

Arbitration Bases for Settling Commercial Disputes in Accordance with The Provisions of The Code of Judgments (JUSTICE) Comparative Study International Trade Law (UNCITRAL) In Light of The Emirati Arbitration Law

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Abstract

The Code of Judicial Judgments is the law governing transactions and it refers to its most prominent explanations, and shows the geographical boundaries that represent the spatial jurisdiction of the Judicial Code. The objective is to make a comparison between the jurisprudential provisions of the Code of Judicial Judgments and the rules of the Commission on International Trade Law UNCITRAL on the one hand and the arbitration laws in some Arab countries. The subject of the study is UAE arbitration law on the other hand. The research methods are descriptive, inductive, jurisprudential, and comparative legal approaches. The main axes of this research paper are introducing the Code of Judicial Judgments and the UNCITRAL Commercial Law Commission, introducing arbitration, and explaining its legitimacy in jurisprudence and law and arbitration awards according to the Judicial Judgments and comparative law. The result shows that arbitration is defined according to the provisions of the law as follows: An agreement between the parties to refer to arbitration all or some specific disputes that arise between them regarding a specific legal relationship – that one of the most important effects of arbitration is that it is limited to the parties to the dispute and does not exceed them to others. And that if the parties to the dispute meet a certain time for arbitration, it may not exceed it. This research is important for future reference for policymakers, government, and neighborhood countries.

Keywords: Arbitration, Conciliation, Reconciliation

INTRODUCTION

The importance of this research lies in the fact that it is known as the Code of Judicial Judgments as a governing law, which ruled the Islamic world for hundreds of years. It refers to the interest of scholars in taking care of the Islamic jurisprudential heritage, represented in the multiplicity of commentaries and postgraduate studies that have been singled out by the Judicial Code. Next, it refers to the special importance of attempts to codify Islamic jurisprudence, and the magazine considered one of the most prominent and mature of these attempts, and it is enough that it was the law governing judicial matters during the Islamic era. This research illustrates the flexibility and appropriateness of Hanafi jurisprudence issues and rules and their suitability for application in different regions and countries. This research also introduces the United Nations Commission on Trade Law in terms of its origin and functions.

This research aims to achieve several objectives, including comparing the provisions of the Criminal Code with the rules of the international organization, the Commission on International Trade Law “UNCITRAL” as a model for international arbitration among other organizations and institutions concerned with international trade. As a result of a comparison between the provisions of the Code of Judicial Judgments, and the provisions of the national arbitration laws of the Emirati arbitration law. Enriching the context of comparative jurisprudential legal texts with the opinions of commentators of positive law based on arbitration issues.

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Enriching the review of legal rulings with the applications of judicial rulings that enhance explanation and commentary. The research method followed by the researchers is characterized as: descriptive, inductive, comparative legal approach.

This research consists of an introduction, three sections and a conclusion. As for the introduction: it consists of the importance of the research, its objectives, the research methodology, and the research questions and the research axes. The first topic discuss the definition of arbitration and the statement of its legitimacy: It includes two requirements. The second topic discuss the arbitration provisions according to the Judicial Judgments and comparative laws and includes four demands: the first: the subject of arbitration and its authenticity, and the conditions of its parties, the second: the provisions of arbitrators: a comparison between the judicial code and comparative laws, the third – the contents of the judgment, its form, the ruling on the opinions of the arbitrators in it, and the permissibility of delegating them to others, the fourth – the timing of arbitration when adhering to a certain time. The third topic discuss the end of arbitration.

PREVIOUS STUDIES

Arbitration in the Journal of International Judgments: A comparative analytical study between the rules of arbitration in Islamic jurisprudence and positive law (Qatari, Omani and Kuwaiti), Dr. Tariq Juma Rashid, Associate Professor of Private Law, and Prof. Tawfiq Salman Namou research published in the Journal of the Kuwaiti College of Law, International, ninth year, issue (4), serial issue (36), Muharram – Safar 1443 AH, September 2021 AD, Journal of Judicial Judgments – new edition – lawyer / Mustafa Khaled Al-Rawashdeh - Publications of the Academic Book Center, Noor Library, published on 26/6/2019, Clarification and statement on the International Journal of Judgments on the Doctrine of Abu Hanifa Al-Nu'man, Prof. Dr. Salah Muhammad Abu Al-Hajj (Dean of the Faculty of Hanafi Jurisprudence, University of World Islamic Sciences, Amman, Jordan), Dar Al-Farouk, Amman, Jordan (2020) and Arbitration in the Journal of International Judgments: A comparative study of the provisions and rules of arbitration between Islamic jurisprudence and arbitration rules, Associate Professor of Fundamentals of Jurisprudence, Department of Islamic Studies, College of Law, United Arab Emirates University, producer time (2010). This research paper differs from previous studies in that it deals with arbitration to settle commercial disputes in accordance with the provisions of the Code of Judgments (Justice), a comparative study of the jurisdiction of the arbitral tribunal for international commercial law (UNCITRAL) and in the light of the Emirati arbitration law.

Introducing the Code of Judicial Judgments and the International Commercial Law Committee, Arbitration and Statement of its Legality

The first requirement:

Introducing the Code of Judicial Judgments and the International Commercial Law Committee:

The Journal of Judicial Judgments is considered one of the most important and greatest exploits and the magazine consists of (1851) articles and is considered the civil law that adjudicates disputes, and its first author was Ali Haidar, the first head of the Journal of Discrimination, the Secretary of Fatya and the Minister of State in the Ottoman Empire, and this magazine was developed according to the Hanafi school, and it was initially written in Turkish The first book to Arabize it was what was done by the professor / lawyer Husseini, and the scholars were interested in explaining it and the scholars worked to achieve its provisions and presented several research compared to its provisions with positive law. It has been translated into several other languages, and the number of its commentaries has reached more than eighty commentaries.

Second requirement:

Introducing the United Nations Commission on International Trade Law (UNCITRAL):

The Committee opened its work in New York and held its first meeting in 1968.

The Committee began its work with a small number of members, which is the membership of (29) countries in about 1973, then the Committee issued its decision later to increase the number of members to reach (36) members, and in 2002 the number of its members reached (60) countries

One of the objectives of the Commission was to promote international trade and to promote the progressive harmonization and consolidation of international trade. On 16 November 2002, under resolution 57/20 of the United Nations, the number of its members reached (192) Member States of the United Nations, and the representative of the State is called the delegate and he is qualified and experienced in law and international trade, and his actions are based on the benefit of the State that appointed it (Miloud, 2020).

The meetings are held before the end of each year and States submit their nominations through permanent missions to the United Nations, and the Commission on International Trade Law is a standing committee of the United Nations General Assembly, and the commentators take into account competence and specialization in international trade law and knowledge of economics and management, and the UNCITRAL Commission meets once a year successively between Vienna and New York (UNCITRAL, 2012). The United Nations Commission is an important tributary of the United Nations system and has contributed to the establishment of the following bodies: the International Court of Justice, the Trusteeship Council, the Security Council and the Economic and Social Council (Omar, n.d., p. 383). Ratification of the UNCITRAL Model Law on International Arbitration: The UNCITRAL Law was first adopted by the United Nations Commission on 21 June 1985 and the Rules of Law amended by the United Nations Commission on 7 July 2006 and amended it again in 2010.

International Agreements Concerned with The Settlement of Commercial Disputes Are Many Including

1. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958.
2. Convention on the Settlement of Disputes between States and Nationals of Other States (Washington), 1965
3. ICC Arbitration Regulations (122), as amended on 1/1/1998.

The second requirement:

Definition of arbitration and statement of its legality

The first requirement: the definition of arbitration in language and terminology, and the statement of its legitimacy.

Arbitration language: Arbitration in terms of language is taken from the article of the judgment of any judge, and from it the judgment of Falana: that is, make it a judgment, and wisdom is justice, and the wisest matter: that is, mastered it. Hence the name of the arbitrator: by including the meem, the aggravated kaf, and the opening of the bark, and the referee is the tried sheikh attributed to the court (Al Wajeez Dictionary, 2000).

Definitions of arbitration among jurists:

A- Al-Mawardi defined it in the literature of the judge as: "Arbitration is when the two litigants take a man from the parish to judge between them what they dispute (Al-Mawardi, 1989)."

B- As defined by Ibn Qudaamah in al-Mughni by saying: "If two men are tried by a man whom they judge between them and are pleased with him, and he is fit to judge, then the ruling between them is permissible (al-Tabari, 1989).

The Origin of Its Legitimacy Is the Texts of The Qur'an, The Sunnah, The Consensus, The Actions of The Companions and The Sayings Of The Jurists

A. *Its legitimacy from the Qur'an*

The Almighty says (an-Nisa: 65):

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا

Meaning: O Muhammad, they will not be believers, until they make you an arbiter among them and accept your judgment in matters that they disputed and disagreed (al-Sabouni, 2009).

Sheikh Al-Sayyas says: That is, the two judgments intend to repair the relationship between them, with the correct intention, with sincerity of advice for the face of God Almighty, that they mean that God reconciles the spouses with intimacy and love (al-Sais, 2005).

Imam Ibn Kathir argues that the jurists say: “If discord occurs between the spouses, the ruler inhabits them from a trustworthy side that looks into their matter, and prevents the oppressor from oppressing them, and if their matter worsens and prolongs its rivalry, the ruler sent confidence from the woman’s family and confidence from the man’s people to meet and consider their matter, and do what is in the interest of what they see of separation or conciliation, and the street looks to reconcile (al-Dimasyqi, 2002).

B. As for the origin of its legitimacy from the Sunnah

The tribes of Quraish ruled in lifting the black reservation and placing it in its place after the construction of the Kaaba first inside a certain door, and the first inside of it was the Prophet (peace and blessings of Allah be upon him) and they called him in the pre-Islamic era the name of the Secretary, so they said that we were satisfied with his ruling, so he ordered to put the stone on a garment and asked all the tribes of the Arabs to take the helm of the garment even if they brought it to the place of the stone, so he took the stone with his honorable hand and put it in its place (al-Balardhi, 1955).

C. The origin of its legitimacy from the actions of the Arabs in the pre-Islamic era:

The Arabs had a number of wise men and arbitrators who raised to them every dispute that arose between them, and they were satisfied with their judiciary, including Lapid Al-Amiri the poet, Amer bin Abi Al-Dharb and others. The Arabs had wise women to be judged by, such as Hind al-Zarqa and Juma’a, the daughters of khass al-Iyadi, who were the owners of wisdom, eloquence and statement, and among them Sahr bint Luqman, they were tried by her in quarrels that arose between them (al-Alusi, 2009).

The second requirement: the definition of arbitration in accordance with international conventions related to arbitration, positive arbitration laws, and the Judicial Code:

The definition set by the United Nations Commission on International Commercial Arbitration “UNICTRAL” (2002), defined arbitration in Article (7) as: “1/ An arbitration agreement is an agreement between the parties to refer to arbitration all or some specific disputes that have arisen or arise between them regarding a specific legal relationship, whether contractual or non-contractual” while international commercial arbitration is arbitration that takes place between the parties regarding a legal relationship related to the business and related to another country definition according to national arbitration laws.

As defined by the Court of Cassation of the Judicial Department of the United Arab Emirates in the Emirate of Abu Dhabi, saying: “Arbitration is a special system of litigation in which the parties to the arbitration resort to one or more arbitrators without the judiciary of the State, to settle disputes that arise between them related to their contractual or non-contractual transactions by a binding judgment after each of them has stated his point of view in detail through the main litigation guarantees, and this is stipulated in Article (203) of the UAE Civil Procedure Law (al- Tagnan, 1997).

Second Arbitration provisions according to the Judicial Judgments and comparative laws:

The Code of Judicial Judgments has stipulated arbitration rulings in accordance with the Hanafi school according to the provisions of Articles (1841-1851) comprehensive, and below are summarized:

The first requirement: the subject of the arbitration and its argument, and the conditions of the arbitrator and the parties to the arbitration.

First: What is permissible to arbitrate and what is required of the arbitrator in jurisprudence and law:

The effect of Article (1841): “It is permissible to arbitrate in money lawsuits related to the rights of people” Arbitration is: the assumption of the two opponents as a ruler who rules between them, and its condition by

the arbitrator – to break the sufficient - reason not freedom, if the ruling is a true slave, as Islam does not require it, if a dhimmi judgment is correct, as eligibility is required at the time of arbitration and judgment all: If a boy is sentenced and reaches the age or a slave and is freed, or a dhimmi then he becomes Muslim and then a judgment that is not implemented, even if he is a Muslim, then he apostatizes The time of the sentence was not carried out (al-Atassi, n.d., p. 151-163).

As for the convict, it is required that it be no hadd or blood money or blood money. It is permissible to arbitrate in cases of marriage, divorce, bail, pity, alimony, and sales, which is fixed in the Qur'an, Sunnah, and consensus. The permissibility of arbitration and the conditions prescribed by the arbitrator in accordance with the provisions of UNCITRAL law. The provisions of international conventions regulating the rules of settlement of investment disputes with regard to commercial, investment and maritime sales are consistent with regard to arbitration in marriage and divorce, which are governed by personal status laws, and disputes relating to civil contracts are governed by the laws of civil transactions and procedures regulating their provisions, in accordance with the provisions of Article (3) of the Law of the International Trade Law Commission.

Since the text of the Code of Judicial Judgments is related to the legal conditions that must be met by the arbitrator, on the other hand, the conditions prescribed under the International Trade Law Commission, including the legal conditions that the arbitrator be: full capacity to perform and obligation, and to be aware and familiar with the rules of arbitration, and that the arbitrator enjoys impartiality, integrity and independence in order to reassure the parties of the decision issued by him in resolving the dispute (Said, n.d., p. 145). He must also have full mental and physical strength, and no criminal sentence has been issued against him for committing any act that violates trust or public order (Ali, n.d., p.333).

In addition to the condition of the nationality of the arbitrator: which is required by Article (11), the first paragraph, which says: "No person shall be prevented from acting as an arbitrator because of his nationality, unless otherwise agreed by the parties." However, some conventions provide that the arbitrator must be from the State in which the contract is performed, since arbitration is like a judiciary that must not be handled by foreign (Saeed, n.d.). This is in addition to the condition of the arbitrator's experience and competence: it is required that the arbitrator be familiar with the circumstances and nature of the case, and some jurists go further than that that the conditions determined by the judiciary are met in the arbitrator (Amer, 2011).

The parties to arbitration, its arguments, and its effects in accordance with the International Convention on Commercial Law UNCITRAL and the Emirati national arbitration laws:

This rule is agreed upon between Islamic jurisprudence and international commercial agreements regarding arbitration to settle investment disputes, as well as national arbitration laws, and therefore the judgment issued by arbitration is not acquired for the executive force until after the issuance of an order to implement it by a competent court against the two opponents who ruled it, after conducting control imposed by the court from which the execution judgment is issued, and unlike the judicial judgment, which is enforceable immediately upon its issuance (al-Zayadi, 2013).

With regard to the effect of the authenticity of the arbitration award agreed upon in Islamic and international jurisprudence, where some international conventions and national legislation stipulate that it is a conclusive argument between the two opponents in the matter they ruled, and some other legislation.

Second Requirement: Arbitrators' Judgments: A Comparison between the Judicial Journal and Comparative Laws. Appointing several arbitrators according to the Judicial Code:

the text of Article (1843) is that there may be multiple arbitrators, meaning that two or more arbitrators may be appointed for one arbitrator and each of the defendants may appoint a judgment."

There may be multiple arbitrators, one arbitrator may be appointed, and there may necessarily be multiple judges competent to hear the case, whether at the first instance or appellate stage, who are appointed by the Sultan, see Article 1802 of the Code of Judicial Judgments, in addition to that, both the defendant and the defendant may appoint an arbitrator by him (Durar al-Hikam, n.d., p. 633).

Possibility of multiple arbitrators in accordance with the provisions of the Commission on the Law of International Trade (UNCITRAL):

National arbitration laws:

International conventions and national arbitration laws follow the effect of Islamic law and the parties to the dispute may appoint each of them as an arbitrator of his own above Article 10 and 11 of the UNCITRAL Model Law on International Commercial Arbitration. Article I provides that: "1) The parties shall be free to determine the number of arbitrators, 2/ If they do not do so, the number of arbitrators shall be three."

Paragraph (3) of Article (11) also stipulates that: If the arbitrators do not agree on the third arbitrator, the following procedure shall be followed:

"In the case of arbitration with three arbitrators, each of the arbitrators shall appoint an arbitrator, and the arbitrators so appointed shall appoint the third arbitrator, and if one of the parties does not appoint the arbitrator within thirty days of receiving a request to that effect from the other party, and if the arbitrators do not agree on the third arbitrator within (30) days of its appointment, it shall appoint him, at the request of one of the parties, the court or the other authority Named in Article (6).

- If the arbitration is by a sole arbitrator, and the parties cannot agree on the arbitrator, it shall appoint him at the request of one of the parties, the court or the authority designated in accordance with Article (6).
- Article (6) is with regard to the authority of the court: or other authority vested in the performance of certain functions related to assistance and supervision in the field.

According to the provisions of the amended UAE Arbitration Law 2023: Article (9) stipulates the multiplicity of arbitrators and Article (10) stipulates the conditions that must be met by the arbitrator.

the contents of the award, its form, the ruling on the opinions of the arbitrators

According to the Judicial Code:

The effect of Article (1844): "If there are multiple arbitrators on the above, an agreement of opinion is required for all of them, and not one of them can rule alone."

The meaning of the text is that the arbitrators must all agree on the wording of the award because the disputing parties have accepted the opinion of both and have not accepted the opinion of each of them. If one of the arbitrators issues a judgment and the other issues a judgment contrary to it, he says, "Al-Zayli in the response of the confused. If the litigants allow the multiple arbitrators to issue the arbitral award, then their decision shall be issued by majority. There is an opinion in the Hanafi school that it is not permissible to rule by majority unless they agree, because of anonymity and the most likely statement of permissibility (Durar al-Hikam, n.d., p. 634).

What is required in the award issued by arbitrators when there are multiple in accordance with the provisions of the UNCITRAL Model Law:

The provisions of articles 29 and 31 of the UNCITRAL Model Law are consistent with the provisions of 1844 of the above-mentioned Code, the first of which states: "In arbitral proceedings involving more than one arbitrator, any decision of the arbitral tribunal shall be taken by a majority of all its members, unless otherwise agreed by the parties, provided that decisions in procedural matters may be made by the arbitrator presiding over the tribunal if authorized to do so by the parties or by all members of the arbitral tribunal." However, the arbitral awards must include a brief presentation of the prosecution and defense case, and the evidence presented by both parties, judgments must be causative and the judgment must be rendered in writing (Sami, 1991).

As for the contents of the award rendered by the arbitral tribunal, article 31 of the UNCITRAL Model Law is clear: the award must be in written form, must be signed by the arbitrators, must be reasoned and include the date and place of its issuance (Khulusi, n.d., p. 59). With regard to deliberation, some scholars are of the view

that deliberation could be carried out by correspondence by mail and fax with each of the members of the Commission expressing his opinion on the draft resolution before it is finally signed (Dreij, 2014).

What is required in the award issued by arbitrators when there is multiple in accordance with national arbitration laws?

According to the provisions of the UAE law, Article (7) of the UAE Federal Arbitration Law of 2018 stipulates the conditions and manner mentioned above. Paragraph (2) (b) provides that the parties may refer to a particular convention, to the effect that: “If a fixed contract is referred in writing to the terms of a model contract, an international convention, or any other document containing an arbitration clause, and the assignment is clear that such clause is considered part of the contract. Arbitrators may be authorized by other experts or agents if authorized by the parties in accordance with the provisions of the Judicial Code.

The effect of Article (1845): “If the arbitrators are authorized to arbitrate, they may arbitrate arbitration, otherwise they shall not.”

If the arbitrators are entrusted by the disputing plaintiffs to adjudicate the dispute upon the issuance of the decision or to appoint other arbitrators to issue the decision ending the dispute, such power of attorney shall be valid. As the judge competent to hear the dispute, he may entrust others to consider it, which is a valid procedure (Rustom, n.d., p. 917). Concerning the power of attorney of the principal to conduct arbitration proceedings in accordance with the provisions of the UNCITRAL International Trade Law Commission:

The general principle in international trade law is that the parties may settle the commercial dispute between them by conciliatory or negotiating procedures, and may appoint arbitrators to decide on the subject matter of the dispute, and may also in accordance with Article (2), paragraph (d), which provides for the right of the parties to authorize a third party to settle the dispute, and without you: “The parties are free to decide on a particular case, this freedom shall include the right of the parties to delegate a third party, which may be an institution, in doing this work.”

Third Topic

Termination of Arbitration

The first requirement – the termination of the arbitration with the death, referral or dismissal of the arbitrator

A. In accordance with the provisions of the Judicial Code

Article (1847) means: “Each of the parties may dismiss the arbitrator before the issuance of the judgment, but if the two parties rule it and the judge appointed by the Sultan authorized to appoint the deputy shall have the status of the deputy of this judge where he has succeeded him.

The conclusion of this article is a disagreement and agreement among the jurists of the Hanafi school that the arbitrator is isolated in one of three forms, namely (Durar al-Hikam, n.d., p. 635):

He shall be isolated by the removal of the arbitrator as mentioned in this Article. He shall be isolated upon the termination of his mission, and this is if the arbitration is limited to a specific and temporary mission at a certain time as mentioned in this Article. The arbitrator’s disqualification is forfeited, as if he was blinded before the issuance of the judgment entrusted to be issued.

B. Provisions of UNCITRAL Law Requiring the Dismissal or Replacement of an Arbitrator

The substance of Article 14 of the UNCITRAL Rules of International Commercial Arbitration was consistent with the text of Article 1847 of the Code of Judicial Judgments, the operative part of which “Subject to the provisions of the paragraph, a substitute arbitrator shall (UNCITRAL, 2010), whenever it is necessary to replace an arbitrator during the course of the arbitral proceedings, in accordance with the procedure provided for in articles 8 to 11 applicable to the appointment or selection of the arbitrator to be replaced, be appointed or selected by exercising his right to appointment or to participate in the appointment .If, at the request of a party, the appointing authority considers that it is justified to deprive a party of its right to appoint a substitute

arbitrator, given the exceptional nature of the circumstances of the case, the appointing authority may, after giving the parties and the remaining arbitrators an opportunity to express their opinions:

Appoint a substitute arbitrator. After the conclusion of the hearings, authorize the other arbitrators to continue the arbitration process and to make any arbitral or non-arbitral award.”

C. Provisions for the removal of the arbitrator or the appointment of a substitute arbitrator in accordance with the provisions of national arbitration laws:

Articles (16) of the United Arab Emirates related to the termination of the arbitrator’s mission, and Article (17) related to the appointment of the substitute arbitrator

According to the magazine: it is final and binding on the parties that appointed the arbitrators:

The effect of Article (1848): “If the judges’ judgment is necessary to take action against all the people who are within their judiciary, as well as the arbitrators’ ruling, the procedure shall be required in the manner mentioned in respect of the person who ruled them and in the particular manner in which they ruled. Therefore, neither party refrains from accepting the arbitrators’ award after the issuance of The arbitrators’ judgment is in accordance with its legitimate principles

The content of this article is that just as the judges’ judgment is necessary for all litigants within the spatial limits of the judge’s authority, so is the judge’s judgment binding on all the plaintiffs who have appointed the arbitrators as long as the judgment has been issued within the limits of the principles and controls approved by Islamic law (Haider, n.d., p. 636). In accordance with the provisions of UNCITRAL law:

Articles (32), paragraphs (1) and (2) stipulate that the arbitrator rendering the arbitration shall be final, and may not be challenged or appealed, and Article (34) stipulates that it is the only case in which the arbitral award may be challenged if the request is included for reasons It is relied upon to cancel the application, as only the case of cancellation entitles you to appeal the award of nullity.

According to national arbitration laws:

An action for the nullity of the arbitration award may be filed in accordance with the provisions set forth in the following two articles (namely Articles 53 and 54). Article (52) of the UAE Arbitration Law corresponds to it: “The arbitration award issued in accordance with this law shall be binding on the parties.”

Note that the laws of Arab as well as foreign countries consider arbitral awards final as evidence against the parties that may not be appealed or challenged in cassation. The only case in which the courts allow to challenge arbitral awards is the case of annulment without you The following are a range of cases in which it is permissible to appeal under the pretext of annulment in the Sudanese and UAE laws

Upholding and Implementing Arbitrators’ Awards

Implementation of arbitrators’ rulings according to the Judicial Code:

Article (1849) means: “If the arbitrator’s judgment is presented to the judge appointed by the Sultan, and if he agrees with the rules, he shall believe it, otherwise he shall revoke it.”

The article stipulates that if the arbitrator’s judgment is presented to the judge appointed by the Sultan or to another arbitrator to scrutinize the judgment for the second time, and the judge finds that the judgment has been in accordance with the principles of Sharia and its rules or principles and purposes, he must ratify and uphold it There is no point in revoking it, otherwise he must revoke it if it is contrary to the principles of Sharia (Rustom, n.d., p. 917).

The non-conformity of the judgment with the principles of Sharia shall consist of two aspects (The role of rulers, n.d., p. 636):

The first aspect – that the arbitrator issues the judgment contrary to the principles of all schools of thought or comes contrary to the doctrine of the imitating mujtahid judge appointed by the Wali of the Muslims.

The second aspect – that the judgment issued by the arbitrator is in accordance with the principles of one of the schools of jurisprudence, but not in accordance with the principles of the doctrine in which the Wali of the Muslims who appointed the judge to consider the arbitrator's judgment works (al-Atassi, n.d., p. 153). Implementation of arbitral awards in accordance with the provisions of the UNCITRAL Law of 2006. Foreign arbitral tribunals:

Pursuant to Article (1846) mentioned above, the UNCITRAL Model Provisions of 2006 in accordance with Article (36) endorse the provisions established by the Code of Judicial Judgments regarding the permissibility of refusing to ratify arbitral awards issued outside the territory of the State Which means:

First: No award may be recognized or refused to be enforced: regardless of the country in which it was issued, except 1/ At the request of the party against whom the award is requested, if that party submits to the competent court to which the application for recognition or enforcement is submitted evidence to prove:

The parties to the arbitration agreement referred to in Article 7 lack capacity: the said agreement is invalid under the law to which the parties are subjected, or in the absence of reference to such law is invalid under the law of the State in which the award was made,

The party against whom enforcement of the award is sought has not been properly notified of the appointment of the arbitrator or the arbitral proceedings, or contains decisions relating to matters outside the scope of this Agreement, provided that, if decisions concerning matters not within the scope of the arbitration can be separated, then the part containing decisions on matters within the scope of the arbitration may be recognized and enforced.

The constitution of the arbitral tribunal or the procedure followed in the arbitration was contrary to the agreement of the parties or, in the absence of such agreement, contrary to the law of the country in which it took place to arbitrate, or that the award has not become binding on the parties” and has been set aside or suspended by a court or the country in which that award was made or under the law thereof, or if the court decides the subject matter of the dispute is not amenable to settlement by arbitration in accordance with the law of this State. Recognition of an arbitral award is contrary to the public policy of this state

Fourth requirement: Termination of the dispute through conciliation with the permission of the arbitrators. According to the provisions of the Judicial Code:

The effect of Article (1850): “If the parties authorize the two arbitrators they authorized in the judgment in accordance with its legitimate assets to settle the matter in conciliation, if attributed, it shall be considered If one of the parties entrusts one of the arbitrators and the other arbitrator to conduct the composition also in the manner mentioned in the matter in which they disputed and reconciled the matters included in the conciliation letter, neither of the parties may refrain from accepting such composition and settlement.”

Article stipulates that if the parties authorize the arbitrators to conduct conciliation and settle the dispute on this basis, If the composition is in accordance with the legitimate provisions, one of the parties does not refrain from accepting it, in accordance with Article (1556) of the Code, which contains if the composition is made, one of the parties has no revocation of it (Rustum, n.d., p. 920; Atassi, n.d., p. 16-161). In accordance with the provisions of national arbitration laws:

the arbitrator authorized to conciliate cannot exclude the rules of law relating to public order, but can exclude the rules of court. In general, international conventions on the settlement of disputes arising from investment permit the provisions of the settlement of international disputes by conciliation.

CONCLUSION

At the end of this research, it is concluded that arbitration in jurisprudence and law involves resolving disputes through mutually agreed arbitrators, with similar qualifications and procedural rules in both domains. Key aspects include the binding nature of arbitration awards, the need for timely judgments, and the prohibition of

arbitrator substitution in law. Recommendations include studying the Journal of Judicial Judgments for its unique insights and developing comprehensive contemporary jurisprudential arbitration encyclopedias to guide scholars and researchers in Islamic law and economics.

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Praise be to Allah, Lord of the Worlds, and prayers and peace be upon the most honorable of the prophets and messengers, our master Muhammad, upon him be the best prayer and delivery.

REFERENCES

- Al-Quran
- Abou El-Enein, Mohamed Maher Abou El-Enein, Atef Mohamed Abdel Latif Al-Qadi. (n.d.). Arbitration Judiciary: An Analytical Study of Jurisprudence Trends and Rulings of the Supreme Constitutional Court – Court of Cassation – Supreme Administrative Court – Administrative Court – and Courts of Appeal regarding International and Internal Arbitration. Book One, Dar Abu Al-Magd for Printing and Publishing. Cairo.
- Abu Abdullah Muhammad bin Ahmed Al-Qurtubi. (2011). The Collector of the Provisions of the Qur'an, Part 3. Edited by: Abdul Hamid Hindawi. Al-Asriya Library, Sidon, Beirut, Lebanon.
- Ahmed Al-Mardi Saeed Omar. (n.d.). The specialty of international organizations, p. 383.
- Ahmed bin Abi Ahmed al-Tabari. (1989). Adab al-Qadi, investigated by: Hussein Khalaf al-Jubouri, Al-Siddiq Library for Publishing and Distribution.
- Al-Alusi, Mahmoud Shukri Al-Baghdadi. (2009). Reaching the Lord in Knowing the Conditions of the Arabs, Edited by Bahja Al-Athari. Dar Al-Kitab Al-Masri, Cairo.
- Al-Atassi. (n.d.). Explanation of the magazine. vol. 5-6, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, from 151-163.
- Al-Balardhi. (1996). Genealogy of the Ashraf Ahmed bin Yahya bin Jaber bin Dawood Al-Balardhi. 1st Edition, Beirut, Lebanon, pp. 99-100.
- Ali Haidar. (2015). Durar Al-Hakam Explanation of the Journal of Judgments: Arabization of Lawyer Fahmi Al-Husseini. Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, second edition.
- Ali Haider. (n.d.). Explanation of the Majalla Al-Ahkam Al-Adliyyah.
- Al-Razi, Muhammad bin Abi Bakr bin Abdul Qadir. (2003). Mukhtar Al-Sahih, Dar Al-Hadith, Cairo.
- Donald Quataert. (2005). The Ottoman Empire, 1700 – 1922 (New Approaches to European History) Second Edition, Cambridge.
- Durar al-Hikam, vol. 4.
- Fawzi Mohamed Sami. (1991). International Commercial Arbitration, and the Position of Arab Legislation, Arab Journal of Law, No.(13, 14, 15, 16), July.
- Hamza Haddad. (1980). International Trade Law, United Publishing House, Amman, Jordan, p. 39.
- Hye, Q. M. A., & Dolgoplova, I. (2011). Economics, finance and development in China: Johansen-Juselius co-integration approach. Chinese Management Studies, 5(3), 311-324.
- Ibid., p. 894.
- Ibn Hisham. (1955). Biography of Ibn Hisham, edited by Mustafa Al-Bagha, Ibrahim Al-Anbari, and Abdul Hafeez Shalabi, Mustafa Al-Babi Al-Halabi Library Publications, Cairo, second edition.
- Ibn Kathir, Imam al-Hafiz Abu al-Fida Ismail bin Katheer al-Qurashi al-Dimashqi. (2002). Interpretation of the Great Qur'an, vol. 1, Al-Mukhtar Foundation for Publishing and Distribution, Cairo.
- Ibn Manzur, Muhammad bin Makram bin Ali, Abu al-Fadl Jamal al-Din Ibn Manzur al-Ansari al-Ruwaifi'i. (2008). Lisan al-Arab, Dar al-Maaref, Cairo, edited by Abdullah Ali al-Kabir
- Ibn Sayyid al-Nas. (1994). Oyoun al-Athar fi Funun al-Maghazi, al-Shama'il and al-Sir, Dar al-Qalam, 1st Edition.
- Imam al-Hafiz Abu al-Fida Ismail ibn Katheer al-Qurashi al-Dimashqi. (2002). Interpretation of the Great Qur'an, vol. 1, Al-Mukhtar Foundation for Publishing and Distribution, Cairo, p. 482.
- Ismail Ibrahim Al-Ziyadi. (2013). On Arbitration and Jurisprudence (without mentioning the year of publication), quoted by Aliwa Mustafa: Arbitration as a means of dispute resolution, Publisher, Abu Dhabi Court House, United Arab Emirates.
- Lazhar Ben Said. (n.d.). International Commercial Arbitration According to the Code of Civil and Commercial Procedure and Comparative Law, Dar Houma for Printing and Publishing, Algeria, p. 145.
- Izahr bin Saeed, ibid.
- Mbarki Tawfik Miloud. (2020). Contribution of the United Nations Commission on International Trade Law to the preparation of the rules of international trade law. PhD thesis in law specializing in comparative business law at the University of Oran, Algeria, supervised by Znaki Dalila.
- Mohamed Majed Kholousi. (n.d.). Conditions of Arbitration in Engineering Disputes and Arbitration in Arab Laws, Dar Gabes for Printing and Publishing, Beirut.
- Muhammad Ali Al-Sabouni: Elite Interpretations, Al-Asriya Library, Sidon, and Beirut (1430 AH-2009 AD).

Arbitration Bases for Settling Commercial Disputes in Accordance with The Provisions of The Code of Judgments (JUSTICE) Comparative Study International Trade Law (UNCITRAL) In Light of The Emirati Arbitration Law

- Muhammad Ali Al-Sais. (2005). Interpretation of the Verses of Judgments, Part 1, edited by: Naji Ibrahim Sioudan, Al-Asriya Library, Sidon, Beirut.
- Muhammad Khalid Al-Atassi. (2017). Explanation of the magazine, part 5, 6: Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, first edition.
- Muhammad Maher Abu Al-Enein, Atef Muhammad Abdel Latif. (n.d.). Arbitration Judiciary, An Analytical Study of Jurisprudence Trends and Rulings of the Supreme Constitutional Court, the Court of Cassation, the Supreme Administrative Court, the Administrative Judicial Court, and the Courts of Appeal regarding International and Domestic Arbitration, Book One, Dar Abu Al-Majd for Printing and Publishing, Cairo, p. 893.
- Salim Rustom Barez Al-Lebnani. (2010). Explanation of the magazine. Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, first edition.
- Sharh al-Majalla al-Atassi, vol. 5-6, p. 153.
- Sharh al-Majalla by Salim Rustom, vol. 1-2, p. 917.
- Talib Hassan Musa. (2008). International Trade Law. Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, p. 26.
- The Arbitration Law of the United Arab Emirates, Federal Law No. (6) of 2018. (2019). The Dubai Judicial Institute Publishing House, first edition.
- The role of rulers, vol. 4, p. 636.
- UAE Civil Transactions Law, Federal Law No. 5 of 1985, as amended by Federal Law No. 1/1987 dated 14/2/1987. And decree Federal Law No. 30/2020 dated 27/9/2020.
- UNCITRAL Arbitration Rules. (2010). Issued at the 57th session of the United Nations General Assembly.
- United Nations Commission for International Trade Law (UNCITRAL). (2016). July.
- Zahr bin Said. (n.d.). International commercial arbitration in accordance with the Civil and Commercial Procedures Law and laws Comparison, Dar Houma for Printing and Publishing, Algeria.