internationally competitive system of contractual liability in the United Arab Emirates.

II. Methodology

This study adopts a qualitative research design grounded in doctrinal legal method, the approach conventionally used in legal scholarship to examine statutory provisions, judicial principles and the doctrines governing private law relationships. Qualitative inquiry is well suited to an in-depth understanding of complex phenomena through the interpretation of textual and documentary evidence within its legal and institutional context.[10] Consistently with that approach, the study examines the framework governing civil liability for breach of contract under the United Arab Emirates Civil Transactions Law through a systematic analysis of statutory provisions, comparative legal materials, judicial principles and academic literature. The principal object of analysis is Federal Decree-Law No. 25 of 2025 Promulgating the Civil Transactions Law, which now constitutes the governing framework for contractual obligations and civil liability in the United Arab Emirates.

Doctrinal analysis is complemented by thematic analysis. Doctrinal research involves the systematic identification, interpretation and critical evaluation of legal rules and principles derived from primary and secondary sources; thematic analysis permits the identification and synthesis of recurring concepts and interpretative patterns within the literature.[11] The study

[8] CARTWRIGHT, *supra* note 2.
[9] Kevin Werbach & Nicolas Cornell, *Contracts Ex Machina*, 67 DUKE L.J. 313 (2017).
[10] JOHN W. CRESWELL & CHERYL N. POTH, QUALITATIVE INQUIRY AND RESEARCH DESIGN: CHOOSING AMONG FIVE APPROACHES (4th ed. 2018).
[11] Virginia Braun & Victoria Clarke, *Using Thematic Analysis in Psychology*, 3 QUALITATIVE RES. PSYCHOL. 77 (2006).

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accordingly analyses the provisions governing contractual obligations, breach, causation, damages and remedies under the Emirati Civil Transactions Law. Comparative analysis draws on the French Civil Code, the Egyptian Civil Code, the Qatari Civil Code, the Saudi Civil Transactions Law, the UNIDROIT Principles of International Commercial Contracts and, where relevant, the United Nations Convention on Contracts for the International Sale of Goods, in order to assess the coherence and contemporary relevance of the Emirati framework.

The study relies on published legal materials: legislation, judicial authority where relevant, leading contract law texts, peer-reviewed journal articles and internationally recognised legal instruments, obtained from established academic databases. Two constraints follow from the subject matter and are acknowledged throughout. First, because the 2025 legislation commenced only on 1 June 2026, no substantial body of judicial interpretation has yet accumulated, and the analysis of the new provisions is necessarily textual and comparative rather than jurisprudential. Second, the new Code renumbers the entire body of Emirati civil law, so that scholarship and judicial authority decided under the 1985 legislation cannot simply be transposed by reference to the article numbers in which it is expressed. By combining doctrinal analysis with thematic interpretation and comparative evaluation, the methodology supports an assessment of the principles governing civil liability for breach of contract and of the effectiveness of the current Emirati legislation.

III. Theoretical Premise Underpinning the Study

The study takes corrective justice as its guiding theoretical framework. The idea is Aristotelian in origin: rectificatory justice in transactions restores an equality disturbed by a wrong, the judge taking from the gain of the wrongdoer and restoring it to the loss of the sufferer.[12] In its modern form the theory is principally associated with Ernest J. Weinrib, who argues that private law is intelligible only as a correlative relationship between the party who suffers a wrong and the party who commits it, and that its purpose is to undo the injustice by requiring the wrongdoer to repair the loss caused.[13,14] Applied to contract, corrective justice holds that civil liability arises where one party breaches a legally enforceable obligation and thereby causes loss to the other.[15] The object of liability is not to punish the party in breach but to rectify the injustice the breach created by requiring a legally appropriate remedy. Contractual damages are therefore the

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[12] Aristotle, Nicomachean Ethics bk. V, ch. 4, 1131b-1132b (W.D. Ross trans., Oxford Univ. Press 1925).
[13] Ernest J. Weinrib, The Idea of Private Law (1995).
[14] Ernest J. Weinrib, Corrective Justice (2012).
[15] Jules L. Coleman, Risks and Wrongs (1992).

principal mechanism through which the law corrects the injustice produced by breach while giving effect to the relationship the parties themselves created.[16,17]

The theory is adopted here because it supplies an analytical frame appropriate to civil liability for breach of contract under the United Arab Emirates Civil Transactions Law. It explains the rationale of contractual damages by treating compensation as the primary means of correcting the loss suffered by the innocent party, and it provides a coherent basis for analysing the statutory requirements of breach, causation and damage. It also has a critical edge: a code that permits recovery beyond the loss sustained, or that leaves the innocent party short of it, departs from the corrective standard, and the framework makes that departure visible. Corrective justice thus enables an evaluation of how the law determines liability, allocates responsibility for breach, and ensures that a party who suffers a legally recognisable loss receives appropriate compensation.

Contemporary scholarship continues to treat corrective justice as one of the leading normative accounts of private law precisely because it explains contractual liability as the correction of an injustice created by breach through an appropriate remedy.[18] It is therefore a suitable lens through which to ask whether the provisions of Federal Decree-Law No. 25 of 2025 achieve the objectives of contractual compensation by requiring the party in breach to repair the loss caused. Despite the significance of the reform, little scholarly attention has examined the Emirati Civil Transactions Law from this perspective. This study addresses that gap by evaluating how the reformed framework applies corrective principles in determining breach, causation, damages and civil liability, and how far it strengthens legal certainty and fairness in contractual relationships in the United Arab Emirates.

IV. Literature Review

A. Conceptual Foundations of Civil Liability for Breach of Contract

Civil liability for breach of contract is a cornerstone of modern private law because it holds parties accountable for failing to perform obligations voluntarily assumed under a valid agreement. Scholars broadly agree that contractual liability protects the integrity of legally enforceable promises, but they differ about its conceptual basis and normative objectives. McKendrick treats contractual liability principally as a means of protecting the expectations of the innocent party;[19] Cartwright emphasises its corrective function, restoring the injured party

[16] Weinrib, Corrective Justice, *supra* note 14.
[17] Peter Benson, Justice in Transactions: A Theory of Contract Law (2019).
[18] Weinrib, The Idea of Private Law, *supra* note 13; Benson, *supra* note 17.
[19] McKendrick, *supra* note 3.

to the position that proper performance would have achieved;[20] Treitel argues that contractual remedies enforce bargains rather than punish wrongdoing, and on that ground distinguishes contract law from public law sanctions.[21] Taken together, these accounts show that contractual liability is not merely the consequence of non-performance but serves the wider ends of commercial certainty, transactional fairness and economic stability.

The literature consistently distinguishes contractual from tortious liability, yet the practical boundary between the two remains contested. Contractual liability arises from obligations created by agreement, while tortious liability originates in duties imposed by law independently of agreement.[22] Commercial disputes nevertheless generate concurrent claims with some regularity, particularly where defective professional services, negligent performance or pure economic loss are in issue. Atiyah argued that the historical separation between contract and tort has become increasingly difficult to maintain because modern commercial relationships cut across the traditional categories.[23] Cartwright, by contrast, maintains that the distinction is worth preserving because each regime reflects different policy objectives, standards of liability, limitation rules and remedial consequences.[24] The disagreement illustrates that the conceptual boundaries of contractual responsibility remain unsettled notwithstanding their long recognition in private law.

Scholarship identifies several elements said to justify the imposition of contractual liability, though the weight placed on each varies across legal traditions. Most commentators agree that liability ordinarily requires a valid contract, breach of a contractual obligation, legally recognisable loss and a causal relationship between the breach and the damage sustained.[25,26] Disagreement persists about whether liability should depend on fault or should follow from non-performance itself. Fried defends contractual liability on the basis of promissory morality, arguing that parties should honour commitments because promises generate moral obligations deserving legal protection.[27] Economic analysis takes a different view, contending that breach may in limited circumstances increase overall welfare provided the innocent party is adequately compensated, which unsettles purely moral explanations of contractual responsibility.[28] These

[20] CARTWRIGHT, *supra* note 2.
[21] TREITEL, *supra* note 1.
[22] ROBERT MERKIN & SEVERINE SAINTIER, POOLE'S TEXTBOOK ON CONTRACT LAW (16th ed. 2023).
[23] P.S. ATIYAH, ESSAYS ON CONTRACT (1986).
[24] CARTWRIGHT, *supra* note 2.
[25] TREITEL, *supra* note 1.
[26] MCKENDRICK, *supra* note 3.
[27] CHARLES FRIED, CONTRACT AS PROMISE: A THEORY OF CONTRACTUAL OBLIGATION (2d ed. 2015).
[28] RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW (9th ed. 2014).

competing accounts show that the theoretical foundations of contractual liability continue to develop alongside commercial practice.

Historically, contractual liability moved from the formalistic enforcement of promises towards a framework balancing party autonomy, fairness and commercial efficiency. The analysis by Fuller and Perdue of the expectation, reliance and restitution interests redirected scholarly attention to the benefits reasonably anticipated by the promisee, while reliance-based approaches emphasised compensation for losses incurred through justified dependence on contractual assurances.[29] Contemporary work has extended these debates to electronic commerce, smart contracts, transnational transactions and the growing influence of good faith within contract law. Despite that breadth, most analysis of the United Arab Emirates still addresses the repealed Federal Law No. 5 of 1985, leaving the conceptual implications of Federal Decree-Law No. 25 of 2025 largely unexamined. That gap is the point of departure for the statutory analysis in the following section.

B. The Legal Framework Governing Civil Liability under the UAE Civil Transactions Law

The framework governing civil liability for breach of contract in the United Arab Emirates was substantially reformed by Federal Decree-Law No. 25 of 2025 Promulgating the Civil Transactions Law, which entered into force on 1 June 2026 and repealed Federal Law No. 5 of 1985 in its entirety.[30] The new legislation modernises Emirati contract law by preserving core civilian principles while introducing provisions intended to strengthen legal certainty, commercial predictability and alignment with contemporary business practice. Scholarship has long characterised the Emirati framework as a hybrid, combining civilian principles of Egyptian and French derivation with principles of Islamic jurisprudence.[31] That hybrid character survives the reform: where the Code is silent, the courts are directed to the rules of Islamic Sharia, and only then to custom and to the principles of natural law and equity.[32] Because most of the available literature predates the reform and therefore analyses liability under the repealed legislation, an evident gap exists concerning the interpretation and practical operation of the new framework.

Before the substance of the reform can be assessed, a structural point requires emphasis because it conditions everything that follows. The new Code is not an amending instrument but a

[29] L.L. Fuller & William R. Perdue, Jr., *The Reliance Interest in Contract Damages* (pts. 1 & 2), 46 YALE L.J. 52 (1936), 46 YALE L.J. 373 (1937).
[30] Federal Decree-Law No. 25 of 2025, *supra* note 6, promulgating decree art. 2.
[31] Gaffar & Al Mamari, *supra* note 4.
[32] Civil Transactions Law art. 1 (U.A.E.) (annexed to Federal Decree-Law No. 25 of 2025).

replacement, and it renumbers the whole of Emirati civil law. The 1985 legislation contained 1,528 articles; the Code annexed to Federal Decree-Law No. 25 of 2025 contains 1,422.[33] The displacement is not uniform, and it widens as the Code proceeds, so that no constant offset will convert an old citation into a new one. Performance in good faith moves from article 246 to article 221; the binding force of the contract from article 267 to article 232; judicial termination from article 272 to article 234; the assessment of compensation where none has been fixed from article 389 to article 339; and agreed compensation from article 390 to article 340.[34] The practical consequence for scholarship is considerable. Four decades of commentary and judicial authority remain substantively relevant, but every citation in that literature now points to a provision of a repealed statute, and the reader must re-map it before relying on it. Studies that continue to discuss Emirati contract law by reference to the 1985 numbering are, from 1 June 2026, describing law that no longer exists in that form.

The Civil Transactions Law treats contractual obligations as legally binding duties arising from agreements concluded by parties with capacity. The contract is the law of the parties and may not be revoked or varied save by their agreement or by operation of law,[35] and it must be performed in accordance with its terms and in a manner consistent with the requirements of good faith.[36] Scholarly literature consistently recognises that enforceability depends on a valid contract, lawful subject matter, legal capacity and compliance with mandatory legal requirements.[37,38] Modern contract law nevertheless extends beyond the literal enforcement of terms to recognise broader requirements of fairness, cooperation and commercial reasonableness. The 2025 legislation gives that development statutory form at a stage the 1985 law did not expressly regulate. Good faith now governs the negotiation itself: a party who negotiates in bad faith, including by deliberately withholding material information, is liable for the loss actually caused, though not for lost profit.[39] A companion provision requires each party to disclose information decisive to the other's decision to contract, and any term purporting to exclude that duty is void.[40] The reform therefore moves the moment at which the law begins to police contractual conduct backwards, from performance to formation.

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[33] Federal Decree-Law No. 25 of 2025, *supra* note 6; Federal Law No. 5 of 1985 Concerning the Civil Transactions Law (U.A.E.) (repealed 2026).
[34] Compare Federal Law No. 5 of 1985, arts. 246, 267, 272, 389, 390 (U.A.E.) (repealed 2026), with Civil Transactions Law arts. 221, 232, 234, 339, 340 (U.A.E.).
[35] Civil Transactions Law art. 232 (U.A.E.).
[36] *Id.* art. 221(1).
[37] MCKENDRICK, *supra* note 3.
[38] TREITEL, *supra* note 1.
[39] Civil Transactions Law art. 121 (U.A.E.).
[40] *Id.* art. 122; *id.* art. 122(4).

Civil liability under the Civil Transactions Law is established, in general terms, where a contracting party fails to perform a contractual obligation, performs it defectively, or delays performance without lawful justification, and legally recognisable harm results. Comparative scholarship reflects a broad consensus that contractual liability depends on four interconnected elements: a binding contractual obligation, breach of that obligation, causation, and recoverable damage.[41,42] Although those elements are widely accepted across civil law jurisdictions, debate continues about the extent to which liability should depend on proof of fault rather than on non-performance itself. The question has practical bite in complex commercial transactions involving sophisticated contractual structures, digital commerce and international trade, where fault may be considerably harder to establish than the fact of non-performance. The Code addresses the point obliquely, through the exoneration of a debtor whose non-performance is attributable to an external cause,[43] which locates the Emirati position closer to non-performance than to fault while preserving a defence for events outside the debtor's control.

The legislation recognises different categories of contractual obligation and corresponding remedies intended to protect the legitimate interests of the parties. Comparative scholarship distinguishes obligations to achieve a specified result from obligations requiring the exercise of reasonable care, and the applicable standard frequently determines how breach and liability are assessed.[44] Once liability is established, the remedies available generally include specific performance where appropriate, judicial termination of the contract,[45] compensation for loss attributable to the breach, and such other remedies as the law or the agreement provides. Specific performance retains its civilian priority, but the Code now qualifies it: the court may confine the creditor to damages where performance in kind would be excessively onerous for the debtor.[46] That qualification is significant for corrective justice, because it accepts that the corrective aim may be satisfied in money where insistence on performance would impose a burden disproportionate to the interest protected.

The treatment of agreed compensation illustrates most clearly how the reform refines rather than abandons the civilian inheritance. Under the repealed legislation the court could, on the application of either party, vary compensation fixed in advance so as to make it equal to the loss actually suffered, and any agreement to the contrary was void.[47] The new provision retains

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[41] CARTWRIGHT, *supra* note 2.
[42] MERKIN & SAINTIER, *supra* note 22.
[43] Civil Transactions Law art. 249 (U.A.E.).
[44] CARTWRIGHT, *supra* note 2.
[45] Civil Transactions Law art. 234 (U.A.E.).
[46] *Id.* art. 331(2).
[47] Federal Law No. 5 of 1985, art. 390 (U.A.E.) (repealed 2026).

judicial supervision but disciplines its exercise. Reduction is available on defined grounds and on proof by the debtor: that the agreed sum is exaggerated, that it exceeds the loss actually sustained having regard to partial performance, or that the creditor contributed to or aggravated the harm by its own fault.[48] A creditor seeking to recover more than the agreed sum must establish fraud or gross fault on the part of the debtor.[49] The supervisory jurisdiction remains mandatory and cannot be excluded by agreement.[50] The asymmetry is deliberate and it is corrective in character: the agreed figure may be brought down to the loss on defined grounds, but it may be exceeded only where the conduct of the party in breach takes the case outside ordinary non-performance. For commercial parties the practical effect is a meaningful increase in the enforceability of liquidated damages, since the open-ended invitation to re-open the agreed figure that characterised the former provision has been replaced by a structured and evidentially burdened test.

Two features of the new framework are best stated as questions rather than conclusions, because the text does not resolve them and no judicial authority yet does. The first concerns the measure of contractual damages. The Code contains no express limitation of recoverable loss to what was foreseeable at the time of contracting, a restriction familiar from French law and from the common law alike. Its absence may reflect a deliberate choice to leave the question to judicial assessment under the general power to fix compensation where the parties have not done so,[51] but the point is not settled by the text. The second concerns the content of recoverable loss. The provision stating that compensation covers loss sustained together with lost profit, provided these are the natural consequence of the wrongful act, is located in the chapter dealing with harmful acts rather than in the chapter on the effects of the contract, and the articles governing compensation for breach do not cross-refer to it.[52] Whether it carries across to contractual claims is therefore a matter of construction. Both questions bear directly on whether the Code achieves the corrective measure, and both will require appellate clarification. Systematic analysis of the new provisions in application remains limited because of their recent commencement, and their interpretation, judicial implementation and interaction with emerging commercial practice constitute an important field for research.

[48] Civil Transactions Law arts. 340(2)-(3) (U.A.E.).
[49] *Id.* art. 340(4).
[50] *Id.* art. 340(5).
[51] Civil Transactions Law art. 339 (U.A.E.).
[52] *Id.* art. 255; compare *id.* arts. 336-340.

C. Contemporary Issues and Challenges in Contractual Liability

The transformation of commercial practice has generated new pressures on the law of civil liability for breach of contract, requiring legal systems to hold contractual certainty and commercial flexibility in balance. Traditional principles of contractual liability remain fundamentally sound but are increasingly tested by sophisticated contractual structures, technological innovation and the internationalisation of commerce.[53,54] In the United Arab Emirates these developments acquired particular significance with the enactment of Federal Decree-Law No. 25 of 2025, which modernises the framework governing contractual relations while preserving the stability of the civilian system. Because the legislation entered into force only recently, little academic literature has yet examined its capacity to address emerging disputes.

Among the most contested questions is the validity and enforceability of limitation and exemption clauses that allocate or exclude contractual liability. Commercial parties incorporate such provisions to manage risk, reduce litigation and increase transactional certainty. Scholars remain divided about how far contractual freedom should extend. Those who emphasise autonomy argue that sophisticated commercial actors should ordinarily be free to allocate risk by negotiated agreement.[55] Others contend that unrestricted enforcement of exclusion clauses may undermine fairness, particularly where bargaining power is unequal or where a clause deprives the innocent party of any meaningful contractual protection.[56] The Emirati position is not neutral between these views. Certain provisions of the Civil Transactions Law are mandatory and cannot be displaced by agreement, including the judicial power to adjust agreed compensation[57] and the pre-contractual duty of disclosure,[58] so that the extent to which parties may contract out of the statutory liability regime is bounded by the Code itself rather than left to judicial control of unfair terms.

The doctrines of force majeure and hardship have attracted renewed attention following global economic disruption, the pandemic and geopolitical instability. Both address supervening events affecting performance, but the literature consistently distinguishes impossibility of performance, which extinguishes the obligation, from circumstances that merely render performance excessively burdensome.[59] The Emirati Code preserves that distinction.

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53 MCKENDRICK, *supra* note 3.
54 MERKIN & SAINTIER, *supra* note 22.
55 TREITEL, *supra* note 1.
56 CARTWRIGHT, *supra* note 2.
57 Civil Transactions Law art. 340(5) (U.A.E.).
58 *Id.* art. 122(4).
59 UNIDROIT, PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS arts. 6.2.1-6.2.3, 7.1.7 (2016).

Impossibility arising from an external cause discharges the obligation and, where it is total, the corresponding obligation falls with it.[60] Hardship is treated separately: where exceptional and unforeseeable general circumstances render performance oppressive so as to threaten the debtor with grave loss, the court may reduce the oppressive obligation to a reasonable level or rescind the contract, after balancing the interests of the parties.[61] Two changes from the former provision are worth noting. Rescission is a new alternative to reduction, which widens the judicial toolkit; and the former condition that the court act if justice so required has been replaced by an express instruction to balance the interests of the parties, which is a more determinate standard and one better suited to appellate review. The application of these doctrines is among the most demanding problems in modern contract law, because courts must reconcile certainty with fairness in precisely the situations where the parties' allocation of risk has failed.

Technological development has complicated the operation of contractual liability through electronic contracts, automated contracting systems and smart contracts executed on distributed ledgers. Electronic contracting is now widely accepted under modern commercial legislation, but smart contracts raise harder questions about contractual intention, automated performance, the allocation of liability and the remedies available when coded transactions malfunction or produce unintended outcomes.[62] These difficulties are sharper in cross-border transactions, where the parties may be subject to different legal systems, conflicting jurisdictional rules and divergent standards of interpretation. Arbitration has meanwhile become the preferred mechanism for resolving international contractual disputes because of its procedural flexibility, confidentiality and enforceability under the New York Convention, to which the United Arab Emirates acceded in 2006.[63] Existing literature has nonetheless given limited attention to the interaction between the Emirati Civil Transactions Law and evolving commercial technologies, and future scholarship should evaluate judicial interpretation, legislative responsiveness and the practical enforcement of contractual liability in increasingly digital and international commercial environments.

D. Comparative Perspectives and Legal Reform

Comparative analysis has become indispensable to evaluating the effectiveness of contractual liability regimes because it allows legislators and scholars to identify workable solutions, test doctrinal consistency and pursue harmonisation across jurisdictions. The development of the

[60] Civil Transactions Law art. 236 (U.A.E.).
[61] *Id.* art. 224.
[62] Werbach & Cornell, *supra* note 9.
[63] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3 (acceded to by the United Arab Emirates on 21 August 2006, entering into force for it on 19 November 2006).

United Arab Emirates Civil Transactions Law was influenced by continental civilian traditions, particularly the Egyptian and French codes, while incorporating principles derived from Islamic jurisprudence.[64,65] With Federal Decree-Law No. 25 of 2025 the UAE has introduced a modernised framework governing contractual obligations and civil liability. Because the legislation entered into force only recently, comparative scholarship evaluating its substantive innovations remains limited, which makes comparative assessment particularly valuable for identifying both the strengths of the new framework and the areas where further legislative or judicial development may be required.

The French Civil Code continues to exert considerable influence on civil law jurisdictions through its treatment of contractual autonomy, the binding force of agreements and good faith, all of which were restated in the reform of the law of obligations effected in 2016.[66] That reform is instructive on two points central to this study. It confines recoverable damages to the loss foreseen or foreseeable at the time of contracting, except where non-performance is due to gross or dishonest fault,[67] a limitation for which the Emirati Code has no counterpart. And it permits the court, even of its own motion, to moderate or increase an agreed penalty that is manifestly excessive or derisory,[68] a power that closely parallels the supervisory jurisdiction familiar in Emirati law, though the French formulation confers a discretion where the Emirati provision now specifies grounds and allocates the burden of proof. The Egyptian Civil Code, drafted under the leadership of Abd al-Razzaq al-Sanhuri, adapted French civilian principles to the legal traditions and socio-economic conditions of Arab jurisdictions and subsequently shaped the legal development of several Gulf states, including the United Arab Emirates.[69,70] More recently the Qatari Civil Code and the Saudi Civil Transactions Law have pursued comparable objectives of balancing certainty against equitable intervention, particularly in relation to hardship, force majeure and judicial supervision of contractual obligations.[71,72] Comparative scholarship reveals substantial convergence among these systems alongside real differences in judicial discretion, the treatment of contractual fairness and the allocation of commercial risk.[73]

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64 Gaffar & Al Mamari, *supra* note 4.
65 ABD AL-RAZZAQ AL-SANHURI, AL-WASIT FI SHARH AL-QANUN AL-MADANI AL-JADID vol. 1 (1952).
66 C. CIV. arts. 1103, 1104 (Fr.), as amended by Ordinance No. 2016-131 of Feb. 10, 2016 (Fr.).
67 *Id.* art. 1231-3.
68 *Id.* art. 1231-5.
69 Egyptian Civil Code, Law No. 131 of 1948 (Egypt).
70 al-Sanhuri, *supra* note 65.
71 Qatari Civil Code, Law No. 22 of 2004 (Qatar).
72 Civil Transactions Law, Royal Decree No. M/191 of 1444H (2023) (Saudi Arabia).
73 Jadalhaq & El Maknouzi, *supra* note 5.

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International instruments enrich the comparison by articulating widely accepted standards of contractual performance and remedy. The UNIDROIT Principles of International Commercial Contracts have proved particularly influential in international commercial practice because they address interpretation, non-performance, hardship, force majeure and damages in a single coherent scheme,[74] and their treatment of damages makes explicit the foreseeability limitation that the Emirati Code leaves unstated.[75] The United Nations Convention on Contracts for the International Sale of Goods establishes a harmonised regime for international sales and has significantly shaped comparative contract scholarship.[76,77] The United Arab Emirates is not a Contracting State to the Convention,[78] but its provisions retain value as persuasive comparative authority when analysing international commercial transactions and assessing reforms directed at legal certainty and commercial competitiveness. These instruments accordingly furnish reference points for asking whether domestic contract law reflects internationally accepted standards.

Several research gaps remain notwithstanding the progress represented by Federal Decree-Law No. 25 of 2025. Most published studies continue to examine contractual liability under the repealed Federal Law No. 5 of 1985, or address general principles of Emirati contract law without evaluating the implications of the new legislation. Little scholarship has considered how the reformed framework will respond to digital commerce, smart contracts, complex cross-border transactions and evolving commercial risk allocation. Future research should therefore assess judicial interpretation of the new law, examine its interaction with international commercial standards, and consider whether further legislative clarification is required, particularly on the measure of contractual damages. Such work would strengthen the Emirati contractual liability regime and support the wider objective of maintaining a modern, predictable and internationally competitive legal environment.

V. Discussion and Findings

A. Conceptual Foundations

The analysis shows that civil liability for breach of contract rests on the protection of legally enforceable contractual expectations, coupled with the requirement that losses arising from

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[74] UNIDROIT Principles, *supra* note 59.
[75] *Id.* arts. 7.4.1-7.4.4.
[76] United Nations Convention on Contracts for the International Sale of Goods, Apr. 11, 1980, 1489 U.N.T.S. 3.
[77] SCHLECHTRIEM & SCHWENZER: COMMENTARY ON THE UN CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG) (Ingeborg Schwenzer & Ulrich G. Schroeter eds., 5th ed. 2022).
[78] UNCITRAL, *Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)* (the United Arab Emirates is not listed among the Contracting States).

breach be remedied through appropriate legal mechanisms. A theme running through the literature is the convergence of contractual autonomy and corrective responsibility: obligations are voluntarily assumed, but once breached they become enforceable independently of the will of the party in default. Contemporary scholarship consistently distinguishes contractual from tortious liability, although the practical boundary continues to generate doctrinal debate, particularly in commercial relationships involving overlapping duties.

A second finding concerns the movement of contractual liability from a fault-centred doctrine towards a framework emphasising performance, causation, recoverable loss and commercial certainty. Scholarly disagreement persists over whether liability should depend on fault or follow from non-performance itself.[79] The analysis also identifies the growing influence of expectation, reliance and economic accounts in explaining contractual remedies, while confirming that scholarship on the United Arab Emirates remains concentrated on the repealed Federal Law No. 5 of 1985, leaving the conceptual implications of Federal Decree-Law No. 25 of 2025 insufficiently examined.

These findings align with the premises of corrective justice, which holds that civil liability exists to correct the injustice suffered by the innocent party by requiring the party in breach to repair the resulting loss.[80] Contractual damages and related remedies under the Emirati Civil Transactions Law are directed towards restoring the injured party rather than punishing the defaulting party, which reinforces fairness, legal certainty and the corrective function of contractual liability within the contemporary Emirati framework.

B. Civil Liability under the UAE Civil Transactions Law

Federal Decree-Law No. 25 of 2025 establishes a framework governing civil liability for breach of contract that reinforces contractual certainty while modernising the regulation of obligations and remedies. The dominant theme is statutory coherence: the legislation integrates the essential elements of contractual liability, namely a valid obligation, breach, causation and recoverable damage, within a single civilian structure. The reform preserves established civilian principles while adapting them to contemporary commercial conditions. The codification of pre-contractual good faith and of a duty to disclose decisive information is the clearest illustration, because it converts a standard previously derived from the general obligation of good faith in performance into a discrete and non-excludable pre-contractual duty.[81,82] The recasting of agreed

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[79] FRIED, *supra* note 27; POSNER, *supra* note 28.
[80] WEINRIB, CORRECTIVE JUSTICE, *supra* note 14.
[81] Civil Transactions Law art. 121 (U.A.E.).
[82] *Id.* art. 122(4).

compensation is the second, because it replaces an open-ended judicial power to re-open the parties' figure with a structured test allocating the burden of proof to the party seeking to depart from it.[83]

A second finding concerns the convergence of statutory regulation with comparative civilian principle in determining contractual responsibility and available remedies. The Emirati framework recognises different categories of contractual obligation and provides remedies including specific performance, judicial termination and compensation, according to the nature and consequences of the breach. The analysis also identifies a significant literature gap: scholarship continues to focus predominantly on the repealed Federal Law No. 5 of 1985, leaving the practical interpretation and judicial application of the 2025 legislation largely unexplored. That gap will not close quickly, and the renumbering of the Code compounds it, because the existing literature cannot be carried forward without provision-by-provision re-mapping. The Code commenced on 1 June 2026, and a settled body of appellate authority on its liability provisions will take years to accumulate. Until it does, the measure of contractual damages and the reach of the provision on lost profit remain open.

These findings are consistent with corrective justice, which maintains that civil liability serves to rectify the injustice occasioned by breach through an appropriate remedy.[84] The statutory framework demonstrates that compensation and other contractual remedies are designed primarily to restore the innocent party to the position that proper performance would have achieved, which reinforces fairness, legal certainty and the corrective function of private law within the evolving Emirati regime.

C. Challenges in Contractual Liability

Contractual liability is increasingly shaped by technological innovation, changing commercial practice and the complexity of cross-border transactions. A central theme is the tension between contractual autonomy and judicial intervention, most visibly in relation to the enforceability of limitation and exemption clauses, where the Emirati Code sets the boundary itself by making certain protections non-excludable. The doctrines of force majeure and hardship have assumed greater significance in addressing unforeseen circumstances affecting performance, and the Code now permits the court, where exceptional and unforeseeable circumstances have made performance oppressive, either to reduce the obligation to a reasonable level or to rescind the contract.[85] At the same time, electronic contracts, smart contracts and digital commerce have

[83] *Id.* art. 340.
[84] WEINRIB, THE IDEA OF PRIVATE LAW, *supra* note 13.
[85] Civil Transactions Law art. 224 (U.A.E.).

expanded the range of contractual relationships and raised new questions about formation, automated performance, the allocation of liability and the adequacy of traditional remedies.

A second finding is that the internationalisation of commerce has intensified procedural and enforcement difficulties. Arbitration has become an increasingly significant mechanism for resolving contractual disputes because of its flexibility and cross-border enforceability. Technological development has nevertheless outpaced the legal literature, particularly on the interaction between Federal Decree-Law No. 25 of 2025 and emerging commercial technologies.[86] Judicial interpretation and legislative adaptation will therefore determine whether the Emirati liability framework remains responsive to commercial reality.

These findings support the premises of corrective justice, which holds that contractual liability should operate to correct the injustice arising from breach whatever the complexity of the commercial environment.[87] Commercial transactions continue to evolve, but the underlying objective of the Civil Transactions Law remains the restoration of the innocent party through appropriate legal remedies, preserving fairness, contractual certainty and effective legal protection within modern commercial relationships.

D. Comparative Perspectives and Legal Reform

Comparative convergence emerges as a defining characteristic of the contemporary Emirati contractual liability framework. Federal Decree-Law No. 25 of 2025 reflects principles common to the French Civil Code, the Egyptian Civil Code, the Qatari Civil Code and the Saudi Civil Transactions Law while retaining the distinctive features of the Emirati system, including the direction to Islamic Sharia where the Code is silent.[88] International instruments, particularly the UNIDROIT Principles of International Commercial Contracts and, where relevant, the United Nations Convention on Contracts for the International Sale of Goods, supply persuasive benchmarks for interpreting contractual obligations, remedies and commercial fairness in a globalised environment. The comparison also exposes where the Emirati Code is silent: neither the foreseeability limitation of French law nor its equivalent in the UNIDROIT Principles has a counterpart in the new legislation.

A further finding is the persistence of scholarly and legislative gaps despite the breadth of the 2025 reform. The literature remains focused on the repealed Federal Law No. 5 of 1985, leaving limited critical evaluation of how the new framework operates in practice. Continued judicial clarification will be required in relation to digital commerce, smart contracts, cross-border

[86] Werbach & Cornell, *supra* note 9.
[87] WEINRIB, CORRECTIVE JUSTICE, *supra* note 14.
[88] Civil Transactions Law art. 1 (U.A.E.).

disputes and the application of comparative principles to emerging commercial relationships within the United Arab Emirates.

These findings align with the premises of corrective justice, which maintains that contractual liability should restore the innocent party by correcting the injustice resulting from breach.[89] The comparative analysis shows that although jurisdictions adopt different legislative techniques, they share the objective of providing remedies that repair contractual loss and preserve legal fairness. The Emirati Civil Transactions Law strengthens its liability regime by combining comparative developments with corrective principles that promote consistency, commercial certainty and effective contractual justice.

VI. Conclusion

This study has examined civil liability for breach of contract under the United Arab Emirates Civil Transactions Law, with particular emphasis on the principles governing contractual obligations, breach, remedies and the framework introduced by Federal Decree-Law No. 25 of 2025. Civil liability remains a fundamental component of private law because it preserves contractual certainty, protects legitimate expectations and provides remedies that restore the innocent party following breach. The recent reform is a significant development in the modernisation of Emirati contract law, strengthening the framework governing contractual responsibility in a commercial environment that has changed considerably since 1985.

The first part of the study examined the conceptual foundations of civil liability for breach of contract. Contractual liability has developed from a mechanism for enforcing promises into a framework that balances autonomy, commercial certainty and corrective justice. The analysis distinguished contractual from tortious liability, identified the essential elements of contractual responsibility, and set out the continuing debate about the theoretical foundations of liability, while noting the limited attention devoted to these questions under the newly enacted Civil Transactions Law.

The second part examined the statutory framework. Federal Decree-Law No. 25 of 2025 establishes a coherent structure regulating contractual obligations, breach and remedies within an integrated civilian scheme, in which good faith operates from the negotiation stage onwards, specific performance may yield to damages where performance in kind would be excessively onerous, and the court retains a bounded supervisory role over agreed compensation and over contracts thrown out of balance by exceptional circumstances. It also established that the Code renumbers Emirati civil law in its entirety, so that the accumulated literature and

[89] Benson, *supra* note 17.

jurisprudence must be re-mapped provision by provision before it can be relied upon. The third part evaluated the contemporary pressures on that framework, including limitation and exemption clauses, force majeure, hardship, electronic and smart contracts, arbitration and cross-border disputes, and showed that technological innovation and commercial globalisation continue to reshape contractual relationships in ways that will require sustained judicial interpretation and, in time, further legislative adaptation. The fourth part examined comparative perspectives, assessing the Emirati framework alongside the French, Egyptian, Qatari and Saudi systems together with the UNIDROIT Principles and the CISG, and found that comparative developments offer usable guidance for strengthening the effectiveness and international competitiveness of the Emirati regime.

The study adopts a qualitative doctrinal methodology supported by thematic and comparative analysis of legislation, comparative civilian materials, international instruments and scholarly literature. Its contribution lies in offering a contemporary analysis of Federal Decree-Law No. 25 of 2025 at the point of its commencement, thereby addressing a gap in a literature that has remained focused on the repealed Federal Law No. 5 of 1985. Its principal limitation is the corollary of that contribution: the absence of judicial authority on the new provisions means that the assessment offered here is textual and comparative, and it will require revision as the courts begin to apply the Code. Two questions in particular invite legislative attention rather than patience, namely whether recoverable contractual damages are limited by foreseeability and whether the provision on loss sustained and profit lost extends to contractual claims. By combining corrective justice with doctrinal analysis, the study contributes to the understanding of contractual liability under the contemporary Emirati framework and offers insights that may assist legislators, judges, practitioners and future researchers in promoting legal certainty, contractual fairness and the continued development of contract law in the United Arab Emirates.

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