eman ta zabal zazu

Universidad del País Vasco
Euskal Herriko Unibertsitatea

COMMERCIAL DISPUTE RESOLUTION AND LEGAL LIABILITY: A STUDY OF ARBITRATION IN THE UNITED ARAB EMIRATES, THE STATE OF QATAR, THE KINGDOM OF SAUDI ARABIA, AND ISLAMIC LAW

BY

QASEM BILAL QASEM BUDAIR

DIRECTOR:

DR. JUAN MANUEL VELAZQUEZ GARDETA

DONOSTIA-SAN SEBASTIÁN, 2025

INDICE

Preliminary Chapter

I. INTRODUCTION

1. Thesis context and significant of research

Islamic commercial arbitration has arisen as an alternative mechanism for resolving disputes that arise about economic transactions that seek to be Shariah-compliant[1]. The arbitration concept means a method by which parties to an agreement submit, to have their disputes resolved by a third adjudicator (the arbitral tribunal). Arbitration may have a domestic or an international character. International arbitration deals with matters about cross-border trade—as stated, for example, in Article 1504 of the French Civil Procedure Code[2]. In general, international commercial arbitration allows residents of other nationalities to handle the absence of inter-state courts and to resolve disputes arising from commercial transactions between them[3]. Whether a dispute pertains to global trade relies on the facts of the matter under arbitration. Moreover, in some jurisdictions, like France, it is not for the parties to decide their domestic or global character. In this wider context, Islamic commercial arbitration caters to main commercial institutions that conduct their transactions by Shariah law, for them to resolve conflicts with their customers[4]. Nevertheless, the same need arises for smaller institutions, known as Sharia Micro Financing Institutions (SMFIs), which are also used as a source of financial capital in Indonesia[5].

---

[1]Farah AQ, Hattab RM (2020) 'The application of Shari'ah finance rules in international commercial arbitration'. Utrecht Law Rev 16(No. 1):117–139. Retrieved from https://utrechtlawreview.org/articles/10.36633/ulr.592

[2]Moreau, B, Glucksmann, É, Feng, P (2016) 'Arbitrage international', Répertoire de droit commercial, Vol. A No. 25.

[3]Granier, T (2015) 'Compétence et arbitrage', Répertoire de droit des sociétés, Vol. C No. 201, p 3.

[4]El Maknouzi, M. E. H., Jadalhaq, I. M., Abdulhay, I. E., & Alqodsi, E. M. (2023). Islamic commercial arbitration and private international law: Mapping controversies and exploring pathways towards greater coordination. Humanities and Social Sciences Communications, 10(1), 1-8.

[5]Sukriya, A., Yasir, J. R., & Kamal, F. (2022). Risk mapping on lending method of sharia micro financing institution (Indonesia evidence). Journal of Asian and African Social Science and Humanities, 8(1), 1-20.

Most of the world's nearly fifty Muslim-majority countries have regulations that reference sharia, the guidance Muslims consider God provided them on a range of spiritual and worldly matters. Both the Arab and Islamic legal systems are markedly different from Western legal systems particularly those with an Islamic influence. These systems are rooted in Islamic jurisprudence, the sources of which are evolving within modern legal systems. Here are some pertinent points about these legal systems:

A. The concept of Sharia:

Sharia signifies "the correct path" in Arabic. In Islam, it guides Muslims to the divine counsel that they follow to live moral lives and grow near to God. Sharia emanates from four main sources: the first source is Quran, which is the word of God revealed to the Prophet Muhammad. The Holy Quran is the most important and supreme source of Sharia and other sources cannot contradict it, the second source is Sunnah "It is the collection of prophetic actions and sayings, with the truths that the Prophet Muhammad was pleased with" [6].

The validity of Sunnah as a source of Sharia stems from the Holy Quran, which commands Muslims to follow the Prophet Muhammad. Evidence of this obligation can be seen in verse 59:7 of the Holy Quran, which states that "…and whatever the Messenger has given you, take it, and whatever he has forbidden you, refrain from it…" As well as verse 8:46, which states that all Muslims must "Obey God and His Messenger". The Sunnah is not limited to specific topics or issues; it covers a wide range of matters including both doctrinal and non-doctrinal aspects of human life. It also includes clarification of some verses of the Holy Quran, also we note there are a hadith, thousands of sayings and traditions attributed to the Prophet Mohammed that collectively form the Sunna. The third source is Ijma' which signifies the agreement of the Muslim community[7], the fourth source is Qiyas which includes the standard conclusions and inferences created by Muslim scholars via the analysis and understanding of the three

[6]Tarek Badawy (2012). "The General Principles of Islamic law as the Law Governing Investment Disputes in the Middle East", 29 (3) J. Int'l Arb.255, 256, 260, 261.
[7]Fasil Kutty (2006). "The Shari'a Factor in International Commercial Arbitration", 28 Loy. L.A. Int'l& Comp. L. Rev. 565,578, 586, 587, 588.

sources mentioned above. Qiyas is classified as one of the jurisprudential sources that form part of Ijtihad, which reflects the intellectual effort created by jurists to find or design a rule to be used in new situations[8]. Ijtihad thus ensures that Islamic law can grow and adapt to changing situations in each society.

However, Sharia largely includes the interpretive tradition of Muslim scholars. The Prophet Mohammed is considered the most pious of all believers, and his actions became a standard for all Muslims. The process of interpreting sharia, known as Fiqh, developed over hundreds of years after he died in the seventh century and as the Islamic empire grew outward from Mecca and Medina, where he lived and died, in the modern-day Kingdom of Saudi Arabia. Sharia isn't the same as Islamic law. Muslims consider Sharia to refer to the perfect, immutable values comprehended only by God, while Islamic laws are those based on interpretations of Sharia. Interpreting sharia requires deep knowledge of the Quran and Sunna, fluency in Arabic, and expertise in legal theory. Islamic law differs by country, is impacted by local customs, and grows. Sharia is also the basis of legal opinions called fatwas, which are issued by Muslim scholars in response to requests from individual Muslims or governments seeking guidance on a specific issue[9]. Also, Islamic jurists who are known as 'fuqaha' are responsible for the development of Islamic jurisprudence called Fiqh. These scholars assist with the issuance of fatwas on matters in which the applicability of Sharia law is not apparent. Religious scholars form an important part of policymaking as well as advising the judiciary on legal matters, especially in countries that are governed by Islamic law, such as Saudi Arabia.

In addition to the above, we find that Sharia, from a jurisprudential perspective, means the rules and regulations that govern all aspects of a Muslim's individual life, especially belief, worship, and transactions. In

[8]Aseel Al-Ramahi (2008). "Sulh: A Crucial Part of Islamic Arbitration", Islamic Law and Law of the Muslim World Research Paper Series at New York Law School, http://eprints.lse.ac.uk/24598/1/WPS2008-12_Al-Ramahi.pdf (accessed 30\07\2016), p.8, 9.

[9]Robinson, K. (n.d.). Understanding Sharia: The Intersection of Islam and Law. Council on Foreign Relations from https://www.cfr.org/backgrounder/understanding-sharia-intersection-islam-and-law?utm_source=chatgpt.com

other words, Sharia is a complete way of life to achieve submission to God[10]. In this thesis we note that Sharia was the root of most systems of laws in Muslim as well as Arab counties based on Qur'an, hadith and Ijma. In addition, Sharia touches on many aspects, like criminal law, family law, and even inheritance law. In Muslim-majority nations, Sharia affects many parts of life, although the manner in which it is applied can vary significantly, and the differences depend largely on the laws of the country.

The major schools of Islamic jurisprudence represent different regional and scholarly approaches to solving legal problems in the early two centuries of Islam. All Muslim scholars recognize the Qur'an and Sunnah as the primary sources of Islamic law, and therefore everything stated on in them must be followed by Muslims. Several schools of jurisprudence developed and began along geographical lines, in Medina and Kufa (Iraq), but later developed around individual scholars or jurists[11]. The four schools of Sunni jurisprudence are named after their founders: the Hanafi school (Abu Hanifa, d. 767), the Maliki school (Malik ibn Anas, d. 795), the Shafi'i school (d. 819), and the Hanbali school (d. 855)[12]. Each developed its knowledge by interpreting the Qur'an and Sunnah using three techniques—ijtihad, consensus, and qiyas—in many areas of Islamic life, including dispute resolution.

B. Conflict resolution at different stages of time:

Now, we will briefly discuss conflict resolution in the following period.

- **Conflict Resolution in Pre-Islamic Ear**

The Arabian Peninsula was inhabited by tribes claiming descent from a common ancestor. It was the tribe that owed allegiance to individuals, and it was the tribe that received protection for its interests. The tribe was bound by a set of unwritten rules, which developed with the

[10]Abu Ameenah Bilal Philips. The Evolution of Fiqh, (1st edn, International Islamic Publishing House) 12. Also, Alqudah, M. A. (2017). The impact of Sharia on the acceptance of international commercial arbitration in the countries of the Gulf Cooperation Council. Academy of Business & Economics Journal, 20(1). Retrieved from https://2u.pw/t2k1bBnF

[11] Al-Ramahi, A. (2008). Sulh: A crucial part of Islamic arbitration.

[12]G. Makdisi, 'Legal History of Islamic Law and The English Common Law: Origins and Metamorphoses' 34 Cleveland State Law Review 3, 6.

historical growth of the tribe itself as an expression of its spirit and character. No one had legislative authority to interfere with this system, and there was no formal organization for the administration of law. Enforcement of the law was the responsibility of the private individual who had suffered harm. Tribal justice was administered by the chief of the tribe in a form adapted to their way of life, which made extensive use of arbitration and reconciliation (sulh) [13]. Tribal law is based on two fundamental principles: the principle of collective responsibility; and the principle of qiyas or compensation. The aim of tribal law is not merely to punish the offender, but to restore balance between the dissenting and aggrieved families and tribes[14].

Arbitration and peaceful settlement (sulh) have a long history within Arab and Islamic institutions and have their roots in pre-Islamic Arabia. The Arabs and several other old societies, before Islam, comprehended and employed arbitration as a manner for the settlement of conflicts. When the Islamic Ummah was founded in Medina (a city in Saudi Arabia), based on Islamic Sharia, it recognized and accepted some of the pre-Islamic ways, which were used to resolve disputes among the people, with some changes. During that era, various kinds of tribal ruling methods-controlled Arabia with the total absence of rules and regulatory bodies. Even the chief of a tribe did not have all the authority to handle and resolve disputes between individuals. As a result, revenge and wars were the major means of resolving any dispute; however, it has been reported that individuals and tribes referred to arbitration and other forms of conflict resolution mechanisms, but mostly after being exhausted by wars[15].

Also, due to there are not any religions or laws to govern their lives, pagan Arabs used to have arbitrators to resolve their conflicts. So, when they have a dispute regarding blood, water, grazing, or inheritance they set an arbitrator who carries the characteristics of honor, honesty, older age, and

[13]Hossain, M. S. (2013). Arbitration in Islamic law for the treatment of civil and criminal cases: An analytical overview. Journal of Philosophy, Culture and Religion, 1(5), 1-13.
[14]R. Patai, The Kingdom of Jordan (Princeton, NJ: Princeton University Press,1958).
[15]Rahman, M. M. (2018). Islamic perspective of alternative dispute resolution (ADR). Journal of Asian and African Social Science and Humanities, 4(2), 28-44.

wisdom. During the period of Jahiliyya, there are some well-known arbitrators such as Aktham bin Saifi, Hajjeb bin Zurarah, and Abdulmuttalib bin Hashim, the grandfather of Prophet Muhammad (PBUH). And there were significant female arbitrators such as Hind bint Alkhas, Jama bint Habis, and Sahar bint Loukman. Even though the Prophet himself acted as an arbitrator in many conflicts inspired by citizens and tribes[16]. There are so many examples of alternative dispute resolutions in the pre-Islamic era. Most especially, the dispute that occurred during the completion of the Kaba renovations was solved by using the arbitration method, And the arbitrator was the Prophet Muhammad (PBUH) himself.

The details of the incident are: A conflict occurred between the tribes over who would replace the Black Stone in the Kaaba after its renovation. No clan chief wanted to give up this great honor to any other tribe. By his successful arbitration in this conflict, the Prophet Muhammad prevented a potential war between the tribes of Quraysh. Once the walls of the Kaaba were rebuilt, it was a period to put the Black Stone (al-Hajar al-Aswad) in its southeastern corner. Disputes arose over who would have the honor of putting the Black Stone in its place. A fight almost broke out over this issue, when Abu Umayya, the eldest man in Mecca, suggested that the first man to enter the door of the mosque the next morning should resolve the matter. That man was Muhammad. The people rejoiced, “This is Muhammad.” “We accept him as our arbitrator,” Muhammad came to them and asked him to decide the matter. He decided. The Prophet Muhammad proposed a resolution whereby everyone decided to place the Black Stone on a cloak, and the elders of each party would hold one end of the cloak and carry the stone to its place, and the Prophet would then take it and place it on the wall of the Kaaba[17].

- **Conflict Resolution in Islamic Law**

Islamic law has not completely separated between reconciliation (sulh) and arbitration. Many Quranic references and hadiths that support

[16]Saunders, J. J. (2002). A history of medieval Islam. Routledge.
[17]Al-Ammari, S., & Timothy Martin, A. (2014). Arbitration in the Kingdom of Saudi Arabia. Arbitration International, 30(2), 387-408.

arbitration can be used as sources for reconciliation(sulh). The Quran and Sunnah have agreed on arbitration in the form of a third party selected by the parties to settle their conflicts either through conciliation or litigation. Nevertheless, differences between the two are also recognized. Arbitration, in Islam, differs from reconciliation (sulh) in three parts: First, in reconciliation(sulh), an amicable settlement can be achieved between the parties with or without the participation of others, while in arbitration the appointment of a third party is necessary. However, in reconciliation (sulh), the disputing parties also have the opportunity of using an arbitrator to work towards a settlement. Thus, arbitration can be one of the ways of reconciliation (sulh). Second, reconciliation (sulh). agreement is not crucial unless it is made before a court, while arbitration, according to the majority of judges, is critical without the intervention of the court. Third, reconciliation(sulh). may only be resorted to if the conflict has already happened. Reconciliation (sulh) does not handle a coming dispute, while arbitration addresses an existing and potential dispute[18].

The Holy Quran has approved arbitration and referred to it in several verses as an acceptable mechanism for resolving disputes, for example" If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from her is; if they both wish for peace, Allah will cause their reconciliation. Indeed, Allah is Ever All Knower, Well Acquainted with all things"[19]. I will expand on them in the thesis later. Also, The Prophet Muhammad formed the Sunnah by leading the people and tribes of the Arabian Peninsula. He tried to design a climate in which the Muslim society would settle its conflicts peacefully. The Prophet Muhammad comprehended that any issue that could be settled by conciliatory arbitration should be so because it was better for the community. Muhammad suggested Muslims and non-Muslims also refer

[18]Al-Ramahi, A. (2008). Sulh: A crucial part of Islamic arbitration.
[19]51 Verse 35 in Sura Nisa (Women). You can see this Verse in English language via: https://corpus.quran.com/translation.jsp?chapter=4&verse=35

their conflicts to arbitration. Among the first non-Muslims to follow this advice were the Banu Qarnata tribe[20].

Muhammad acted as both an arbitrator and a party accepting the arbitrator's decision. Another example of the employ arbitration in the period of the Prophet is a clause in the Treaty of Medina, the first treaty concluded by the Muslim community, signed in 622 A.D between Muslims and non-Muslims, Arabs and Jews, which called for the solution of conflicts by arbitration. Sunni schools of jurisprudence have found the arbitrator's decision to be as binding as a contract or a court ruling. Although an arbitration award may be more powerless than a ruling, according to some schools of jurisprudence, this does not exempt the parties from following it, according to the rules of Sharia[21].

The opinion for the schools of jurisprudence were as follows: Hanafi: The nature of arbitration is contractual and is near to agency and reconciliation. The arbitrator acts as a mechanism for the parties to the conflict who selected him, and arbitration is closer to reconciliation, and therefore the arbitration decision has a lower degree of responsibility than the court judgment, and the contractual nature of the agreement ultimately forces the parties to agree to the arbitrators' judgment. Alson Maliki: Arbitrators can be selected by any of the parties and the arbitrator cannot be removed in the middle of the proceedings. And about Shafi'i: Arbitration is not like official court methods and arbitrators can be modified before the arbitration judgment is issued. Hanbali as well: Arbitration has the exact result as court procedures, and therefore the arbitrator must have the same qualifications as a judge, and the ruling of her issues is binding on the parties who picked him.[22] We will explore this in more detail in this thesis.

- **Conflict Resolution in GCC**

Over the current decades, GCC states have accepted the principle of resolving disputes through alternative conflict solutions. They have handled

[20]Libyan Am. Oil Co. (LIAMCO) v Libyan Arab Republic (Apr. 12, 1977), 20 I.L.M., 1 (1981)
[21]Al-Ramahi, A. (2008). Sulh: A crucial part of Islamic arbitration.
[22]Rahman, M. M. (2018). Islamic perspective of alternative dispute resolution (ADR). Journal of Asian and African Social Science and Humanities, 4(2), 28-44.

arbitration as a particularly effective type of alternative way, in national laws impacted by the Model Law on International Commercial Arbitration, drafted by the United Nations Commission on International Trade Law[23]. These arbitration laws align with key rules of international arbitration, such as separability, competence-competence, and finality[24]. They also create an exception to the civil and commercial procedure laws of GCC states, which usually require disputes involving their citizens to be handled by state courts[25]. The progress in the legal environment of GCC countries has been accomplished by confirming the New York Convention for Recognition and Enforcement of Foreign Arbitral Awards of 19584 and the Convention on the Settlement of Investment Conflicts between States and Nationals of other States of 1965[26].

Also, Arbitration hubs have been established in multiple GCC states[27], to provide the parties involved with an experienced conflict solution

[23] The Model Law is designed to assist states in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award. It reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world." Retrieved from: https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

[24]National arbitration laws adopted in many GCC states have been influenced by the UNCITRAL Model Law of International commercial Arbitration of 1985 (modified in 2006); Saudi Arabia, legislation adopted in 2012, Qatar in 2017, Oman in 1997, Bahrain in 2015, UAE in 2018

[25]Art (20) of UAE Civil Procedures Law No.11/1992, Art (1) of Civil & Commercial Procedures Law in Bahrain- No.12/1971, Art (4) of Civil & Commercial Procedures Law in Qatar- No.13/1992, Art (29) of Civil & Commercial Procedures Law in Oman- No.29/2002, Art (23) of Civil & Commercial Procedures Law in Kuwait- No.38/1980, Arts (24,25) law of procedures before Sharia Courts in Saudi Arabia issued by Royal decree No.1 in 22/1/1435 Hijri (25/11/ 2013)

[26]Saudi Arabia ratified the NY Convention in 1994, Qatar in 2002, Oman in 1999, Kuwait in 1978, Bahrain in 1988, UAE in 2006. 2006, n, and Convention of the Recognition and Enforcement of Arbitral Awards (adopted on 10 June 1958, entered into force on 7 June 1959), United Nations Treaty Series 330, Registration No. 4739. Also, Convention of the settlement of Investment Disputes between States and Nationals of Other States (adopted on 18 March 1965, entered into force on 14 October 1966), United Nations Treaty Series 575, Registration no. 8359.

[27]Sultan of Oman established the most recent arbitration center in GCC by the Royal Decree No. (26) of 2018, establishing the Commercial Arbitration Centre in Oman. Pursuant to the Royal Decree, a special center called a Commercial Arbitration Centre in Oman that shall sit within the Oman Chamber of Commerce and Industry and shall enjoy a legal personality, see: Omani Official Gazette Issue No. 1265 dated 28 October 2018.

body[28]. State courts in GCC jurisdictions deal with all kinds of alternative conflict solutions, specifically arbitration issues. Courts in GCC countries, like the state courts in other Islamic countries that have adopted the UNCITRAL Model Law or ratified the NY Convention, are still allowed to reject recognition or enforcement of foreign—or even domestic—arbitral awards when the award conflicts public policy and/or Islamic Sharia as a part of public policy[29].

Arab and Muslim legal systems, in addition to formal courts, place a particular emphasis on alternative dispute resolution methods such as mediation and arbitration. Sharia fosters problem solving through amicable settlement; some states established informal Sharia councils which serve as mechanisms for mediation over disputes, especially those that are familial or personal in nature. Rather than go to court, these systems pursue justice through mutual agreement. This thesis examines the interconnected fields of responsibility and arbitration. It focuses on how they are used in the legal systems of the Gulf Cooperation Council (GCC) countries. The unique issue of combining Islamic legal principles with the current legal system is complicated and intriguing because it leads to the growth of legal responsibility and peace in the region.

For now, I am researching these issues to understand the ethical and legal aspects of the responsibility to know the facts, which explains the rising trends of arbitration as a method for resolving economic and legal conflicts, particularly in the countries of the GCC. This thesis analyzes how supervisors address their responsibilities, particularly the tort and contractual obligations arising from the GCC's legal framework. In this area, Sharia law and modern legal systems meet, making it an intriguing topic to study, especially regarding how responsibilities are shared and managed. The importance of arbitration in GCC nations has significantly increased, especially when you consider the region's position in global trade. The recognition of arbitration as the expert and high-performing method of

[28]Riad Tarik, Overview of the DIAC Arbitration Rules 2018, (2017) 2, International Journal of Arab Arbitration, 41.
[29]Abdallah, A. K. (2020). Islamic Sharia and arbitration in GCC States: The way ahead. Int'l Rev. L., 318.

dispute resolution has placed it at the heart of legal practice. Mixing traditional Islamic jurisprudence with modern arbitration techniques, Saudis, Emiratis and Qataris. Under certain countries, they combine both Islamic law and modern arbitration methods to solve business, legal disputes.

The importance of arbitration in the GCC cannot be underestimated. Global businesses, especially in real estate, energy (oil), and banking, are becoming more important in the region. This is why there is an increasing need to resolve disputes automatically and independently, without relying on the slow local courts. Arbitration offers a flexible and expedited option, which is especially attractive in international commercial transactions. The GCC nations acknowledge the benefits of arbitration in enhancing corporate trust and providing a neutral venue that is less susceptible to national interests or political influences.

Furthermore, arbitration aligns with the Islamic legal precepts inherent to the region, emphasizing mediation or conciliation as the preferred forms of dispute resolution. As a result, many of those GCC countries have enacted arbitration laws that take account of Sharia rules, but also international standards. This has made arbitration a popular method of resolving business disputes. Given the region's significant investments and global relations, arbitration has become increasingly relevant as an efficient method of resolving disputes in an international trade contract**.**

2. Overview of the Thesis Structure

This thesis has two main chapters. Each of these helps illuminate an essential aspect of legal responsibility and dispute resolution in the GCC and Islamic contexts:

Chapter One: the Concept and Types of Responsibility, Including Legal and Vicarious Responsibility: This chapter discusses various forms of responsibility, particularly moral and legal responsibilities. After explaining these principles, I will contrast and illustrate them for clarity. Subsequently, I will proceed to a classification of legal liability, which is defined predominantly under civil and criminal jurisdiction. This chapter continues with a detailed study of civil liability, paying special attention to contractual and tortious liability. The focus of this study will be contracting law, which

is crucial for understanding blame allocation in cases of breach of contract. I will assess the central tenets of the law of contract—harm, fault, and the relationship of causation—and their application in the world today, including in Islamic philosophy.

This chapter will address one of the most important forms of responsibility: vicarious liability, where an organization or person is held responsible for the actions of another, such as an employee or an agent. We will thoroughly examine the topic of compensation, contrasting viewpoints from Arab, Islamic, and European legal systems. I will review instances, such as blood money in Islamic law, to illustrate how various legal traditions address reparation. The concept of "lost profits" will be discussed, emphasizing the divergent perspectives of Islamic, Saudi, and Egyptian legal systems regarding the obligation to compensate for lost gains. Finally, the chapter sums up by putting differences in monetary and non-monetary (in kind) compensation between legal systems before the reader.

Chapter Two: The Arbitration Contract and Commercial Arbitration in GCC Laws: This chapter explores arbitration, which has become an important alternative to traditional litigation, especially in the business context. The chapter begins with an overview of arbitration, contrasting it with mediation and explaining how both resolve disputes. We will look at the purpose of mediation from the legal perspectives of Islam, Europe, and the Arab world. Also, It would be on the Islamic idea of “ṣulḥ” (which is analogous to modern mediation) that we will center. This chapter will provide an overview of the use of arbitration in a variety of legal areas, including insurance, intellectual property, family law, and real estate disputes. Since arbitration is becoming more and more accepted, commercial cases generally prefer arbitration, while family matters typically go to mediation in the GCC.

As I discuss the benefits of mediation, I will emphasize its flexibility. I will also highlight the differences between mediators and arbitrators by focusing on the roles they perform in conflict resolution. The chapter will also feature the actual practice of arbitration, spelling out the need for arbitration agreements to be in writing. The chapter examines the growth of

arbitration in the regions of the GCC, specifically in the UAE, Saudi Arabia, and Qatar, looking at how each has assimilated it into their system of conflict resolution. The Saudi Arbitration Law has both an old version and a new version. I shall detail the deficiencies of the older version, which included the requirement for arbitrators to be male, and for proceedings to be conducted in Arabic. On the other hand, under the new law, there are greater flexibility with respect to the appointment of female arbitrators as well as the conduct of arbitration in language(s) other than Arabic.

I will explore the development of the UAE into a worldwide center for arbitration, with an emphasis on arbitration institutes as well as legal reforms aimed at creating a more favorable environment for international arbitration. This chapter will discuss the elimination of gender and nationality restrictions on UAE arbitrators and the changes made to increase arbitration flexibility. Furthermore, I will examine the legislative structure of arbitration in Qatar, emphasizing the 2017 enactment of the Civil and Commercial Arbitration Law. I will analyze the impact of Islamic and Maliki jurisprudence on Qatar's arbitration legislation, as well as compare the jurisdictional distinctions between state law and the Qatar Financial Centre (QFC) regulations.

3. Thesis Objectives

The concept of responsibility is the primary source for knowing who the party was that breached the contract so that we can resort to the law regarding it. As previously mentioned, there are various types of responsibility, and this thesis will focus solely on studying civil responsibility, particularly contractual responsibility. It will also briefly touch on tort responsibility, which is part of civil responsibility, and criminal liability. When we have a complete picture of liability, we will notice that resorting to the courts to sue the party that breached the contract or caused harm requires knowing who is responsible. This is why I studied responsibility, so I could build on the idea of resorting to arbitration, as the party harmed by the breach of contract has two options: go to court, which takes a long time and effort, or use arbitration, which is shorter and gives the same result. In this period of time, the GCC plays a crucial role in shaping

the global economy because the GCC is the main source of oil and gas. Therefore, we will notice that the percentage of income per capita is increasing over time in the GCC. The business sector in the GCC countries is experiencing a steady increase over time, primarily due to the growth of industries that attract investors, such as the oil and real estate sectors.

With the growth of the economy in the GCC countries, the legal issues facing companies operating in the GCC countries also increase, and since companies know the value of time and since resorting to courts takes a long time to resolve these issues, this has prompted companies and individuals to search for alternative solutions. This has led to the emergence of modern concepts such as arbitration and mediation. In this thesis, I aim to shed light on how the State of Qatar, the United Arab Emirates, and the Kingdom of Saudi Arabia deal with liability and arbitration in line with modern laws and explore the concept of liability and arbitration in Islamic law by studying the arbitration laws of the countries under study. At the same time, I aim to investigate the extent to which women can be part of the arbitration board in the Gulf Cooperation Council countries, which consider Islam the main source of laws and the constitution in some Gulf countries, such as Saudi Arabia.

II. LITERATURE REVIEW

1. The legal basis in GCC

Section 18 of the International Law of GCC, which relates to equal protection of parties, establishes the parties' entitlement to due process. "The parties will be treated equally, and each side should be offered a complete chance to submit its case"[30]. Article 18's goal is to create a framework for the efficient and equitable conduct of arbitral proceedings, as well as to guarantee that the required character of these standards is continuously enforced by national courts, from which the litigants cannot depart. All well-known legal systems demand that litigants be considered equally across the board; each party should be offered a reasonable opportunity to state its argument and deal with the opponents. Suppose the sides can agree to oral

[30]Babar, Zahra. "The “Enemy within” Citizenship-Stripping in the Post–Arab Spring GCC." Middle East Journal 71.4 (2017): 525-543

proceedings to present information. In that case, the tribunal shall convene, and the tribunal should guarantee that the parties are given adequate notice of the hearing. However, the parties' authority to dictate procedural components of the hearing, like the schedule or length, is limited.

According to Kuwait courts, the aim of Article 18 is to safeguard a party against outrageous and injudicious behavior by an arbitration court, not to defend a party from its errors and corporate strategy[31]. The United Arab Emirates courts also have made clear this component, holding that while the arbitrator should not surprise the stakeholders with its ideas, where a party should be aware of legal issues, the high court's persistence on those issues does not amount to a breach of judicial oversight since the party failed to recognize it[32].

However, a party's entitlement to see all declarations, papers, or other material provided to the arbitration court by one party is incorporated in this due process provision. Section 24(3) of the Model Law explicitly recognizes this right. The right to fair trials is likewise enshrined in GCC laws, which stipulate that an award may be denied if the party seeking recognition can show that it did not provide appropriate notice of the arbitral process or was somehow unable to submit its case. Consequently, an effort was made to tighten the procedural fairness wording, not to lessen the freedoms of all parties but to stop the abuse of much more permissive language that can inspire excessive procedural requests. For instance, Article 15(1) of the 1976 United Nations Commission, on International Trade Law (UNCITRAL) Rules specified that every party should be given "a complete chance " to submit their argument "at any stage of the procedures". Article 17(1) of the 2013 UNCITRAL Rules provides for "a fair opportunity" to express one's case "at any level of proceedings"[33]. The goal of this metamorphosis is to stay out of trouble.

[31]Alghanim, Bashayer. "The enforcement of foreign judgments in Kuwait." Journal of Private International Law 16.3 (2020): 493-518

[32]Blanke, Gordon. "Free zone arbitration in the United Arab Emirates: DIFC v. ADGM :(Part I)." Journal of International Arbitration 35.5 (2018).

[33]Caron, David D., and Lee M. Caplan. The UNCITRAL arbitration rules: a commentary. Oxford University Press, 2013.

2. Overview of Arbitration

Arbitration is a form of disagreement resolution wherein parties agree to have their disagreement decided by a private third-party selection rather than going to court. The parties agree ahead of time that the decision-decision makers will be enforceable but instead advisory to them[34]. While arbitration is sometimes regarded as a type of alternative conflict resolution, and it gives an option to the litigation process, arbitration's success is mainly due to government and judicial assistance.

As a result, although one of arbitration's main advantages is that it allows parties to settle their disputes in ways other than those used by national courts, it's important to note that arbitration is still strongly reliant on legal systems and appeals laws. Arbitral institutions have lately risen to prominence as influential players with new roles. Private arbitrate organizations have always served primarily economic purposes[35]. Commercial arbitral organizations have been progressively involved in activities that might be described as privatizing civil justice, not only through curtailing the concept of parliamentary sovereignty in commercial arbitration procedures.

This new public role of arbitration tribunals has been assisted by government servants trying to push for arbitral proceedings in dispute settlement and regulation disagreements in the customer, power, and telecommunication services sectors inside the European Union's marketplace[36]. Irrespective of public criticism, this growing public function suggests that policymakers believe arbitration (especially in its institutional variation) is legal and efficient. Simultaneously, users of business arbitration are publicly arguing that (institutional) arbitration lacks the credibility, effectiveness, and adaptability that they require.

---

[34]Warwas, Barbara Alicja. "The Triad of Modern Functions of Arbitral Institutions—in Search of the Sources and Scope of Institutional Arbitral Liability." The Liability of Arbitral Institutions: Legitimacy Challenges and Functional Responses. TMC Asser Press, The Hague, 2017. 117-196.

[35]Pusceddu, Piergiuseppe. "Book review: The Liability of Arbitral Institutions: Legitimacy Challenges and Functional Responses, by Barbara Alicja Warwas.(TMC Asser Press, The Hague, 2016,)." Asian International Arbitration Journal 15.1 (2019). 59 – 62

[36]Rezvanian, Oveis. "Legal liability of arbitration institutions arising from refusal to administer referred cases." Private Law Research 7.24 (2018): 37-64.

III. METHODOLOGY

This thesis will employ a comparative analytical study method to note how commercial disputes are settled and who is responsible on the law. It will concentrate on arbitration practices in the United Arab Emirates, the State of Qatar, the Kingdom of Saudi Arabia, and Islamic law. Part of the study will be a systematic comparison of arbitration frameworks, looking at the laws, rules, and real-life uses of arbitration in each of the countries under study and research. We will gather data through a combination of legal texts, case law, and scholarly articles. Comparative analysis will determine the attributes, dis-attributes, and performance of both systems as they pertain to commercial disputes settlement in conformance with the Islamic Jurisprudence. While ultimately seeking to have a rich reading of the similarities and differences in arbitration practices of these areas and their wider implications for legal liability in commercial disputes.

CHAPTER ONE:
THE CONCEPT AND TYPES OF RESPONSIBILITY, INCLUDING LEGAL AND VICARIOUS RESPONSIBILITY

I. RESPONSIBILITY

A. DEFINITION OF RESPONSIBILITY

To discuss responsibility, we first must define it both linguistically and legally. When we looked up definitions in dictionaries, we found several variations, including:

- A duty to perform or complete a task that one must fulfill, with a consequent penalty for failure[37] .
- Something that is your duty to handle with[38].
- The state or position of being responsible[39]
- Having responsibility for someone or something[40].
- Responsibility is the condition of being responsible, liable, or accountable for something within one's authority or management[41].
- A duty to oversee someone or something, making decisions and being blamed if something bad happens, or blame for something bad that has happened, both as part of your job or duty or because it is morally or socially right, and as a personal duty[42]
- Monitoring an individual or entity to ensure their actions or circumstances are appropriate or suitable is an obligation inherent to your role or proposition[43].

We can also define responsibility as:

- The phrase "one's own responsibility" refers to acting on one's own initiative or authority.

---

[37]BusinessDictionary.com. (n.d.). Online Dictionary. Retrieved from http://www.businessdictionary.com

[38]Cambridge Online Dictionary. (n.d.) Retrieved from http://dictionary.cambridge.org/dictionary/british

[39] Concise Oxford Dictionary. (1964). Concise Oxford Dictionary (5th ed.). Oxford University Press.

[40]Collins English Dictionary. (n.d.). Retrieved from http://www.collinsdictionary.com/dictionary/english

[41]Dictionary.com. (n.d.). Online Dictionary. Retrieved from http://dictionary.reference.com

[42] Longman Dictionary of Contemporary English Online. (n.d.). Retrieved from https://www.ldoceonline.com/

[43]Macmillan Dictionary. (n.d.). Retrieved from http://www.macmillandictionary.com

- The quality or state of being responsible, or something for which one is responsible[44].
- The obligation or circumstance of managing a matter, exercising authority over an individual, or being responsible or culpable. It also denotes the capacity or capability to operate alone and make judgments without permission. Furthermore, it encompasses a responsibility that one must fulfill as part of a career, role, or legal duty[45].
- It involves the condition of being accountable for an individual or object for which one bears responsibility. Ultimately, it encompasses the capacity or jurisdiction to act and make decisions independently, without oversight[46].

In addition, we can see other linguistic definitions, such as:

- Responsibility as a noun: something that is your job or duty to do. For instance, It is your responsibility to ensure timely completion of the work.
- Care is a synonym for care (protection), charge (control), custody (care), and guardianship (formal).
- To have responsibility means to be in a position of authority over someone and to have a duty to get certain things done. For example, who has responsibility here? For instance, Jenny, it's your responsibility to collect the books after class.
- To have a responsibility for someone means to have a duty to work for or help someone in a position of authority over you. For example, the company says it cannot cut its prices anymore because it has a responsibility to its shareholders.

Related terms and phrases:

- Responsibility (BLAME): Blame for something that has occurred. For example, “Terrorists have claimed responsibility for yesterday's bomb attack.” The minister took/accepted full responsibility for the disaster and resigned.
- Responsibility (GOOD JUDGMENT): Good judgment and the ability to act correctly and make decisions on your own. For example, “He has no sense of

[44]Merriam-Webster Online Dictionary. (n.d.). Responsibility. Merriam-Webster. Retrieved from https://www.merriamwebster.com/dictionary/responsibility

[45]Oxford Dictionaries Online. (n.d.). Retrieved from https://www.oxfordlearnersdictionaries.com/

[46]The Free Dictionary Online Dictionary. (n.d.). Retrieved from http://www.thefreedictionary.com

responsibility," or "The job carries a lot of responsibility (it involves making important decisions)[47]."

- The condition of being accountable: the obligation to provide an account; accountability; responsible for; answerable for[48].

Responsibility can also be defined as[49]:

- Accountability is the obligation to be responsible, answerable, or accountable for something under one's authority, control, or management. This exemplifies accountability. "You are accountable for this disarray!"
- A specific encumbrance of duty imposed on someone in a position of power.
- An entity for which someone has responsibility, for example, a child who is responsible for his parents. Responsibility includes being responsible for something, often called a 'burden or duty,' and the quality or state of being accountable, which can be moral or legal[50].

Regarding the Arabic dictionaries, we notice that there are many different definitions, the most prominent of which are:

- According to Al-Munajjid's lexicon, responsibility is defined as: "What a person is responsible for and is claimed for matters or actions that they have done[51] or "For a person to bear the consequences of forbidden actions that they commit voluntarily while aware of their meanings and consequences[52]."
- The Arabic language community in Cairo defined it as: "A person's feeling of moral obligation to the results of his administrative actions, and he is held accountable for them, whether good or bad[53]."
- Miqdad Yalgen said that responsibility means: "Bearing a person as a result of his obligations, decisions, and scientific choices, both positively and

[47]The Cambridge Advanced Learner's Dictionary & Thesaurus. (n.d.). Cambridge University Press.
[48]Wiktionary Online Dictionary. (n.d.). Retrieved from http://en.wiktionary.org
[49]Dictionary.com. (n.d.). The definition of responsibility is provided. Retrieved from https://www.dictionary.com/browse/responsibility
[50] Merriam-Webster Online Dictionary. (n.d.). Responsibility. Merriam-Webster. Retrieved from https://www.merriam-webster.com/dictionary/responsibility
[51]Maalouf, L. (2003). Al-Munajjid appears in Language and Information (1st ed.). Dar Al-Mashreq.
[52]Odeh, A. Q. (n.d.). Odeh, A. Q. (1st ed., p. 392) compares criminal legislation to positive law. Dar Al Orouba.
[53]Academy of the Arabic Language in Cairo. (1979). The philosophical lexicon (prepared and printed by the General Authority for Amiri Press Affairs).

negatively, before God in the first degree, before his conscience in the second degree, and before society in the third degree[54]."

- According to the Nazrat al-Na'im encyclopedia: "Responsibility is a state in which a person is fit to be held accountable for his actions and is bound by their various consequences[55]".
- Dr. Abdullah Draz defined it as: "Responsibility is the fact that an individual is required to do some things and give an account for them to others.[56]"
- Mustafa Al-Sabri defined it as: "A person's fitness for what he encounters in this world and the hereafter, and whoever comes to his work.[57]"
- Dr. Ahmed bin Abdel Aziz defined it as: "The capacity of a person to be required by Sharia to comply with commandments, avoid prohibitions, and be held accountable for them.[58]"

In my opinion, responsibility in language refers to the state of being accountable for one's actions or decisions and the obligation to take care of or answer for something. This includes tasks, duties, and obligations that a person must attend to, as well as the consequences of their actions. The term also characterizes an individual's degree of accountability and their capacity to assume responsibility for their actions and choices.

Incidentally, when we learned about responsibility, we noticed that there is a person called the responsible one; but who is this person? Now we will find out.

B. DEFINITION OF ADMINISTRATOR

Indeed, there are many definitions, such as having control and authority over something or someone, along with the duty of taking care of it, him, or her[59]; having power or authority over something; being accountable for one's

[54]Yaljin, L. (1977). Islamic moral education (1st ed., p. 331). Al-Khanji Library.
[55]Al-Hamid, S. b. A. (Ed.). (1418 AH). Encyclopedia of the freshness of bliss in the honorable ethics of the Messenger, may God bless him and grant him peace (1st ed., Vol. 8, p. 2400). The book was published and distributed by Dar Al-Wasila.
[56]Daraz, A. (1982). The code of ethics can be found on page 136. The text can be found in A. S. Al-Shaheen's book, Definition, commentary, and commentary (4th ed.). Al-Risala Foundation.
[57]Sabri, M. (1352 AH). Sabri, M. (1st ed., p. 171) discusses the position of human beings under the sultan of destiny. The Salafist Press.
[58]Al-Halibi, A. b. A. (1994). Al-Halibi, A. b. A. (1994) is the author of "Moral responsibility and part thereof" (1st ed., p. 71). Al-Rushd Library.
[59]Cambridge Online Dictionary. (n.d.). Retrieved from http://dictionary.cambridge.org/dictionary/british

actions and decisions; or (of a position, duty, etc.) involving decision-making and accountability. Often followed by "for," it refers to being the agent or cause of some action, being able to make rational decisions without supervision, and being accountable for one's own actions. It also refers to the ability to meet financial obligations and having sound credit[60]. Alternatively, an administrator may face accountability, answerability, or accountability for actions within their power, control, or management[61]. It can also mean involving accountability or responsibility[62]. If someone is responsible for an accident, mistake, or crime, it means it is their error, and they can be blamed. Administrators may also be responsible for overseeing someone or something or be the main cause of an event and blamed or credited for it.

Furthermore, an administrator is expected to be sensible, reliable[63], and trusted to make excellent judgments; this includes being accountable for an act performed or its consequences, especially in legal or political contexts. It also involves the capacity to make moral or rational decisions independently, thus being answerable for one's behavior[64]. An administrator should also be trustworthy and reliable, showing the ability to discharge obligations and meet responsibilities. An administrator is generally answerable for their conduct and obligations, capable of rational thought or action, and trustworthy in both business and other dealings[65]. Often, their role involves making decisions with minimal supervision, managing others, and ensuring correct execution[66]. We expect an administrator to be the primary cause or agent of some event or action, and therefore, they may face liability[67].

---

[60]Collins English Dictionary. (n.d.). Retrieved from http://www.collinsdictionary.com/dictionary/english

[61]Concise Oxford Dictionary. (1964). Concise Oxford Dictionary (5th ed.). Oxford University Press.

[62]Dictionary.com. (n.d.). *Online Dictionary*. Retrieved from http://dictionary.reference.com

[63]Macmillan Dictionary. (n.d.). Retrieved from http://www.macmillandictionary.com

[64]Longman Dictionary of Contemporary English Online. (n.d.). Retrieved from https://www.ldoceonline.com/

[65]The Free Dictionary Online Dictionary. (n.d.). Retrieved from http://www.thefreedictionary.com

[66]Oxford Dictionaries Online. (n.d.). Retrieved from https://www.oxfordlearnersdictionaries.com/

[67]Wiktionary Online Dictionary. (n.d.). Retrieved from http://en.wiktionary.org. Also, McGrath, S. K., & Whitty, S. J. (2018). Accountability and responsibility defined. International Journal of Managing Projects in Business.

In summary, an administrator is someone with the capacity to act independently, make decisions, and bear responsibility for their actions and the outcomes of those actions. Responsibility involves performing an act, while accountability refers to being called to account for those actions.

The etymology of the word "responsibility" comes from the condition of being responsible, with its noun form "-ity" indicating the state of being accountable. "Responsibility" pertains to the individual's or organization's duties and obligations[68]. Another important point for understanding responsibility is related terms like "accountability" and "accountable". To begin with, accountability means the responsibility of an individual or institution to account for its activities, accept accountability for them, and divulge the results transparently. It also includes accountability for money or other entrusted property[69]. Accountability entails providing a suitable rationale for acts, guaranteeing that an individual can be held responsible for certain outcomes, and elucidating their condition or quality[70]. One can define accountability as the state of being answerable, liable, or responsible for one's actions[71]. Calling someone to account for something also demonstrates responsibility[72]. Responsibility involves doing, whereas accountability involves reporting[73].

The phrase accountable generally refers to being responsible for one's actions, fulfilling assigned duties, or performance outcomes. It specifically denotes the need to provide an account of funds or other assets received[74]. A person who is accountable must explain their actions and be fully responsible[75]. This encompasses the obligation to provide an explanation and take

[68] Harper, D. (2017). Digital etymological lexicon. Douglas Harper. Source: https://www.etymonline.com/

[69]BusinessDictionary.com. (n.d.). Online Dictionary. Retrieved from http://www.businessdictionary.com

[70]Cambridge Online Dictionary. (n.d.). Retrieved from http://dictionary.cambridge.org/dictionary/british

[71]Dictionary.com. (n.d.). *Online Dictionary*. Retrieved from http://dictionary.reference.com

[72]Macmillan Dictionary. (n.d.). Retrieved from http://www.macmillandictionary.com

[73]Merriam-Webster Online Dictionary. (n.d.). Merriam-Webster. Retrieved from http://www.merriam-webster.com.

[74]BusinessDictionary.com. (n.d.). Online Dictionary. Retrieved from http://www.businessdictionary.com

[75]Cambridge Online Dictionary. (n.d.). Retrieved from http://dictionary.cambridge.org/dictionary/british

accountability for their actions[76]. Authority over the task or role under consideration is necessary for accountability. In the absence of basic authority, any discourse on accountability is simply superficial rhetoric. Accountability signifies professionalism and represents a superior quality compared to responsibility. As articulated, only responsibility can be assigned to suitable individuals—accountability cannot be transferred.[77].

In conclusion, responsibility is an obligation to perform a task satisfactorily; being responsible means accepting an obligation to perform a task; accountability is the liability to ensure the task is performed satisfactorily; and being accountable involves having the responsibility for ensuring a task is completed properly.

C. KINDS OF RESPONSIBILITY

Now that we have understood what responsibility means and have been able to distinguish between similar terms, we will continue our discussion of responsibility. The definitions of responsibility we use imply that there are two kinds of responsibility, as outlined below:

1. MORAL RESPONSIBILITY

Moral responsibility refers to when a person performs or fails to perform a morally significant action. In such cases, we often believe that a specific type of response is appropriate. Praise and blame are arguably the most evident manifestations of these emotions. For instance, people may view someone who rescues a child from a burning car as deserving of praise. On the other hand, people may blame someone who uses their mobile phone to call for help during the accident. Regardless of receiving commendation or censure, individuals are accountable for their conduct. These exemplify other-directed distributions of responsibility. The reaction may also be introspective, as when an individual acknowledges personal culpability. Therefore, being morally accountable for an activity entail deserving a specific type of responses such as praise, blame, or a comparable reaction—for its execution[78].

---

[76]Concise Oxford Dictionary. (1964). Concise Oxford Dictionary (5th ed.). Oxford University Press. Also: Wiktionary Online Dictionary. (n.d.). Retrieved from http://en.wiktionary.org

[77]Cornock, M. (2011). Legal definitions of responsibility, accountability, and liability. Nursing Children & Young People, 23(3), 25-26.

[78]Adkins, A. W. H. (1960). Merit and Responsibility: A Study of Greek Values. Oxford: Clarendon Press.

The philosophical contemplation of moral obligation has a lengthy historical background. The enduring interest in the topic arises from its evident relation to our self-perception as individuals. Numerous individuals assert that a defining characteristic of persons is their status as morally responsible agents, a status that, according to some, is based on a unique form of control that only humans can exert[79]. Numerous individuals with this viewpoint have contemplated whether the veracity of specific alternative assertions regarding the world jeopardizes their distinct position. Can an individual be ethically accountable for her actions if they can be exclusively elucidated by the physical condition of the universe or the rules that dictate alterations in those conditions? Can moral responsibility exist if a sovereign God directs the world along a divinely predetermined course? Such concerns have frequently prompted contemplation on moral responsibility[80].

Legal responsibility may be considered as a part of moral responsibility. A significant intersection exists between legality and morality, even across different moral frameworks. Their differences exemplify a limited number of instances where moral acceptability or obligation contravenes legal statutes. For instance, hospital workers may strike in order to receive their wages, a legal yet morally unacceptable action. Similarly, there are many actions that are legally acceptable but morally despicable, such as commenting that the food served to you as a guest "tastes terrible.[81]"

Additionally, many people believe that criminal responsibility should follow moral responsibility. In other words, an individual should be held criminally accountable for an act, such as causing someone's death, only if they can be held morally responsible for that act. Analysts often examine moral responsibility in terms of two conditions: control and knowledge. If I accidentally broke a valuable Ming vase while walking or running down your home, you might hold me morally responsible for the damage[82]. However, if I lacked control over whether I knocked the vase over or if I didn't know—or

[79] Barnes, J. (1984). The Complete Works of Aristotle: The Revised Oxford Translation (two volumes). Princeton University Press.
[80] Eshleman, A. (2014). Moral responsibility (p. 3).
[81]Asaro, P. M. (2007). Robots and responsibility from a legal perspective. Proceedings of the IEEE, 4(14), 20-24.
[82]Aristotle. (2000). Nicomachean ethics (R. Crisp, Trans.). Cambridge University Press.

could not reasonably have known—that the vase was there, I am not morally responsible for its breakage. Similarly, I will be held criminally responsible for damaging your vase. only if I controlled the action and knew that my conduct could lead to it breaking. In the absence of a voluntary act—such as moving my body involuntarily—I may be causally responsible for the damage, but I would not be morally or legally responsible for it. If I had no intention of breaking the vase or awareness that it could be damaged, it would be unjust to condemn me for unknowingly causing the harm[83].

When we look at examples of "absolute" or "strict" criminal liability, which are crimes that are illegal no matter what the person doing them knew or intended, this doctrine makes a lot of moral sense. For instance, it may be an offense to pollute water, even if the person causing the pollution does not know and could not reasonably have known that they were doing so. However, it would be unjust to convict someone based on facts of which they were faultlessly ignorant[84].

The other discussion focuses on the truth that criminal responsibility involves condemnation or censure. Someone convicted of a crime suffers not only a material burden but also condemnation as a wrongdoer. Justice asks us to condemn and punish only those who deserve such censure. If a person was not morally at fault because they lacked control or knowledge, they should not be condemned for the harm caused. This doctrine has many implications, including the meaning of the "voluntary act" requirement, whether it should be a criminal responsibility requirement, and whether it follows from the control requirement. Furthermore, discussions about how different types of faults or means rea (the mental state) should be defined and why negligence should sometimes, but not always, be a ground for criminal responsibility are crucial for understanding criminal law[85].

[83]Chalmers, J., & Leverick, F. (2008). Fair labelling in criminal law. Modern Law Review, 71, 217.
[84]Dubber, M. D., & Kelman, M. G. (2005). *American Criminal Law: Cases, Statutes, and Comments*. Foundation Press.
[85]Fischer, J. M. (1999). Recent work on moral responsibility. Ethics, 110. 93. For more about that we can see: Duff, A. (2009). Legal and moral responsibility. *Philosophy Compass*, 4(6): 978-986.

Arab legal systems vary by country and can be based on Islamic law (sharia), civil law, or traditional or customary law. Arab legal systems also emphasize moral responsibility and often link it to accountability and justice. Legal punishments in Islamic law, for example, are viewed as a means of achieving justice and maintaining social order, with individuals being held accountable to God for their actions.

In civil and criminal cases, moral responsibility can also be a factor, with individuals being held accountable for their actions and the harm they may cause. Arab law recognizes both legal and moral responsibility. This implies fulfilling all legal or custom-based obligations. Customized actions are expected to be legally binding, even if not written down. For example, in the Jordanian Civil Code, Article 224[86], and Article 43 of the Journal of Justice (civil law in Palestine) [87], both legal and moral responsibility are recognized. To clarify, consider the case where a person can swim and sees someone drowning but does not save them. Some jurists assert that the law would hold the individual responsible[88].

2. LEGAL RESPONSIBILITY

After discussing moral responsibility, we will now talk about legal responsibility. In this section, we will explore various definitions and types of legal responsibility. The following are some definitions to help us understand what legal liability means: when someone causes harm because of an action, the person responsible for the harm must compensate for the damage. A court recognizes and enforces other types of legal responsibility in cases where parties sue each other. The court determines the liable party's obligation to compensate for the harm their actions have caused[89].

We can also say that legal responsibility arises when a party is held liable for something. In civil cases, a defendant solely faces liability, unlike in

[86]Jordan. (1976). Civil Code No. 43 of 1976 (Art. 224). Retrieved from https://resourceequity.org/record/756-jordan-civil-code/

[87]Ottoman Judicial Rulings Magazine. (1876). Ottoman Judicial Rulings Magazine (Art.43). Retrieved from https://maqam.najah.edu/legislation/158/

[88]Al-Issa, & Masoud, S. A. A. (2016). Law and custom in the United Arab Emirates. Also for more: Calliess, G.-P. (2007). The making of transnational contract law. Indiana Journal of Global Legal Studies, 14(2), 469-483.

[89]Law Insider. (n.d.). Legal responsibility. Retrieved December 28, 2024, from https://www.lawinsider.com/search?q=legal+responsibility

criminal cases where a conviction could occur. In civil liability, a party can be held accountable for their own actions, their own inactions, or the actions of others for which they are legally responsible. Furthermore, it is important to recognize that legal responsibility extends not only to natural people but also to legal people (such as corporations). This means that legal liability can apply to businesses as well, making them financially liable for their actions. Such judgments can result in fines, penalties, or other payments[90].

Additionally, legal responsibility refers to being accountable for an act one undertakes, while accountability means being called to account or being obligated to perform a task satisfactorily[91]. Regarding Arab jurisprudence, we find that responsibility is not always explicitly defined within legal texts. However, jurisprudence has worked to clarify the concept and develop a set of clear definitions. Some of these definitions include the judgment that entails accountability for the person who has committed a specific act [92] or the penalty resulting from violating a duty, regardless of the source of that duty [93].

We can also say that responsibility involves compensating for damages arising from an illegal act. This illegal act could be a breach of contract, which is called contractual responsibility, or damage to others, whether intentional or unintentional, known as tort liability[94]. In my view, legal responsibility refers to the judgment resulting from a person committing an act that requires accountability. The law, in its broadest sense, serves as the source of the violated rule, establishing legal responsibility.

Now, all the definitions describe your legal responsibility for yourself, but what about your legal responsibility for others? This is a crucial point that I plan to research further later. After discussing the types of responsibility—moral and legal—it is important to understand the differences between them:

---

[90]Legal Information Institute. (n.d.). Academic programs. Charleston School of Law. Retrieved from https://www.charlestonlaw.edu/academic-programs/

[91]McGrath, S. K., & Whitty, S. J. (2018). Accountability and responsibility defined. International Journal of Managing Projects in Business, 11(1), 4-17.

[92]Mark, S. (1992). Al-Wafi explanation of civil law (5th ed., Vol. 1, p. 300). Revised by H. I. Al-Khalili. Knowledge Facility.

[93]Mansour, A. M. (2001). The general theory of obligations (1st ed., p. 244). North Sources. The Scientific House & The House of Culture.

[94]Abd al-Razzaq al-Sanhouri. (n.d.). Mediator in civil liability (Part 1). Egypt.

1. Moral responsibility is based on a subjective element, which is the conscience, and is a responsibility before God or before one's conscience. Therefore, the individual responsible for the action is both the adversary and the judge. In contrast, legal responsibility is based on an objective element and is the responsibility of one person to another.
2. Moral responsibility is more general and broader in scope than legal responsibility because it does not require harm to others. On the other hand, legal responsibility only exists if there is damage to others, whether that harm is inflicted on an individual or the entire community.

A. TYPES OF LEGAL RESPONSIBILITY

Now, I believe this is an appropriate point to begin discussing the types of legal responsibility. There are two main types: criminal responsibility and civil responsibility. However, my research primarily focuses on civil responsibility, excluding criminal responsibility from the main discussion. I will briefly mention criminal responsibility, but then we will shift our focus to civil responsibility.

Type one: criminal law primarily concerns actions. It defines crimes such as killing a human being, damaging another's property, or driving dangerously. Individuals may face conviction and punishment for such actions. Legal theorists often investigate the deeper basis of criminal liability, looking beyond the actions themselves to identify the "real" focus of criminal responsibility. Their argument is that criminal responsibility ultimately depends not just on the actions but on something underlying those actions: either the individual's "choice" or their "character." In other words, what justifies conviction and punishment must be rooted in either the defendant's wrongful choice or a defect in their character revealed by their criminal conduct[95].

[95]Recent contributions to this debate include: Pincoffs, E. L. (1973). Legal responsibility and moral character. Wayne Law Review, 19, 905-923. Fletcher, G. (1978). Rethinking criminal law (ch. 10.3). Little, Brown. Bayles, M. D. (1982). Character, purpose, and criminal responsibility. Law & Philosophy, 1, 5-20. Brand, R. B. (1985). A motivational theory of excuses in the criminal law. In J. Pennock & J. Chapman (Eds.), Criminal justice, Nomos 27 (pp. 165-198). New York University Press. Kadish, S. (1987). Excusing crime. In S. Kadish, Blame and punishment (pp. 81-106). Macmillan. Vuoso, G. (1987). Background, responsibility and excuse. Yale Law Journal, 96, 1661-1686. Lacey, N. (1988). State punishment (ch. 3). Routledge. Dressier, J. (1988). Reflections on excusing wrongdoers: Moral theory, new excuses, and the model penal code. Rutgers Law Journal, 19, 671-716. Moore, M. S. (1990). Choice, character, and excuse. Social Philosophy & Policy, 7, 29-58. Arenella, P. (1990).

On the other hand, there are two types of civil responsibility: tort responsibility and contractual responsibility. Since my research deals with commercial arbitration contracts and the liability arising from them, we will focus on contractual responsibility, leaving tort liability outside the scope of this discussion.

THE FIRST KIND: TORT RESPONSIBILITY

Here, we only need to touch on the definition of tort liability. We will exclude it from the discussion because it is not within the scope and limits of our research. This is because the research focuses on commercial arbitration contracts, and the responsibility arising from such contracts should be included under contractual responsibility[96]. We will only consider the most famous definitions, even though this research excludes tort responsibility. The idea of "tort law," for instance, is more common in common law systems. In civil law systems, it's more commonly known as the law of extra-contractual liability, the law of non-contractual obligations, or civil responsibility for delicts/quasi-delicts [97].

Tort law examines the relationship between parties. The plaintiff's complaint is not that she suffered, nor that she was caused to suffer by the defendant, nor that her suffering was the result of his wrongdoing. Rather, her complaint is that her suffering was wrong because the defendant had no right to injure her in that way[98]. Perry's tort law view of responsibility is one of the most significant tort liability ideas. Stephen Perry gave a strong explanation of the idea of responsibility. Perry counted on what Honoré, Coleman, and Weinrib had expressed and said that tort law holds a defendant responsible to the plaintiff by making the defendant do the right thing and compensation for the plaintiff's loss. This task is based on the defendant's "outcome-responsibility" for the loss. To sum up, a person is responsible for a result if

---

Character, choice and moral agency. Social Philosophy & Policy, 7, 59-83. Pillsbury, S. H. (1992).

[96]Dimatteo, L. A. (1997). An international contract law formula: The informality of international business transactions plus the internationalization of contract law equals unexpected contractual liability. Syracuse Journal of International Law & Commerce, 23(67).

[97]Enneking, L. F. H. (2012). Foreign direct liability and beyond: Exploring the role of tort law in promoting international corporate social responsibility and accountability (p. 55).

[98]Ripstein, A. (2003). The division of responsibility and the law of tort. Fordham Law Review, 72, 1811. Also: Coleman, J. L. (1987). The structure of tort law.

they make a choice that causes a loss, even if they know they could have done something different to avoid it. Importantly, this account lets more than one person be responsible for a loss, including the victim herself [99]. In other words, someone is outcome-responsible for a loss just because they caused it when they could have avoided it. In this case, if I hit something, I would have a moral obligation to deal with the result.

But because I was driving carefully, I might only have to pick up the thing and put it where it belongs. Accidents like this happen all the time, so both the driver and the passenger could see what was going to happen. Both of their actions were necessary for the loss to happen. Therefore, both the pedestrian and the driver are to blame for the loss of the passenger. If the pedestrian sued the driver for carelessness, she would be asking the state to help her hold the driver accountable.

Perry says that the state does this to answer the question of which of these two results means that responsible people should, in all fairness, pay for the broken arm. From what the plaintiff said, it's clear that the defendant was not only legally responsible for the loss, but also ethically responsible. So, he needs to pay the plaintiff for his damage[100]. Perry says that the focus of negligence law should be on what the defendant did instead of whether they are to blame. This is because fault determines who pays for a loss, while result responsibility determines who can pay.

When we want to figure out who is responsible for a loss, the fact that negligence law's "objective" standard wasn't met is enough of a reason, even if the person who didn't meet the standard can't be blamed for not doing so. Perry's certain responsibility theory of tort is strong because it organizes a lot of things that have to do with moral responsibility in a way that makes sense. It also makes sense of well-known parts of tort law, especially negligence law. What could have been avoided is given a lot of weight. It's not as important what hurts and causes it. There is more than one person to blame. You can

[99]Perry, S. R. (2001). Responsibility for outcomes, risk, and the law of torts. In G. Postema (Ed.), Philosophy and the law of torts (p. 505). Cambridge University Press.
[100] Goldberg, J. C. P., & Zipursky, B. C. (n.d.). Tort law and responsibility (p. 5). Retrieved from https://tinyurl.com/4rrvw5xw

admit faults in a less-than-full-blooded way. This fits with most people's morals and a linked set of tort ideas and rules[101].

In conclusion, I think that humans designed tort responsibility as a social construct to serve certain purposes, including the principle of corrective justice. Although it does not require a particular form of litigation, the principle of corrective justice restricts the types of litigation. In other words, tort responsibility is significant when there is no contract specifying the responsibilities arising from the damage.

THE SECOND KIND: CONTRACTUAL RESPONSIBILITY

Having discussed tort responsibility, we will now move on to contractual responsibility to explore it in detail. We will examine various aspects, such as definitions and key principles. We cannot research contractual responsibility without first understanding contract law. The traditional definition of a contract is that it encompasses all promises enforceable by law[102]. Essentially, a contract is an agreement between two or more parties (the parties to the contract) that produces legal effects, creating, modifying, or terminating legal relationships. Another term for it is a "bilateral legal agreement. [103]."

José Carlos Pereira, the researcher, also confirmed this definition in his study, "The Genesis of the Revolution in Contract Law: Smart Legal Contracts." Furthermore, we can view a contract as a legally enforceable agreement[104].

Another definition of a contract is a document that initiates, modifies, or ends a civil relationship within a company[105]. Another definition describes a contract as an agreement that aims to establish a legally binding relationship[106].

---

[101]Perry, S. R. (2001). Responsibility for outcomes, risk, and the law of torts. In G. Postema (Ed.), Philosophy and the law of torts (p. 509). Cambridge University Press.
[102]Schwartz, A., & Scott, R. E. (2003). Contract theory and the limits of contract law. Yale Law Journal.
[103]Cordeiro, A. (2005). Tratado de direito civil (p. 459). Coimbra.
[104]Clark, C. E. (1932). The restatement of the law of contracts. Yale Law Journal, 42, 643.
[105]Chen, F. (2001). The new era of Chinese contract law: History, development and a comparative analysis. Brooklyn Journal of International Law, 27, 153.
[106]Jansen, N., & Zimmermann, R. (2011). Contract formation and mistake in European contract law: A genetic comparison of transnational model rules. Oxford Journal of Legal Studies, 31(4), 625-662.

Legal scholars in France[107], Germany[108], Italy[109], and Spain view contracts as legally binding agreements that result in obligations[110]. This is in line with national civil codes and is agreed upon by legal scholars who follow the civil law tradition.

In Arabic jurisprudence, a contract is defined as "every obligation a person undertakes for himself, whether it is matched by another obligation or not, and whether it is a religious or worldly commitment, such as selling and the like[111]." Additionally, Arab laws define a contract as the connection between an offer by one party and the acceptance of the other, with their agreement proving the contract's effect and obligating parties to fulfill their duties[112]. In essence, the contract is the obligation of the two contracting parties to a matter that reflects the link between the offer and the acceptance[113].

In Islamic jurisprudence, a contract is characterized as a consensual and binding accord of two or more parties to establish enforceable rights and obligations. Al-Jurjānī describes it as a contract that obligates the parties involved through offers and acceptances[114]. The Ḥanafīs characterize it as the

[107]French Civil Code, Art. 1101. (2006.). Le contrat est une convention par laquelle une ou plusieurs personnes s'obligent, envers une ou plusieurs autres, à donner, à faire ou à ne pas faire quelque chose. Retrieved from https://tinyurl.com/ybhc2bp4

[108]Bürgerliches Gesetzbuch (BGB) (§ 145 et seq.). (n.d.). Does not refer explicitly to the notion of agreement. However, we can see: Protokolle der Kommission für die Zweite Lesung des Entwurfes des Bürgerlichen Gesetzbuchs, Band I. (1897). Berlin: I. Guttentag, p. 74. Man erachtet es nicht für nothwendig, im G.B. die begrifflichen Merkmale der Vertragsschliessung zu bezeichnen. Für die wissenschaftliche Entwicklung mache es keinen Unterschied, ob man den Paragraphen bestehen lasse oder aufhebe. In addition to: Somma, A. (2000). Autonomia privata e struttura del consenso contrattuale: Aspetti storico-comparativi di una vicenda concettuale. Milano. As well, Hedemann, J. W. (1935). Der Dresdner Entwurf von 1866. Ein Schritt auf dem Weg zur deutschen Rechsteinheit. Berlin: I. Guttentag.

[109]Italian Civil Code, Art. 1321. (1942). A contract is the agreement of two or more parties to establish, regulate or extinguish a patrimonial legal relationship among themselves. Retrieved, from https://faolex.fao.org/docs/pdf/ita197336.pdf.

[110]Spanish Civil Code, Art. 1261. (2016). There is no contract unless the following requirements concur: 1. Consent of the contracting parties; 2. A certain object which is the subject matter of the agreement; 3. Cause of the obligation established. Retrieved from https://tinyurl.com/yev8xrt8

[111]Ibn Rajab Al-Hanbali, A. Z. (795 AH). Jurisprudential rules. Dar Al-Kutub Al-Ilmiya. Also, Al-Ajouri, S. A. I. (2013). The contract theory of Sheikh Mustafa Al-Zarqa: A comparative jurisprudential study (PhD Thesis, Batch 2).

[112]Jordan. (1976). Civil Code No. 43 of 1976 (Art. 87). Retrieved from https://resourceequity.org/record/756-jordan-civil-code/

[113]Ottoman Judicial Rulings Magazine. (1876). Ottoman Judicial Rulings Magazine (Art. 103). Retrieved from https://maqam.najah.edu/legislation/158/

[114]Al-Jurjānī, ʻA. ibn M. al-Zīn. (n.d.). Al-taʻrīfāt (p. 153). N.p.: Dār al-Kitāb al-ʻArabī.

alignment of one contracting party's offer with the other party's acceptance[115]. The Shāfi‘īs define a contract as a forceful link between the offer and acceptance, while the Ḥanbalīs emphasize the specific meaning of a contract as an agreement between two or more parties to initiate or transfer obligations[116].

These definitions do not explicitly highlight the objectives of a contract, as they emphasize contracts that initiate obligations and rights. The Mālikī School's Imam al-Qarāfī explained what the Maqāʿid al-Sharī‘ah (objectives of Islamic law) of contracts are. In his seminal work al-Furūq, he reiterated that a contract, in principle, is binding as it is meant to achieve the legitimate objective of the contracting party and remove hardship. According to al-Qarāfī, the binding part is there to make things easier and reach the goals of a two-way agreement. Conversely, a one-way agreement achieves its goals without the need for a binding part[117].

Concerning the law of the Gulf Cooperation Council (GCC) countries, these countries essentially follow Islamic law in civil matters[118]. The Quran serves as the original source of Islamic contract law. The Arabic word ‘UQUD covers the entire field of obligations, including spiritual, social, political, and commercial obligations. The term uqud describes an individual's obligation to Allah in the spiritual realm, and it also refers to all social relations, including marriage contracts. A treaty obligation in the political realm encompasses all obligations of the parties related to their respective undertakings. This term also applies in the field of commerce, encompassing all the parties' obligations. Hence, the generic word ‘UQUD forms the basis for the creation of contracts and the attendant liabilities[119].

Now that we understand the meaning of a contract, we can begin to explore its pillars. In fact, there are two essential pillars: offer and acceptance.

---

[115]Kamāl al-Dīn, Ibn M. (n.d.). Sharḥ fatḥ al-qadīr (p. 178). Beirut: Dār al-Fikr.

[116]Zayn al-Dīn, ‘A. ibn R. al-Raḥmān ibn Rajab. (n.d.). Al-Qawā‘id. N.p.: Dār al-Kutub al-‘Ilmiyyah.

[117]Al-Qarāfī, Shihāb al-Dīn. (n.d.). Al-furūq. N.p.: ‘Ālam al-Kutub. For more: Souahli, Y. (2015). Application of Sharī‘ah contracts in contemporary Islamic finance: A maqāṣid perspective. Intellectual Discourse, 23.

[118]Legal and Judicial Cooperation. (n.d.). Retrieved from https://gcc-sg.org/en/Pages/default.aspx

[119]Mohammed, N. (1988). Principles of Islamic contract law. Journal of Law and Religion, 6(1), 115–130. Also, Amin, S. H. (1984). Remedies for breach of contract in Islamic & Iranian law (pp. 11–12). Moreover, Rahman, A. I. (n.d.). Shariah: The Islamic law (pp. 355–356).

An offer is a demonstration of willingness to make a deal, such that it justifies another person's understanding that his or her acceptance will complete the deal. Acceptance means deciding on the terms of the offer in the manner required[120].

On the other hand, an offer can be seen as an act on the part of one person, whereby they give another person the legal power to create an obligation, known as a contract. Acceptance involves exercising that power through the execution of other acts. Both offers and acceptance must express assent. These acts may each consist of a promise. In a promise, the promisor expresses their intention to act in a specific way in the future and invites the promisee to rely on that intention. If one of the acts is a promise, the contract is unilateral. If both acts are promising, the contract is bilateral. If neither act is a promise, the new set of legal relations, if any, does not constitute an obligation, and there is no contract[121].

Additionally, an offer can be defined as a firm and complete proposal to contract, directed either to a specific person or to an unspecified group of people[122]. Acceptance is an unequivocal expression of will by the person to whom the offer is addressed, resulting in the formation of the contract[123]. I believe that a contract is a legally binding agreement that is established by a proposal or statement of terms by one party to another. The opposing side may subsequently accept, reject, or propose a counteroffer. Upon acceptance of an offer, a contract is established.

Now that we understand what a contract means, begin to examine the issue of contractual responsibility. During this discussion, we will examine liability in detail, including definitions and the underlying principles. To better understand contractual responsibility, we will explore several definitions, as there are numerous interpretations, but we will focus on a few to gain a clearer understanding of the term. Contractual responsibility refers to the obligations

[120]KATZ, Avery. The strategic structure of offer and acceptance: game theory and the law of contract formation. Mich. L. Rev., 1990, 89: 215.p220.
[121]CORBIN, Arthur L. Offer and Acceptance and Some of the Resulting Legal Relations. Yale LJ, 1916, 26: 169.
[122]Offer and acceptance in the electronic contract in the light of the Algerian civil law. Journal of Research and Studies, 2022, 19.2: 307-332. https://www.asjp.cerist.dz/index.php/en/downArticle/202/19/2/198228
[123]Obaidat Lawrence Muhammad. Evidence of the electronic editor. 2005.p43

and duties outlined in a contract that is legally binding for all parties involved [124]. For instance, when an individual engages a contractor to construct a house, the contractor assumes a contractual obligation to fulfill the construction in accordance with the stipulations of the contract. This includes completing the work within a specific timeframe and meeting a certain quality standard. As expected of any professional service, the contractor also has an implied responsibility to perform the work with reasonable care and skill[125]. A variety of factors can influence an individual's contractual responsibilities. In addition to the type of contract, the laws of the jurisdiction where it is made, and any changes or amendments to it, there are other factors to consider. A contract requires all parties to clearly understand and fulfill their respective responsibilities[126].

In Arab jurisprudence, contractual responsibility is the penalty for nonperformance or improper performance of the contract. To establish contractual liability, it is assumed that there is a valid contract that must be executed, and the debtor has failed to fulfill their obligations. In addition, the debtor may fulfill the responsibility, but it may be defective, meaning the execution is not done in the required way, or the debtor may be late in fulfilling their responsibilities. In any of these cases, the creditor has the right to claim compensation based on contractual liability[127].

On the other hand, civil liability (responsabilité civile) is the legal status of a person who has committed a wrongdoing that has resulted in harm to a third party, whether financially or in terms of honor. This wrongdoing makes it possible for the harmed party to demand compensation for the damage[128]. We can also say that contractual responsibility occurs when one party accepts

[124]CRESSEY, Julia. Ewan McKendrick, Contract Law. 2014.
[125]ANDENÆS, Mads Tønnesson; FAIRGRIEVE, Duncan (ed.). Courts and comparative law. Oxford University Press, USA, 2015.
[126]BARNETT, Randy E.; OMAN, Nathan B. Contracts: Cases and doctrine. Wolters Kluwer, 2016.
[127]Al-Tabbakh, S. (2008). Compensation for breach of contract: Practical application of civil liability in light of the judiciary and jurisprudence (p. 209). House of Thought and Law. Also, Saleh, S. (2011). Compensation for the debtor's delay in executing his obligation: A comparative study. (PhD thesis). An-Najah National University College of Graduate Studies.
[128]Mark, S. (1998). In the commentary of civil law: The obligations in harmful acts and civil responsibility.

responsibility for the losses and damage suffered by another party[129]. To further clarify contractual responsibility, consider this example. Lessor/Renter: Suppose a person rents a tractor from another individual. The lease agreement includes a standard compensation clause. While using the equipment for a job, the lessee accidentally hit a parked car. The owner of the parked car can sue the lessee for damages, but they could also sue the lessor, as the lessor owns the equipment. In this scenario, the lessee is responsible for paying or reimbursing any expenses incurred due to the lawsuit, damages, and costs[130].

In conclusion, we note that this discussion has provided a clear understanding of the elements that form a contract, as well as the key aspects of contractual responsibility. It is essential for all parties involved in a contract to fully understand and uphold their responsibilities to avoid liability.

B. Elements of Contractual Responsibility

1. The Error ("Fault")

From a historical perspective, early legal systems did not consider wrongful acts or "fault" as a necessary condition for responsibility. Instead, the focus was placed on the damage caused by an act. Over time, however, the concept of fault or wrongful behavior became integral to the establishment of civil responsibility. A Roman jurist in one of his influential works on civil law stated that: "All losses and damage caused by individuals due to lack of foresight, ignorance of duties, or any similar error, regardless of how minor, shall be reimbursed by those whose lack of foresight or error caused them[131]." This notion laid the foundation for what is known as the theory of gradual error, a concept that can be traced back to Roman law and was later integrated

[129]UpCounsel. (n.d.). What is contract liability? Retrieved from https://www.upcounsel.com/what-is-contract-liability

[130]Al-Mersal. (2020). Pillars of contractual liability and examples thereof. Retrieved from https://www.almrsal.com/post/955302

[131] Al-Sanhouri, A. R. (2015). Mediator in the commentary of the new civil law: Theory of commitment in general, sources of commitment (Vol. 2). Also, Aldajeh, B. M. (2020). The theoretical framework of the theory of civil responsibility. PalArch's Journal of Archaeology of Egypt/Egyptology, 17(6), 8045-8051, In addition, Jacobi, O., & Weiss, A. (2013). Allocation of fault in contract law. International Review of Law and Economics, 36, 1-11.

into French legal thought, being adopted by influential French jurists such as Dumas and Boutier[132].

Arab law, particularly Egyptian law, has predominantly discarded the doctrine of error. Article 215 of the Egyptian Civil Code, states, "When the debtor's specific performance is incredible, he shall be responsible for paying damages for non-performance of his commitment[133]. Unless he can demonstrate that the impossibility of performance resulted from a cause beyond his control. This alteration is evident. The same principle applies when the debtor postpones the execution of his obligation. This clause clearly stipulates that the debtor is responsible for fulfilling all contractual obligations, and any noncompliance constitutes a breach of contract.

Anglo-American contract law is often described as a system based on strict liability, yet it can equally be interpreted as a fault-based system. Advocates for a fault-based contract system suggest that such an approach could be more effective in enforcing contracts by providing courts with a clearer framework for adjudicating disputes. While the fault-based system can lead to more detailed inquiries and potential errors in judgment, it provides advantages such as promoting optimal contract enforcement. Critics argue that Anglo-American contract law, despite its strict liability components, implicitly incorporates fault-related principles, such as good faith and best efforts. These concepts allow the law to ensure that contractual obligations remain reasonable, and that parties act fairly and in good faith, thus recognizing fault indirectly[134].

Contractual Error refers to the failure of the debtor to perform as required by the contract, delay in performance, or a breach of the terms agreed upon. Several prominent jurists have provided definitions of error in the

---

[132]Al-Arari, A. Q. (2011). Sources of obligations: Book two, civil responsibility (3rd ed.). Rabat, 34. Also, Nouiri, A.-B. S. W. (2021). Corner error in civil liability (PhD thesis). Al-Masila.

[133] Egypt Law No. 131 of 1948 promulgating the Civil Code. (1948). ART. 215: When specific performance by the debtor is impossible, he will be condemned to pay damages for nonperformance of his obligation, unless he establishes that the impossibility of performance arose from a cause beyond his control. The same principle will apply, if the debtor is late in the performance of his obligation. Retrieved from https://www.fao.org/faolex/results/details/en/c/LEX-FAOC212999/

[134] Cohen, G. M. (1994). The fault lines in contracts damages. Virginia Law Review, 80(6), 1225-1239.As well as, Posner, E. A. (2009). Fault in contract law. Michigan Law Review, 107(9), 1431-1444.

context of contractual obligations. For instance, French professor Blagnol defined error as a breach of an obligation arising from law, contract, or morals[135]. Emanuel Levy described it as a breach of legitimate trust[136]. French jurist Planiol viewed error as a breach of a prior legal obligation[137], and Riber defined it similarly, emphasizing the breach of an obligation from the contract or moral norms[138]. Saftyo defined error as a breach of a legal duty where the violator was aware, or could have reasonably been aware, of the breach. In Arabic jurisprudence, Dr. Jamil El-Sharkawy defines error as the breach of a legal duty, whether private or general, which entails respecting the rights and freedoms of others. Dr. Sumaiman Marcos offered a similar definition, describing error as the failure to fulfill a legal duty with an awareness of it[139]. My opinion is that a contractual error can be attributed to three key causes: 1. The failure of the debtor to perform as stipulated in the contract. 2.Delay in fulfilling the obligation.3. Performing the obligation in a manner contrary to the agreed terms.

Following this exploration of contractual error, we now turn to the two primary perspectives regarding its relevance to contractual liability:

1. The Error Does Not Matter in Contractual Liability

This perspective argues that fault is irrelevant to determining liability in contract law. The main objective of contract remedies is to furnish compensation that sufficiently rectifies the damaged party's loss, frequently through expected damages[140]. This approach holds that courts should focus on

[135]Nuwayri, A.-B. S. W. (2021). Corner error in civil liability (PhD thesis). Masila.Also, Eisenberg, M. A. (2008). The role of fault in contract law: Unconscionability, unexpected circumstances, interpretation, mistake, and nonperformance. Michigan Law Review, 107(7), 1413.

[136] Amer, H., & Amer, A. R. (n.d.). Civil liability tort and contract (Vol. 0). Dar al-Ma'arif, Cairo. p. 202.

[137]Jad Al-Haq, I. M. (2012). The extent of necessity of error as a pillar of negligence in the Palestinian civil law project: An analytical study. Islamic University Journal of Islamic Studies, 20(1), 203. Department of Law, Private - Faculty of Law, Al-Azhar University, Gaza, Palestine.

[138]Bin Nasir, M. B., & Belkhuja, F. (2022). Error in civil liability (Ph.D. thesis). Al-Masila, Algeria.

[139]Al-Naqmari, H. (2015-2016). Provisions for error in civil liability according to the Algerian Civil Code: A comparative study (Master's thesis). Faculty of Law and Political Science, Abdelhamid Ben Badis University, Mostaganem, Algeria, 22-24.

[140]Hillman, R. A. (2014). Principles of contract law (3rd ed., pp. 163-188).

compensating the non-breaching party for the loss of expected performance[141], rather than considering whether the breach was intentional or accidental. According to this perspective, the nature of the violation, whether intentional or not, should not influence the remedy; the emphasis should be on reinstating the aggrieved party to the status they would have occupied had the contract been executed correctly[142].

Proponents of this view argue that fault, as such, plays no role in the assessment of damage. A breacher who compensates the injured party for the loss caused by the breach should not be seen as at fault[143], even if they intentionally caused the breach. They argue that contract law should encourage breach when it benefits the breacher financially, as long as the promise is fully compensated. Judge Posner, for example, has argued that no-fault contract law minimizes the cost and uncertainty of litigation by focusing purely on the language of the contract and whether it has been breached, without inquiring into the intent behind the breach.

Fault, in this framework, is seen as an extraneous and costly concept that complicates dispute resolution without providing significant benefits.

2. The Error Does Matter in Contractual Liability

Non-legal "business cultures" indeed regulate the daily interactions of numerous parties that feel compelled to uphold agreements and eschew "legalese[144].." The parties rationally assume that a contractual obligation entails the execution of the contract. A contractual obligation necessitates fulfillment for ethical considerations as well. The objective of contract law may not be to explicitly impose ethical standards, although it still seeks to discourage immoral conduct. It is enough to say that if both parties to a contract reasonably expect performance and if promisors have a moral duty to protect

[141] Farnsworth, E. A. (2004). Contracts (4th ed., pp. 737, 761). Also, Ben-Shahar, O., & Porat, A. (2009). Foreword: Fault in American contract law. Michigan Law Review, 107(7), 1341.Morover, Scott, R. E. (2009). In (Partial) defense of strict liability in contract. Michigan Law Review, 107(7), 1381.In addition, Posner, R. A. (2009). Let us never blame a contract breaker. Michigan Law Review, 107(7), 1349, 1351, 1361-1362.

[142] Hillman, R. A. (2014). The future of fault in contract law. Duquesne Law Review, 52, 275.

[143] Shavell, S. (2009). Why breach of contract may not be immoral given the incompleteness of contracts. Michigan Law Review, 107(8), 1569.

[144] Macaulay, S. (1985). An empirical view of contract. Wisconsin Law Review, 1985, 465, 467. Also, Demasse v. ITT Corp., 984 P.2d 1138, 1148 (Ariz. 1999). ("[T]he contract rule is and has always been that one should keep one's promises."

the interests of their promises, then letting promises be broken through a narrow interpretation of the law may hurt trust in contracts, which would have obviously very real effects[145]. Through the development of a doctrine that emphasizes fault, contract law has added important instrumental justifications for rejecting contract damages as a substitute for performance.

The objective evaluation of contract formation and interpretation: While legal language talks about a "meeting of the minds" for contract formation and figuring out the "intent of the parties" for contract interpretation[146], contract law decides the meaning of contract terms by asking whether a reasonable person would have thought that the parties made a deal. A contract is, properly speaking, unrelated to the personal or individual intentions of the people involved. This objective analysis of contract construction and interpretation says that a promisor is responsible for using language in a way that misleads, even if they didn't mean to or were careless or negligent. Numerous instances exist of employing the objective test to regulate intentional, reckless, and negligent language use. The objective method of contract construction and interpretation is central to the no-fault claim. The objective approach says that careless, irresponsible, or purposefully misleading language could bind a promisor, even if they didn't mean to.

This would "penalize" the promisor for their bad behavior. A promisor materially breaches when the promisee does not receive basically what was agreed upon[147].. A determination of material violation allows the promisee to halt performance and ultimately terminate the contract[148]. Criteria for assessing serious breach include considerations of the promisee's reasonable

[145]Von Mehren, A. T. (Ed.). (1982). Contract in general. In International Encyclopedia of Comparative Law (Vol. 7, p. 20). And, Posner, R. A. (1977). Economic analysis of law (Section 4.1, p. 67)

[146]Haber v. St. Paul Guardian Ins. Co., 137 F.3d 691, 702 (2d Cir. 1998). ("[I]t is the intent of the parties which controls the interpretation of contracts."), And: Octagon Gas Sys., Inc. v. Rimmer, 995 F.2d 948, 953 (10th Cir. 1993). ("In construing the meaning of a written contract, the intent of the parties controls."), Also, Holbrook v. United States, 194 F. Supp. 252, 255 (D. Or. 1961). ("[T]he intention of the parties... controls the contract's interpretation and when that is ascertained, it is conclusive.")

[147]Hillman, R. A. (2014). The future of fault in contract law. Duquesne Law Review, 52, 275.

[148]Restatement (Second) of Contracts, ch. 16, intro. note (1981). Also, Farnsworth, E. A. (2004). Contracts (4th ed., p. 737). Moreover, Marschall, P. H. (1982). Willfulness: A crucial factor in choosing remedies for breach of contract. Arizona Law Review, 24, 241, 242. https://tinyurl.com/3ur3wc5u

expectations, as well as the promisor's conduct, including any fault attributable to the promisor. Section 275 of the Restatement of Contracts says that the willful, negligent, or innocent conduct of the party failing to perform has a big effect on how important a breach is[149].

The second Restatement takes away the test of the promisor's good faith and fair dealing to see how important a breach is, but the outcome is still the same[150]. In the Restatement, another way to figure out if something is material is to look at how likely it is that the party that broke the rule will fix it. This shows how trustworthy and honest that party is. In addition, the second Restatement says that if there is a serious breach, the promise can decide if she can stop performing the promise based on the promisor's good faith and fair dealing. Like the objective approach to formation and interpretation, the major breach theory puts a lot of emphasis on the role of fault in contract law. There are probably not many breach cases that don't involve looking at fault if fault affects the party who is unhappy with the performance's right to stop and cancel the contract[151].

Good faith and unconscionability: Good faith is not only a way to figure out how important a breach is, but it's also an implied phrase that spells out what a promiser must do to keep their word[152]. Courts typically determine ill faith when the promisor's performance contradicts the promise's reasonable expectations. The language of contract sometimes fails to encapsulate the complexities of the parties' agreements[153]. Unconscionability employs "moral standards grounded in communal aspirations" to regulate the formation of contracts and the equity of their terms[154].

---

[149]RESTATEMENT (SECOND) OF CONTRACTS d. § 737 cmt. f (1981), see also Patricia H. Marschall, Willfulness: A Crucial Factor in Choosing Remedies for Breach of Contract, 24 ARIZ. L. REV. 275(1982).

[150] Restatement (Second) of Contracts, d. § 241 cmt. f (1981). ("The extent to which the behavior of the party failing to perform . . . comports with standards of good faith and fair dealing is . . . a significant circumstance in determining whether the failure is material . . .. In giving weight to this factor courts have often used such less precise terms as 'wilful.'").

[151]Bar-Gill, O., & Ben-Shahar, O. (2009). An information theory of willful breach. Michigan Law Review, 107(8), 1479, 1480.

[152]Hillman, R. A. (2014). Principles of contract law (3rd ed., pp. 297-303).

[153]Eisenberg, M. A. (2009). The role of fault in contract law: Unconscionability, unexpected circumstances, interpretation, mistake, and nonperformance. Michigan Law Review, 107(8), 1415-1418.

[154]Hillman, R. A. (1981). Debunking some myths about unconscionability: A new framework for U.C.C. Section 2-302. Cornell Law Review, 67, 1.

I would like to emphasize that unconscionability and other theories, such as fraud and duress, significantly contribute to the incorporation of faults in contract law. When these rules are applicable, contract law emphasizes the overreach of the promise and absolves the promisor. Certain experts have deemed it enigmatic that tort law is concentrated on culpability, although, in their perspective, contract law is not.

Contract principles such impracticability, impossibility, and frustration of purpose relieve a promisor from performance when unforeseen events render performance prohibitively expensive, provided the promisor did not accept the risk of such circumstances. Under impracticability, courts may exclude a promisor if performance as stipulated has become impractical due to the development of a contingency, the non-occurrence of which was a fundamental premise underlying the contract. "Was a fundamental assumption" phrase indicating that the parties entered into their agreement based on the presumption that the disruptive event would not transpire. Conversely, courts will not excuse performance if the promisor could have reasonably anticipated the danger and, through its own negligence, failed to mitigate the risk or to contract accordingly[155].

Nonetheless, several analysts assert that successful excusing instances are not exempt from strict liability, as the promisor did not commit to execute under the given conditions. This overlooks the fact that in most cases of excuses, the distribution of risk associated with the unforeseen disruption is ambiguous and necessitates an examination of the circumstances to ascertain the probable intentions of the parties or what they would have meant had they negotiated the issue. The frequent ambiguity of this probe prompts courts to evaluate issues such as the culpability of the promisor[156]. In numerous impractical scenarios, fault and the extent of harm resulting from performance are likely the most significant concerns. In circumstances of impracticability, the promisor is unable to assess the cost of the debilitating risk at the time of

[155]Roy v. Stephen Pontiac-Cadillac, Inc., 543 A.2d 775, 778 (Conn. App. Ct. 1988).
[156]Cohen, G. M. (2009). The fault that lies within our contract law. Michigan Law Review, 107(8), 1457, 1351. (“The promise is to perform or pay damages, and so if you choose not to perform—even if you are prevented from performing by circumstances beyond your control—you must pay damages.”).

making the promise due to the risk being unpredictable or at least unforeseen. It is challenging to ascertain how the decision to fulfill the promise is contingent upon the promisor being the least expensive insurer. Professor Porat indicates that, in numerous cases, the promisee may assume the greater risk, particularly when the promisor's performance is contingent upon the promisee's assistance or when the promisor depends on the promisee's information regarding the likelihood of performance. Determining the superior risk-bearer in each specific scenario is sometimes more expensive, time-consuming, and uncertain than addressing gaps based on the promisor's culpability and the severity of the unforeseen event[157].

2. **THE DAMAGE**

The second pillar of contractual liability is damage. When a person breaches an obligation, they have assumed, the resulting error causes harm to the creditor. If this defect leads to harm to others, contractual liability arises. According to general principles, this responsibility is established by three pillars: fault, damage, and causality. However, before delving into the definition of damage, it is essential to note that there is another term, "destruction," which is like damage but differs in meaning. Understanding this distinction is crucial to comprehending the term damage.

Firstly, according to the Oxford Advanced Learner's Dictionary, damage refers to "to harm or spoil something/someone, Destruction refers to the act of damaging something to the extent that it ceases to exist or function[158]. A 2001 study delineated the distinction between harm and destruction as follows [159]:

1. While the near synonym "destroy" is utilized more frequently in the British National Corpus (BNC) than "damage," both expressions predominantly occur in written literature and magazines, as well as in television news scripts.
2. There exists a notable distinction in the collocation of "damage" and "destroy" with diverse nouns. The term "damage" is predominantly linked to the human

[157]Hillman, R. A. (2014). The future of fault in contract law. Duquesne Law Review, 52, 275.
[158]Oxford University Press. (2009). Oxford Advanced Learner's Dictionary (p. 500, 543). Oxford University Press.
[159]Song, Q. (2021). Effectiveness of corpus in distinguishing two near-synonymous verbs: "Damage" and "destroy". English Language Teaching, 14(7), 8-20.

body or physical health, which partially accounts for its increased prevalence in social sciences, such as health. People predominantly employ "destroy" in the context of military operations or the dismantling of one's thinking or beliefs. Political matters and belief systems are domains where "destroy" is more prominent.

3. In British English, there is a propensity to collocate the two near-synonyms with the same term to generate a buildup. The term "destroy" implies a greater degree of harm than "damage," which may account for the higher frequency of "damage" being used with intensifying adverbs. Destruction typically pertains to natural calamities, such as earthquakes and floods, whereas "damage" is more frequently linked to milder occurrences, such as frost or rain. Furthermore, "destroy" generally denotes an object that is completely obliterated, whereas "damage" suggests an object that remains intact but is impaired in its functionality.

It seems that words related to the human body or physical health carry more damaging connotations, while terms associated with military affairs and one's thoughts or beliefs are more often linked to destruction. The core meaning of "damage" emphasizes something that can be recovered, though it no longer functions as before, whereas "destroy" suggests something that no longer exists. Now, let's explore the concept of damage. While it may seem complicated at first glance, we will discuss it plainly and simply. Simone Leitner's case before the European Court of Justice[160], The case between Simon Leitner and TUI Deutschland GmbH & Co. KG before the European Court of Justice concerned a claim for non-pecuniary damages for the non-performance or improper performance of all-inclusive holiday services. The ECJ ruling of 12 March 2002 confirmed that consumers must be compensated for minor damage caused by all-inclusive holiday services that were not completed or were performed improperly. This ruling strengthened consumer protection within the European Union, confirming that tour operators and travel agencies are responsible for the quality and performance of their services[161].

[160]Case C-168/00 Simone Leitner v. TUI Deutschland [2002] ECR I-2631.

[161]European Court of Justice. (2002). Simone Leitner v. TUI Deutschland GmbH, Case C-168/00. EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62000CJ0168&utm_source=chatgpt.com

strongly supports the idea of developing a common European legal terminology, with the concept of damage being a prime candidate for inclusion in a list of Europe-wide uniform legal definitions[162].

Simone Leitner is just one example, and perhaps not the most relevant. The European Court of Justice's findings were confined to a narrow area of consumer contract law. But can we define damage as meaning losses? The creditor is entitled to compensation for losses incurred due to the debtor's failure to fulfill an obligation, unless the failure is justified." It is clear that "loss" caused to a person "as a result" of a certain event constitutes "legally relevant damage". "[163] A loss becomes a recoverable loss and thus a legal liability only if the defendant is responsible for its cause. A loss for which no one is legally liable is an example of a detrimental effect (detrimental effect), but it is not a legally relevant loss. For example, a loss resulting from lawful competition is detrimental but not legally relevant[164].

Damage is defined in Arabic as: "lack of benefit, severity, distress, bad condition, lack of money, and the soul." In Islamic jurisprudence, it is defined as: "inflicting harm on others," or more broadly, "any harm that affects a person, whether in their property, body, honor, or affection[165]," The term "harm" is mentioned in the Sunnah of the Prophet Muhammad[166], as narrated by Ubadah bin Al-Samit, where the Prophet said: "There is neither harm nor reciprocity." This is a legal principle in Islamic law that denies harm by preventing it from occurring or by removing it [167]. In terms of Arabic legal jurisprudence, Dr. Mijaj Al-Arabi defines harm as the damage to an individual's

[162] Von Bar, C., Clive, E., Schulte-Nölke, H., Beale, H., Herre, M., Huet, S., Schlechtriem, P., Storme, M., Swann, S., Varul, P., Veneziano, G., & Zoll, F. (Eds.). (2008). Principles, definitions and model rules of European private law: Draft common frame of reference, interim outline edition (para. 64). Munich.

[163]von Bar, C. (2010). The notion of damage. Available at SSRN: https://ssrn.com/abstract=1542517

[164]HR 20 September 1985, NedJur 1986, no. 211, p. 775.

[165]Gibran, M. (2003). Lexicon of Al-Raed (p. 564). Dar Al-Ilm for Millions.

[166]Al-Saadi, M. S. (4166). The clear explanation of civil law: The general theory of obligations, sources of obligation (p. 77). Dar Al-Huda.

[167]Zardoumi, H. (4167/4168). Damage in contractual liability: Memorandum to obtain a master's degree in law, specialization in administrative law (p. 9). Department of Law, Faculty of Law and Political Science, Mohamed Kheidar University, Biskra.

rights or legitimate interests[168], as outlined by Professor Muhammad Sabri Al-Saadi. According to Al-Saadi: "Harm is the damage inflicted on a person due to the infringement of their legitimate interest or right." Similarly, Mr. Abdul Hakim Fouda defines harm as: The damage inflicted on a person, whether it pertains to their body, property, appearance, or affection[169]. Moreover, we identify many categories of damages that may be granted in the event of a contract breach, including[170]:

1. Compensatory Damages: These are designed to reimburse the non-breaching party for any losses or expenses resulting from the breach.
2. Consequential Damages (sometimes referred to as "special damages" or "indirect damages"): These damages are not a direct outcome of the breach but are a predictable consequence thereof.
3. Nominal Damages: These are minimal damages granted where there is no actual loss or harm, yet the non-breaching party is still entitled to a legal remedy.
4. Punitive damages: These damages are intended to punish the offending party for exceptionally reprehensible conduct and prevent similar conduct in the future. To obtain damages for a breach of contract, the non-breaching party must generally demonstrate that they have incurred actual loss or damage due to the breach. Ultimately, it is important to emphasize that the criterion for contract recovery should assess damages based on the value of the promised performance[171].

3. Causal Relationship

It is important to note that when discussing compensation or the actions that can be taken if a contract is breached, we need to understand not only who is at fault or what damage has occurred, but also the relationship between these

[168]Belhaj, A. (n.d.). The general theory of obligation in Algerian civil law, Part 1 (p. 284). Also, Amiri, et al. (2019). Damage in contractual liability (PhD thesis). Mouloud Mamari University, Faculty of Law and Political Science.

[169]Al-Daimi, A. (2013-2014). Provisions for compensation for damage in contractual liability (Supplementary note for a master's degree, specialization in contracts and liability, p. 41). Faculty of Law, Al-Akhdar University, Algeria. Moreover: Toatit, A., & Allal, I. (2022). Corner damage in civil liability (PhD thesis). Masila.

[170]Cornell Law School Legal Information Institute. (n.d.). Damages Retrieved from https://www.law.cornell.edu/wex/damages

[171]Fuller, L. W., & Perdue, W. (1936). The reliance interest in contract damages. Yale Law Journal, 46(1), 52-96. Also, Birmingham, R. L. (1969). Breach of contract, damage measures, and economic efficiency. Rutgers Law Review, 24, 273.

factors. This relationship is called the causal relationship. We will now explore this concept in more detail. In the context of a contract, causation refers to the relationship between an event (the cause) and the resulting damage or injury (the effect). Legally, causation concerns the responsibility or liability for the consequences of an event or action. In contract law, causation is crucial when determining which party is responsible for damages or losses that may have occurred due to a breach of contract.

For example, if Party A breaches a contract with Party B, and as a result, Party B suffers a financial loss, Party A may be held liable for that loss if the breach of contract was the cause of the loss[172]. In addition, causal liability in a contract refers to the responsibility of one party to compensate the other for damages or losses caused by their actions or conduct. For example, if one party breaches its responsibilities under the agreement, resulting in damage or harm to the other party, the breaching party may be held causally liable for these harms[173]. Causality plays an essential role in contract law because it determines who is liable for the losses or damages that result from a breach of contract[174]. To establish causation in a contract dispute, it is typically necessary to demonstrate that the breach of contract directly caused the damage or losses suffered. This may involve showing that damage or losses would not have occurred "but for" the breach of contract, or that damage or losses were foreseeable as a consequence of the breach. In some cases, it may be necessary to establish causation through expert testimony or other forms of evidence, such as financial records or documents that demonstrate the connection between the breach and the resulting damage or losses[175].

[172]Williams, T. (2015). Causation in contract law. In The Law Handbook (Federation Press). Also, Legal Information Institute. (n.d.). Causation. Cornell Law School. Retrieved from https://www.law.cornell.edu/wex/causation

[173]Restatement (Second) of Contracts, § 353 (1981). Also, Farnsworth, E. A. (1985). Causation in contract damages. Cornell Law Review, 71(2), 221-257. Furthermore, Fleischer, L. (2007). Causation in contract law. Journal of Contract Law, 23(2), 93-109.

[174]Causal Liability. (2022). Legal Dictionary.The Free Dictionary. Retrieved from https://legal-dictionary.thefreedictionary.com/causal+liability

[175]Legal Information Institute. (n.d.) Breach of contract. Cornell Law School Retrieved from https://www.law.cornell.edu/wex/breach_of_contract

II. VICARIOUS RESPONSIBILITY

A. VICARIOUS RESPONSIBILITY OVERVIEW

Responsibility for others' mistakes can be a complex issue, and it depends on the specific situation and context. In general, individuals should not be held responsible for the mistakes of others if they did not contribute to or cause the mistake. However, there may be certain circumstances where individuals bear some responsibility for the mistakes of others—such as if they were in a position of authority and had a duty to oversee the actions of others. For example, a teacher has a duty to keep a toddler out of the road[176]. A company is responsible for the errors of its employees when those errors occur within the scope of the employee's employment. This is known as "vicarious liability." Generally, "vicarious responsibility" refers to the imposition of responsibility upon one party for the wrongs committed by another[177].

In simpler terms, it is the responsibility that a supervisory party (employer) bears for the actionable conduct of a subordinate or associate (employee) based on the relationship between the two parties[178]. In some cases, there may be shared responsibility for a mistake. For example, if a team is working on a project and one team member makes a mistake, it may be the responsibility of the entire team to address and correct the mistake. Similarly, in a business context, a manager or supervisor may be held responsible for the mistakes of their subordinates if they failed to provide adequate training, guidance, or supervision[179]. The nature of the activity during which the fault occurs typically establishes vicarious culpability. According to the doctrine of

---

[176]COLLINS, Hugh. Ascription of legal responsibility to groups in complex patterns of economic integration. Modern Law Review, 53(5), 731.

[177]Vicarious liability has received increasing academic attention in recent years, much of it from an economic perspective, See, e.g. Kornhauser, L. A. (1982). An economic analysis of the choice between enterprise and personal liability for accidents. California Law Review, 70(6), 1345. Also, Kraakman, R. (1986). Gatekeepers: The anatomy of a third-party enforcement strategy. Journal of Law, Economics, and Organization, 2(1), 53. Moreover, Kraakman, R. (1984). Corporate liability strategies and the costs of legal controls. Yale Law Journal, 93(5), 857. In addition, Landes, W. M., & Posner, R. A. (1980). Joint and multiple tortfeasors: An economic analysis. Journal of Legal Studies, 9(3), 517. Furthermore, Stone, A. (1980). The place of enterprise liability in the control of corporate conduct. Yale Law Journal. As well as, Sykes, A. O. (1984). The economics of vicarious liability. Yale Law Journal, 93(6), 1231.

[178]Cornell Law School Legal Information Institute. (n.d.).Vicarious liability. Retrieved from https://www.law.cornell.edu/wex/vicarious_liability

[179] Dorset Yacht Co. Ltd v Home Office, [1970] 2 WLR 1146, [1970] AC 1004 (HL). Retrieved from https://tinyurl.com/hpcrz47c

respondent superior, an employer (or "master") generally bears vicarious culpability if an employee perpetrates a tort during the normal course of business. However, if the tort arises outside the "scope of employment," the employer is generally not liable, unless exceptional circumstances exist[180].

Vicarious liability is generally limited to tortious conduct "that should be considered a normal risk borne by the business," thereby excluding employee "personal" torts[181]. For example, if a delivery driver for a company is involved in a car accident while making a delivery, the company can be held responsible for any harm caused by the accident, even if the company did not cause the accident itself. There are exceptions to this rule, such as when the employee was working outside the scope of his or her employment or committed willful misconduct or gross negligence. Nevertheless, in general, companies are liable for the actions of their employees within the scope of their employment. As previously mentioned, a company is responsible for employees' mistakes when these mistakes occur within the scope of the employee's employment. To understand the scope of the employee's employment, we must first determine when a person is considered an employee and when they are acting outside of their position. Employers are accountable for torts perpetrated by their workers throughout the course of employment. Nonetheless, with some exceptions, the employer is not accountable for torts perpetrated outside this extent[182].

B. VICARIOUS RESPONSIBILITY TERMS

To understand the cases where an employer is not responsible for an employee's actions, we must examine the circumstances in which a person is considered an employee. This is evident in the following points[183]:

1. A servant's conduct falls within the scope of employment if, and only if: It pertains to the type of work for which the servant is employed. It transpires significantly within the permitted temporal and spatial parameters. It is

[180] Sykes, A. O. (1988). The boundaries of vicarious liability: An economic analysis of the scope of employment rule and related legal doctrines. Harvard Law Review, 101(3), 563-609.
[181] RESTATEMENT (SECOND) OF AGENCY § 229 comment a (1958).
[182]Restatement (Second) of Agency § 219 (1958). Also, Restatement (Second) of Torts § 409 (1965).Moreover: Reuschlein, H., & Gregory, W. (1979). Handbook on the law of agency and partnership (pp. 99-104).
[183]Restatement (Second) of Agency § 228, 229,230,231,232,233,234,235,236,237 (1958).

motivated, at least partially, by a desire to benefit the employer. If a servant willfully employs force against another, such action must not be unforeseen by the employer.

2. An employee's actions are not within the scope of their job if they significantly differ from what was allowed, happen significantly outside of the designated time or location, or are only slightly motivated by a desire to help the employer.

Furthermore, we note that the employer (master) is not responsible for employees' off-duty errors in the following cases[184]: a) the employer intended the actions or their outcomes. b) The employer exhibited negligence or recklessness. c) The actions breached a nondelegable obligation of the employer. d) The employee claimed to act or speak for the employer, and there was dependence on authority, or the employee was promoted in committing tort by the agency connection. There are supplementary jurisprudential interpretations elucidating the circumstances under which an employer is liable for an employee's errors. A tort is considered within the scope of employment if it can be logically determined that employment was the principal cause of the tort.

There are additional jurisprudential opinions clarifying when an employer is responsible for an employee's mistakes. It has been suggested that a tort is within the scope of employment if "it can be said rationally that employment was the primary cause of the tort. [185]

C. Special Conditions in Arab Jurisprudence

In Arab jurisprudence, there are specific conditions for liability for the actions of others, as follows[186]:

1. First Condition: A valid contract between debtor and creditor. If the contract is invalid, the rules of default liability apply.
2. Second Condition: The debtor has entrusted the contract to others or is not mandated by agreement or law to perform the contract.

---

[184] Sykes, A. O. (1988). The boundaries of vicarious liability: An economic analysis of the scope of employment rule and related legal doctrines. Harvard Law Review, 101(3), 21.
[185]Seavey, W. (1964). Handbook of the law of agency (p. 148).
[186]Mamoun, A. A.-R. (1986). Contractual responsibility for the action of others (p. 42). Cairo: Dar Al-Nahda Al-Arabiya.

D. Relevant Legal Provisions

Additionally, Article 283 of the Unified Civil Code of the Gulf Cooperation Council (Kuwait Convention) [187] and Article 288 of the Jordanian Civil Code stipulate: "No one shall be questioned about the act of another. Nevertheless, the court may, at the request of the injured party, if it finds justification, oblige the party responsible to pay the guarantee. Judgment is imposed on whoever caused the damage, in the following cases[188]: A. Whoever is required by law or by agreement to supervise a person who is in need of supervision due to their age or mental or physical condition. B. Whoever has authority over the one from whom the damage has occurred must supervise and direct them, even if the person is not free to choose them, provided the harmful act was committed while performing their job or because of it.

Article 174 of Egypt's Civil Code states: "An employer is liable for damages resulting from an unlawful act committed by an employee during the course of their employment." The master-servant connection persists even if the master did not freely select the servant, as long as the master possesses genuine authority for oversight and control over the servant[189]" In my opinion, vicarious liability means that an employer is held responsible for the actions of its employees, even if the employer did not directly cause the harm. The explanation is that the employer profits from the employee's work and thus should also handle responsibility for any damage caused by the employee's actions.

III. Compensation

Since we have looked at the elements of contractual responsibility, we will now turn our attention to the aspects of compensation, as compensation is the result of the presence of elements of contractual liability.

[187]Kuwait. (1980). Civil code No. 67 of 1980. Retrieved from https://www.lexismiddleeast.com/law/Kuwait/DecreeLaw_67_1980

[188] Jordan. (1988). Civil procedure code and its amendments No. 24 of 1988. Retrieved from https://tinyurl.com/ytnd8vjy

[189]Egypt Law No. 131 of 1948 promulgating the Civil Code. (1948). Retrieved from https://www.fao.org/faolex/results/details/en/c/LEX-FAOC212999/

A. COMPENSATION OVERVIEW

Compensation for contractual liability refers to the payment or award of money or other assets made to compensate for losses suffered as a result of a breach of contract. When a party fails to fulfill its contractual obligations, the other party may suffer damages, including financial losses, lost profits, or other harm. Compensation for contractual liability is designed to make the injured party whole by providing them with the funds or other assets necessary to recover from their losses[190]. In most jurisdictions and under common law, the injured party is entitled to the same treatment as if the contract had been performed.

As a result, they should be compensated for their actual losses, but not for losses that could have been prevented with reasonable effort. In some cases, compensation for contractual liability may also include punitive damages, which are designed to punish the breaching party for their misconduct[191]. Compensation for contractual liability denotes the payment or provision of value to remedy a breach of contract. It is a type of remedy aimed at reinstating the aggrieved party to the status they would have occupied had the contract been executed as stipulated. Compensation may manifest in various forms, including monetary remuneration, the provision of products or services, or the fulfillment of incomplete tasks. The extent or type of compensation will be contingent upon the specifics of the breach, the contractual terms, and the nature of the losses incurred by the aggrieved party[192].

The concept of compensation for contractual liability is recognized in various legal systems around the world. Similarly, in the United Kingdom, the law recognizes the right of the injured party to claim damages for breach of contract[193]. Compensation for contractual liability is often determined by the terms of the contract itself, including any provisions related to damages, liquidated damages, or penalties. If the contract is silent on these matters, the

[190]Law.com Legal Dictionary. (n.d.). Compensatory damages. Retrieved from https://www.law.com/

[191]Cornell Law School Legal Information Institute. (n.d.). Contracts. Retrieved from https://www.law.cornell.edu/wex/contracts. Also, LegalMatch. (n.d.). Compensatory damages. Retrieved from https://www.legalmatch.com/law-library/article/compensatory-damages.html

[192]Treitel, G. H. (2011). The Law of Contract (13th ed.). Sweet & Maxwell.

[193] Beale, H. G., Bishop, W. D., & Furmston, M. P. (2019). Contract law: Text, cases, and materials (8th ed.). Oxford University Press.

parties may need to rely on the general principles of contract law to determine an appropriate level of compensation[194].

In some cases, a court or arbitrator may be called upon to determine the appropriate level of compensation. This may involve considering the real losses or harm suffered by the non-breaching party, furthermore any expenses associated with mitigating those losses[195]. French jurisprudence has defined compensation as the obligation of the debtor in civil liability towards the injured party. In other words, if damage occurs, the right to obtain compensation arises from the damage [196].

In many places, the main goal of damages is to satisfy a claimant's performance interest by giving them the "benefit of the bargain" as an alternative remedy. As a general rule, this includes both money back for actual losses caused by the breach and net gains, like lost wages, that the claimant was unable to achieve because of the respondent's behavior. All legal systems impose restrictions on damage awards. The predominant limits are causality, foreseeability, certainty, fault, and voidability. To get damages, a causal link must exist between the respondent's violation and the claimant's loss[197].The primary objective of damages is to restore the claimant to the position they would have occupied had the contract been executed, so providing the claimant with the "benefit of the bargain." Furthermore, the objective is to restore the plaintiff to the position they would have occupied had the defendant fulfilled his contractual obligations[198].

Additionally, the claimant must demonstrate that the loss was predictable or not too remote. The claimant must also demonstrate, with reasonable certainty, the extent of the loss. Numerous civil law jurisdictions mandate that, as a condition for awarding damages for breach of contract, the respondent must be culpable in violating the agreement. Damage may also be

[194] Farnsworth, E. A. (1999). Contracts (3rd ed.).
[195]Hadley v. Baxendale, 9 Exch. 341, 156 Eng. Rep. 145 (1854).
[196]Chartier, Y. (1983). La réparation du préjudice dans la responsabilité civile (p. 125). Dalloz.
[197]The Selda. (1999). 1 Lloyd's Rep. 729; New Zealand Act, § 56; Civil Code § 398(1) (S. Korea). If parties wish to abandon any remedies upon breach, however, express words must be used. See: Gilbert-Ash (Northern) Ltd. v. Modern Engineering (Bristol) Ltd., [1974] AC 689.
[198]Williston, A. (1937). Contracts § 1338 (rev. ed.). Also, Birmingham, R. L. (1969). Breach of contract, damage measures, and economic efficiency. Rutgers Law Review, 24(273).

limited by the law of voidability, which says that you can't get money back for harm that could have been avoided without too much risk, trouble, or shame[199].

Parties may stipulate remedies for breach of contract. For instance, they may restrict the extent of obligation if a party ends the contract due to specific occurrences. Moreover, they could include a liquidated damages clause that specifies the amount a party breaching the agreement must remit. Despite this, some places might not enforce such a clause, especially if the liquidated damages are way too low compared to the actual loss or the loss that would have been expected given the circumstances. The regulations regarding damages for breach of contract are intricate and differ significantly across nations. Moreover, in certain federal nations, such as the United States and Canada, the relevant regulations vary across states and provinces[200].

Both civil and common law jurisdictions award damages for breach of contract, based on the Roman law principle casum sentit dominus—that each person bears their own responsibility. Accidents are among the most common types of damage. In addition, most civil and common law jurisdictions award damages based on performance, reliance, and price restitution[201]. In some cases, a breach of contract may result in the plaintiff incurring additional expenses to avoid more losses. We refer to these costs as incidental losses. For example, in the case of a breach by a seller, consequential damages may include the costs incurred in preserving or storing goods that have been delivered late. This could involve returning defective goods to the seller. A breach of contract may not only cause a claimant to suffer direct and incidental losses; it may also cause the claimant to incur losses from dealing with third parties, referred to as indirect losses. For instance, if a buyer breaches the contract, the seller may incur consequential losses due to the termination of supplier agreements, perhaps including fees from a dishonored check [202].

The French Civil Code stipulates that "the debtor is only bound for the damages and interest which were foreseen, or which might have been foreseen

[199]Farnsworth, E. A. (2004). Farnsworth on Contracts § 12.18.
[200]Gotanda, J. Y. (2006). Damages in lieu of performance because of breach of contract. Public Policy Research Paper, 2006-8.
[201]Dobbs, D. (1993). The handbook on the law of remedies. West Publishing.
[202]Kathrein, R., & Magraw, D. M. (Eds.). (1987). The convention for the international sale of goods: A handbook of basic materials (p. 1).

at the time of the contract, when it is not due to his fraud that the obligation has not been executed" [203].A similar provision can be found in the Italian Civil Code: Compensation for non-performance or delay is restricted to foreseeable damages at the inception of the contract, unless such non-performance or delay is attributable to the debtor's dishonesty[204].

In Islamic law, the term “compensation” does not exist, but there is a term “guarantee” [205] which means compensation for damage. This includes [206]: damages inflicted on the human soul, which are assessed as blood money, and those that are not assessed, such as damages causing harm. It falls within the scope of criminal responsibility or financial damages within contracts, either in kind or otherwise, which fall within the scope of contractual liability. Financial damage outside the scope of contracts, whether in kind (e.g., seizure) or not in kind (e.g., damages), also fall within the responsibility of tort[207].

In Arab jurisprudence, compensation is defined as a sum of money or any kind of consolation. The type of damage is equal to the benefit that the creditor would have obtained if the debtor had fulfilled their obligation properly[208], which is required by the principle of good faith in dealings. Compensation is also defined as the right proven to the creditor as a result of the debtor’s breach of their obligation, which may take the form of cash or any satisfaction equivalent to the benefit that the creditor would have obtained if the debtor had fulfilled the obligation. Turning to the Arab laws, specifically the Egyptian, Jordanian, and Algerian laws, we find that these laws do not define compensation. For example, the Jordanian Civil Law No. 43 of 1976, does not define compensation, but rather mentions the provisions related to its

[203] French Civil Code. (2006.). Retrieved from https://tinyurl.com/ybhc2bp4 (Art. 1150). Also: Berrmann, G. A., et al. (1989). French law: Constitution and selective legislation. In addition, McCormick, C. T. (1935). Handbook on the law of damages (p. 563, n. 10).

[204]Italian Civil Code. (1942). Retrieved from https://faolex.fao.org/docs/pdf/ita197336.pdf . The Italian Civil Code was adopted by Royal Decree No. 262 on March 16, 1942. (Art. 1225). For more: Ferrari, F. (1992). Comparative ruminations on the foreseeability of damages in contract law. Louisiana Law Review, 53, 1257.

[205]Oqab, T. (2005). The legal basis for compensation: A comparative study (Unpublished PhD thesis). Amman University Arabic for Postgraduate Studies, Oman, Jordan.

[206]Faizullah, M. F. (1981). The theory of guarantee in general Islamic jurisprudence. Kuwait.

[207]Al-Hasnawi, H. H. R. (1999). Judicial compensation in contractual liability. House of Culture for Publishing and Distribution. P.3

[208]Al-Dhonun, H. A., & Al-Rahou, M. S. (2004). Al-Wajeez in the general theory of commitment (C. 2). Amman, Jordan: Dar Wael for Publication and Distribution. P 91.

entitlement cases and types. The Jordanian Civil Code uses the term "guarantee" to denote compensation, influenced by Islamic jurisprudence in Articles 360 to 364 of the law. The same applies to Egyptian Civil Law No. 131 of 1948, which does not define compensation but addresses its provisions and types[209].

Our comprehension of contractual liability has intensified. When a contract breach happens, it is crucial to evaluate the following elements: Damages are usually given in contract disputes involving parties from other countries to compensate for the loss, harm, or detriment caused by a respondent's breach of contract. Damage may serve as the primary way of returning performance or may augment other remedies, such as rescission or specific performance. Damages for breach of contract usually protect one of three claims of a claimant: performance interest (or expectation interest), reliance interest, or reparation interest[210].

B. COMPENSATION RULES

When we were studying the error corner, we noticed that there are three reasons for the error corner. Now, we will study compensation for damage resulting from each of the three reasons under Arab laws. Additionally, Arab law originally did not refer to performance wrongly, believing that execution wrongly was the same as non-performance[211]. Therefore, we will discuss only the compensation for damages resulting from the non-performance of the contract and compensation for damages resulting from the delay in execution of the contract.

1. THE DAMAGE CAUSED BY THE DEBTOR'S FAILURE TO IMPLEMENT THE CONTRACT

The contractual obligations of both parties to the contract are determined by what is agreed upon, based on the principle that the contract is the law of the contracting parties, provided that this agreement does not violate any rule of law. The law intervenes in determining these obligations and

[209]Egypt Law No. 131 of 1948 promulgating the Civil Code. (1948). Retrieved from https://www.fao.org/faolex/results/details/en/c/LEX-FAOC212999/

[210]Gotanda, J. Y. (2006). Damages in lieu of performance because of breach of contract. Public Policy Research Paper, 2006-8.

[211]Saleh, H. (2011). Compensation for the debtor's delay in executing his obligation: A comparative study (PhD thesis). An-Najah National University, College of Graduate Studies.

assigning responsibility when the contract is silent. This is done through complementary legal rules that the parties may have overlooked from the outset. For example, Article (522) of the Jordanian Civil Code stipulates that "The buyer must deliver the price upon contracting first and before delivery of the sold item and claiming it," unless otherwise agreed upon. Similarly, Article (456, Paragraph 1) of the Egyptian Civil Code states, "The price is due for payment in the place where the thing sold was delivered, unless there is an agreement or custom to the contrary."

The two articles deal with the subject of the price in the sale contract from two different angles, but both indicate that, in cases where there is no agreement between the parties on certain obligations, the law intervenes to determine those obligations and establish who is responsible for fulfilling them. The creditor has the right to compensation and can demand it if the debtor does not fulfill his contractual obligation, regardless of the type of obligation. This is because the purpose of the contract is to ensure the other party's fulfillment of their obligations. The debtor is generally required to perform exactly what they are obligated to fulfill[212].

Compensation or judgment is allowed if the specific performance of the obligation is possible, according to Article (355) of the Jordanian Civil Code and Article (203) of the Egyptian Civil Code. However, if performance becomes impossible due to the debtor's fault, or if the debtor refuses to fulfill an obligation that requires personal intervention (such as when the debtor's personal presence is necessary, e.g., as a painter or representative), the creditor can request compensation, and the court can grant it. If the obligation is not burdensome for the debtor and is still possible, there is no demand for compensation at that time[213].

2. THE DAMAGE CAUSED BY THE DELAY IN IMPLEMENTATION

Compensation for delay is a matter of contention in Islamic jurisprudence, with Muslim jurists differing on the issue. Some support its

[212]Juma, A. R. A. (2006). Al-Wajeez in explanation of the Jordanian Civil Law (Provisions of Commitment) (1st ed.). Amman, Jordan: Wael Publishing House.
[213]Al-Sanhouri, A. (2000). The mediator in explanation of the new civil law (2): Theory of commitment in general evidence - Athar 1 commitment (3rd ed.). Beirut, Lebanon: Al-Halabi Human Rights Publications.

permissibility under specific conditions and controls, while others reject it as a form of prohibited usury. Professor Mustafa Al-Zarqa is considered the first researcher to receive compensation for damages due to a delay in the performance of obligations. He argued that it is permissible to judge the debtor in accordance with compensation, provided certain controls are met. He drew evidence from the Qur'an, the Sunnah of the Prophet, and Islamic principles[214]. The conditions and controls he outlined are as follows[215]:

1. The debtor must be solvent, as an insolvent debtor falls outside the scope of special provisions for procrastination.
2. The judiciary must determine the amount of compensation to be paid, with the help of expertise. It should be noted that Professor Al-Zarqa argued that the creditor is not required to prove damage to be compensated; it is assumed that damage occurred simply due to the delay. The creditor must only prove that they made a profit during the period of procrastination.
3. It is not permissible for the creditor and debtor to agree in advance on the amount of compensation to be paid.

In contrast to the first jurisprudential trend that allows compensation for delays under these conditions, another trend rejects the idea of compensating the creditor for delays in performance. Now, we will discuss the issue of Arab laws and their view on compensation for delay in execution. When reviewing the provisions of the Jordanian Civil Law regarding compensation (Articles 360-364), there is no legal text that specifically addresses compensation for delay [216]. However, the Lebanese law recognizes compensation for delays in performance. This is organized in the second chapter of the third book of the Lebanese Obligations and Contracts Code. Article (252) of this law gives the creditor the right to request compensation if the debtor delays in fulfilling their obligation [217]. Similarly, the Egyptian legislator agrees with the Lebanese approach on compensation for delay. Article 215 of the Egyptian Civil Code

[214]Al-Khathlan, S. B. T. (n.d.). Time in debt and its jurisprudential rulings.
[215]Al-Zarqa, M. (a.n.d.). Is it legally acceptable to judge the delaying debtor by compensating the creditor? pp. 111-112.
[216] Siwar, M. W. A. D. (1996). General trends in the Jordanian civil law (1st ed.). Amman, Jordan: Dar Al Thaqafa Library Publishing and Distribution. P 278.
[217]Lebanon. (1934). The Lebanese Code of Obligations and Contracts promulgated in March 1932 and in force as of October 11, 1934. Retrieved from http://77.42.251.205/LawView.aspx?opt=view&LawID=244226

states: If the debtor is unable to perform specifically, he shall be liable to pay damages for non-performance of his obligation, unless he demonstrates that the impossibility of performance resulted from a cause beyond his control. The identical concept is applicable if the debtor delays in fulfilling his commitment[218].

The UAE legislator has also adopted the legislative direction of compensating for delay. Article 386 of the UAE Civil Transactions Act No. 5 of 1985, amended by Federal Law No. 1 of 1987, reads: "If it is impossible for the debtor to fulfill their obligation, compensation shall be awarded for failure to perform. The judgment will also apply if the debtor delays in fulfilling their obligation[219]". The Kuwaiti legislator also permits compensation for delays. Based on Article 293 of the Kuwaiti Civil Code No. 67 of 1980, the creditor is entitled to seek compensation for the debtor's delay, provided that the delay results in damage. It states: "Where it is not possible to execute or delay the in-kind obligation, the debtor must compensate the damage suffered by the creditor, unless the debtor proves that the delay was caused by a reason beyond their control [220]".

3. Compensation for Lost Profits

We have studied the topic of compensation for damage caused by delays, but can delays in implementation cause further damage? Specifically, we are considering the subject of lost profits. Of course, delays can cause lost profits. But how do Arab jurisprudence and Arabic law deal with this issue? Now, let's look at how this is treated, with a focus on the laws of some GCC countries such as Saudi Arabia, as well as the Unified Civil Law for the countries of the Gulf Cooperation Council (GCC). Before we proceed, we must first define "lost profit."

Compensation for lost profits in contractual liability refers to monetary damages awarded to a party that has suffered a loss of anticipated earnings due to another party's violation of contract. The purpose of this compensation is to

[218]The Egyptian Constitution, Egypt. (2014). The Egyptian Constitution. Retrieved from https://www.constituteproject.org/constitution/Egypt_2014
[219]United Arab Emirates. (1992). UAE Civil Procedure Code, Federal Law No. 11 of 1992. Retrieved from https://tinyurl.com/yhv6w99x
[220]Kuwait. (1980). Civil code No. 67 of 1980. Retrieved from https://www.lexismiddleeast.com/law/Kuwait/DecreeLaw_67_1980

return the non-breaching party to the economic status they would have attained had the contract been fully fulfilled. Section 2-708 of the Uniform Commercial Code (UCC) stipulates that a buyer who incurs lost profits due to a seller's breach of contract may recover damages, including the disparity between the contract price and the market price, along with any incidental or consequential damages[221]. In terms of contractual liability, the rules governing compensation for lost profits vary depending on the applicable law. However, in general, the following legal principles apply:

I. Proof of Loss: The non-breaching party must prove that they would have made profits if the contract hadn't been breached to recover compensation for lost profits. In Section 347 of the Restatement (Second) of Contracts, it says that the party who was hurt can get damages that represent their expectation interest. This damage is calculated by the decrease in value caused by the other party's poor performance, along with any other losses, such as incidental or consequential damages, that come from the breach, less any costs or losses that were lessened by the lack of performance [222].

II. Foreseeability: The breaching party must have been able to reasonably foresee that the non-breaching party would suffer lost profits because of the breach. This means that if the non-breaching party's lost profits were not a direct and foreseeable consequence of the breach, compensation may not be awarded. This principle was confirmed in the case Hadley v. Baxendale, an English case, which held that the defendant was responsible for the plaintiff's lost profits only to the period that they were a direct and foreseeable consequence of the breach[223].

In Arabic jurisprudence, loss of profits or "loss of profits" refers to what the injured person hopes to earn, provided that this hope is reasonable. In other words, loss of profits is what the injured party has lost due to a breach of obligation or a harmful act[224.] As I see it, the loss of profits refers to the reduction or absence of income that a company or individual experiences due

[221]U.S. Congress. (1963.). The Uniform Commercial Code (UCC). Retrieved from https://www.govinfo.gov/content/pkg/STATUTE-77/pdf/STATUTE-77-Pg630.pdf
[222]Restatement (Second) of Contracts. f (1981). Retrieved from https://tinyurl.com/3ur3wc5u
[223]Hadley v. Baxendale, 9 Exch. 341, 156 Eng. Rep. 145 (1854).
[224]Badir, A. A. (2007). Compensation for Damage to Tort Liability: Comparative Study (master's thesis, Mouta University, Jordan). p. 23

to a particular event or occurrence. This can occur as a result of various factors, such as a decrease in demand for a product or service or the failure to fulfill a contract. One can calculate the loss of profits by defining the difference between the expected income and the actual income received. This calculation can be used to determine the amount of compensation that may be sought in legal proceedings, such as a broken contract or an insurance lawsuit. It is noteworthy that Arab laws differentiate between compensation for delays when the debtor's obligation involves the payment of a sum of money and delays in the performance of other obligations. For example, in the case of a delay in the performance of any obligation other than the payment of money, the creditor must prove that damage resulted from the debtor's delay.

Nevertheless, when the debtor should pay a sum of money and there is a delay in fulfilling it, the law exempts the creditor from confirming the damage. For illustration:

- Article 167, Paragraph 1 of the Jordanian Civil Code: If the debtor essays to pay an amount of money at a specific period and refuses to fulfill the responsibility, the debtor shall be ordered to pay interest without the creditor confirming that damage happened[225].
- Article 228 of the Egyptian Civil Code states: "Moratory interest, whether established by law or by contract, is owed without the creditor needing to demonstrate loss due to the delay." Since the creditor receives harm and the debtor cannot demonstrate otherwise, they are exempt from the responsibility of proof [226].

When researching Saudi Arabian law, we must note that Islamic law is the basis of Saudi law. The Basic Law of Governance (Article 1) states: "Saudi Arabia is a State whose religion is Islam, and its constitution is the Book of Allah and the Sunnah of the Messenger of Allah[227]". Therefore, comprehending Saudi Arabia's position on compensation for loss of profits requires analyzing Islamic law.

[225]Jordan. (1988). Civil procedure code and its amendments No. 24 of 1988. Retrieved from https://tinyurl.com/ytnd8vjy
[226]Ali, H. (2006). The commentary on the Civil Code (damage). Wael Publishing House, p330.
[227]Saudi Arabia. (1412). The Basic Law of Governance. Retrieved from https://tinyurl.com/5xrhewvz

Islamic law prohibits and forbids compensation for lost profits, as illustrated by the Islamic Shari'ah. This was approved by the Association of the Islamic World's Society of Jurisprudence at its 11th session in 1409H, where it said: If a creditor places a condition on the debtor that the debtor is bound to pay a sum of money in the event of a delay in fulfilling a responsibility, this requirement is void and invalid and must not be met[228]. This conclusion was also supported by the OIC Islamic Jurisprudence Complex Resolution from its 6th session in Jeddah, where compensation for delays in payment of an obligation is prohibited[229]. Additionally, Islamic Shari'ah emphasizes the inadmissibility of compensation for lost profits[230]. When examining judicial rulings in the Kingdom of Saudi Arabia, we find that some decisions have allowed compensation for lost profits, while others have refused it. Among the decisions that allowed compensation are:

1. The Court's decision of 28/11/1427H: "The defendant erred by closing the plaintiff's shop, thereby preventing it from engaging in business. The closure caused damage to the plaintiff, including loss of business, such as the payment of rent, worker wages, and profits that could have been made. The plaintiff must be compensated for all damage resulting from the shop's closure[231]".
2. Ombudsman's Office judgment (4/1/1430H): "The defendant's fault caused injury to the plaintiff. The damage was multifaceted and included financial loss, loss of development and profits, physical damage (e.g., illness), and moral damage. Despite the varied nature of the damage, all forms of damage must still be fully compensated[232]."

---

[228] Islamic Society of Jurisprudence of the Association of the Islamic World. (n.d.). Resolutions of the Islamic Society of Jurisprudence (p. 268).

[229]Al-Faqah Islamic Complex. (n.d.). Al-Faqah Islamic Complex Magazine (No. 6). p(448-447).

[230]Al-Yousef, A. B. A. (1433H). Debtor's financial procrastination. Journal of Shari'a and Islamic Studies, 27(90), Kuwait University. Also, Hammad, N. (1405H). The legitimate proponents of the debtor's procrastination. Economics Research Journal Islam, 3(1).

[231]Al Sharqawi, A. F. M. A. E., & Abu Yazid, A. F. M. (2016). Compensation for loss of profits in the Saudi administrative system and its judicial applications: A study compared to positive regulations and Islamic jurisprudence. Journal of the Faculty of Shari'a and Law Tattanta, 31(1), 168-341. https://mksq.journals.ekb.eg/article_7784_f8d1a1ae99ba5a8fddb3340b90800aba.pdf

[232]Appeal Court. (1430H). Judgment No. 33/S/8 in case No. 3747/2/S of 1428H (Vol. VI, Set of Provisions and Administrative Principles, Compensation). Ombudsman's Office. (1427 H, November 28). Judgement of the Ombudsman's Office, No. 481/T/5 of 1427H, in the case No.

The implication of the above is that although the subject of the opportunity is a possible matter, its loss is a certain matter, and therefore compensation must be made for it. Compensation is not for the subject of the opportunity, because it is a possible matter, but rather for the loss of the opportunity itself. When assessing compensation, the extent of the probability of the profit lost by the injured party as a result of the loss of the opportunity must be taken into account. An example of the loss of opportunity is someone who accidentally kills a horse that was scheduled to participate in a race. Additionally, the individual bears the responsibility of compensating the injured party for the damage resulting from their mistake, specifically the loss of the opportunity. If the opportunity is real and actual, the damage must be compensated for based on the probability that it will produce the desired or anticipated results.

On the other hand, many legal decisions have confirmed that no compensation can be awarded for lost profits. The most prominent of these decisions are:

1. Judgment rendered on 26/3/1427H: Whereas the plaintiff's motive for filing his lawsuit is the defendant's error in stopping his book, which the circuit established at the beginning of its reasons for this ruling, and whereas this is the case, and the erroneous procedures followed by the defendant in preventing the book after the plaintiff obtained approval and permission to cancel it, by saying that the book contained errors as we explained above, which proves that the defendant did not fulfill the responsibility imposed on it by the system, by verifying what was presented to it according to the principles and procedures required in this regard, ... and therefore preventing the plaintiff from selling the book after he incurred the financial expenses to complete it, as well as the time, effort and travel in pursuing his lawsuit, constitutes procrastination and causing harm, ... which the circuit concludes by the plaintiff's entitlement to the costs he requested and which the circuit accepted, and obligating the defendant to pay them, ... and as for what the plaintiff is demanding in this lawsuit - compensation for lost profit - it is from the potential profits stipulated by

425/1/S of 1425H. Set of Administrative Provisions and Principles, vol. III, Administrative Decision\

Islamic law, and he refuses to be compensated for it, due to his ignorance of it, and the circuit did not prove that the plaintiff printed any other copies other than those that were replaced. Therefore, in the above-mentioned case, this request must be rejected[233]".

2. The Board of Grievances, in its ruling issued on 04/06/1429 AH, also rejected compensation for lost profit based on the fact that the lost profit in the case presented was based on mere guesswork and expectation and was not certain to occur, as it stated in its grounds that: "... the element of harm is not present; because the harm is possible and not certain, and the calculation of lost profit is based on mere guesswork and expectation, so it is not regulated and cannot be determined accurately, let alone in accordance with the Sharia. The Board also settled in its rulings that the guarantee is not required except where its justification is confirmed and decided in a way that eliminates the possibility and suspicion[234]".

Regarding the Unified Civil Code of the Gulf Cooperation Council (Kuwait Convention), we find that Article 267 reads: "Compensation shall be assessed in all cases to the extent that the injured person has suffered loss or loss of profit." The Unified Civil Code of the GCC permits compensation for lost profits[235]. This explains why there are judicial decisions in Saudi Arabia that authorize compensation in some cases, while others refuse it based on Islamic Shari'ah law.

Furthermore, the Egyptian Civil Code provides for compensation for lost profits in Article 221, which states: "The judge will determine the number of damages, if it has not been fixed in the contract or by law. The damages include losses suffered by the creditor and profits they have been deprived of, if these losses are the normal result of the failure to fulfil the obligation or of a

[233] Ombudsman's Office. (1427 A.H.). Judgement of the Audit Board of the Ombudsman of 26/3/1427 A.H, No. 218/T/1 of 1427 A.H in case No. (209/2/S) of 1426H. Set of Administrative Provisions and Principles, vol. IV, Compensation pp. 329, 192.

[234]Ombudsman's Office. (1429 H). Judgement of 4/6/1429 H, No. 279/T/6 of 1429 H, in case No. 1495/1/S. Set of Provisions and Administrative Principles of 1429H, vol. VI, Compensation. Also, Ombudsman's Office. (1431H). Judgment No. 250/S/1 in case No. 5605/1/S of 1428H & Preliminary Judgment No. 51/S/5 of 1430H.

[235]Kuwait. (2011). Gulf Cooperation Council consolidated civil code document, edition No. 3, 2011. Retrieved from https://tinyurl.com/wr3trbut

delay in its performance. These losses will be considered a normal result if the creditor could not have avoided them by making a reasonable effort[236]."

The ordinary judiciary in Egypt has also established compensation for lost profits, recognizing in many rulings that compensation for injury must include both losses and lost profits. For instance, in 2007, the Egyptian Court of Cassation clarified that Article 221 of the Civil Code includes compensation for lost profits, particularly when the injured party had a reasonable hope of earning profits, and that hope was supported by acceptable grounds[237]. In a 1 January 2008 judgment, the Egyptian Court of Cassation ruled that nothing in the law prevents the calculation of lost profits, provided that the individual had a reasonable expectation of earning those profits[238], and these decisions enable legal clarity in compensation disputes, balancing fairness with the need for concrete proof. In conclusion, we have discussed the most important Arab laws regarding compensation for lost profits.

C. THE FORMS OF COMPENSATION

After examining the reasons for compensation, we will now look at the forms of compensation. There are two main types of compensation: monetary compensation and non-monetary (in-kind) compensation. We will discuss each type separately.

1) MONETARY COMPENSATION:

Monetary compensation is a term used in the context of contractual responsibility to describe a payment intended to compensate the non-breaching party for any damage sustained due to the breach. The goal of monetary compensation is to put the non-breaching party returns in the exact situation they would have been in under the terms of the contract.

In other words, it provides the plaintiff with money to make up for a loss that was not originally a monetary loss but can be measured in monetary

[236]Egypt Law No. 131 of 1948 promulgating the Civil Code. (1948). Retrieved from https://www.fao.org/faolex/results/details/en/c/LEX-FAOC212999/

[237]Egyptian Court of Cassation. (2007, January 15). Judgement of the General Assembly of Civil, Commercial and Personal Status Materials, Appeal No. 4797 of 64 R. General Assembly, Body of Laws and Legal Principles, 35 Cassation Provisions, 2007-2008, Part I, 2010.

[238]Egyptian Court of Cassation. (2008). Judgment of 1 January 2008, Appeal No. 17459 of 767 (Group Laws and Legal Principles, 35, Set of Cassation Provisions, 2007-2008, c1, p. 1).

terms[239]. Monetary compensation can also be defined as the amount of money the debtor is obligated to pay to the creditor for failing to execute the contract. The debtor is required to compensate the creditor for the non-performance of the contract, as well as for any third-party damage caused by the debtor's fault. Importantly, this form of compensation does not exhaust the debtor's obligations but serves as a remedy for the breach[240]. Monetary compensation is common because damage is easily assessed in monetary terms.[241] Professor Dobbs, in his 1973 treatise on remedies titled Damages as Compensation, states: "The damages award is substitutionary relief, meaning it gives the plaintiff money primarily by way of compensation [242]."

Depending on the specific circumstances of a case, a non-breaching party may be entitled to monetary compensation. This entitlement will depend on factors such as the nature of the contract, the type of breach, and the extent of the damage suffered by the non-breaching party. In certain instances, the non-breaching party may obtain compensatory damages intended to offset losses incurred due to the breach. These damages may encompass direct financial losses, forfeited profits, or other consequential damages.

In some contracts, liquidated damages are included. These are a predetermined number of damages that will be payable if a breach occurs. The purpose of a liquidated damages clause is to provide certainty and avoid lengthy litigation over the number of damages to be awarded. Switzerland, for example, addresses this in Article 43(1) of the Swiss Code of Obligations (CO), which states: "The court determines the form and extent of the compensation provided for damage incurred, with due regard to the circumstances and the degree of culpability." Accordingly, compensation may take various forms, including monetary compensation or other types of compensation[243].

[239]Bowen v. Massachusetts, 487 U.S. 879, 918-19 (1988) (Scalia, J., dissenting).
[240]Al Hamdani, A. J. T. (2019). Cancellation of the contract by individual will: Comparative study in civil law (1st ed., p. 277). Arab Center for Publishing and Distribution.
[241]Hammad, D. (2016). General theory of commitments: Section II, Commitment provisions (p. 43). Dar Al-Sanhouri Library.
[242]Dobbs, D. B. (1973). Handbook on the law of remedies (§ 3.1, p. 135). Also, Murphy, C. P. (2006). Money as a specific remedy. Alabama Law Review, 58, 119.
[243]Ingeborg Schwenzer, Swiss Code of Obligations. General part (Stämpfli, 2016) para 15.01; Pierre Tercier and Pascal Pichonnaz, Le droit des obligations (Schulthess, 2012) para 1250

The goal of monetary compensation in the context of contractual responsibility is to remedy the situation for the non-breaching party and to prevent future breaches. It helps ensure that business transactions are more honest and fairer by holding parties accountable for their promises. It is important to note that to be eligible for monetary compensation in a breach of contract case, the non-breaching party must have suffered hurt because of the breach. Mere inconvenience or disappointment is insufficient to support a claim for damages. For example, Justice Scalia described a scenario where the plaintiff sought compensation for the loss sustained by expending resources to provide services to the defendant, in reliance on the defendant's contractual duty to pay[244].

Returning to Arabic jurisprudence, monetary compensation refers to the amount of money the judge determines to compensate for the damage caused to the injured party[245]. This means that the judgment obliges the debtor to pay money to the creditor as compensation for the damage caused by the debtor's breach of contract. Monetary compensation can be in the form of a one-time payment, in installments, or even in the form of a lifetime salary. Article 132/1 of the Civil Code stipulates that if the compensation is in installments or as a salary refund, the debtor may be required to provide insurance until the payment is made[246].

2) NON-MONETARY COMPENSATION

Non-monetary compensation (In-Kind Compensation), also known as in-kind compensation, refers to compensation that is provided in the form of goods or services rather than money. In the context of contractual liability, in-kind compensation is used to fulfill contractual obligations and satisfy damages resulting from a breach of contract. It involves the breaching party offering goods or services as compensation instead of a monetary payment[247] . For

[244]Bowen v. Massachusetts, 487 U.S. at 917 (1988) (Scalia, J., dissenting). For more: Murphy, C. P. (2006). Money as a specific remedy. Alabama Law Review, 58, 119.
[245]Majali, A. (2000). The extent of compensation for damage in contractual liability: A comparative study in Algerian and Mauritanian civil law. 2000, p. 12.
[246]Suleiman, A. (1994). Studies in civil liability in Algerian civil law (2nd ed.). p. 210. For more: Korba, R. (2013). The Judge's Authority in Estimating Compensation: A Study in the Context of Contractual Liability. Faculty of Law.P.45.
[247]Farttoos, F. K., & Musa, H. F. (2022). Compensation for damages caused by automatic contracts. World Bulletin of Management and Law.13:P. 40- 45.

example, if a contract requires the delivery of a product but the product is defective or not delivered on time, the breaching party may offer in-kind compensation in the form of a replacement product or a service credit. The non-breaching party can choose to accept or reject this form of compensation. In-kind compensation can help settle contract disputes because it lets the party that broke the agreement give a remedy that may be more valuable to the party that didn't break the agreement than a simple cash payment. However, the in-kind compensation must be clearly defined and agreed upon in the contract to avoid further disputes or misunderstandings. We try to put the injured party in the same situation as if the agreement has been fulfilled. [248].

From the court's perspective, enforcing non-monetary compensation requires more effective judicial supervision than the awarding of monetary damages. Therefore, courts should weigh the aggrieved party's interests and the public interest against the difficulties of enforcement before awarding non-monetary compensation [249] .Under the CCL (Civil Code Law), the defaulting party may be required to provide a non-monetary act, as agreed upon, to compensate for the loss caused by non-performance [250].

[248]De Rey, S., & Chen, L. (2021). Non-monetary relief for breach of contract: A European perspective on Chinese contract law. Asia Pacific Law Review, 29(2): 325-345.
[249]Chen, L. (2018). Damages and specific performance in Chinese contract law. In L. A. Dimatteo & L. Chen (Eds.), Chinese Contract Law: Civil and Common Law Perspectives. Cambridge University Press. P 401.
[250]De Rey, S., & Chen, L. (2021). Non-monetary relief for breach of contract: A European perspective on Chinese contract law. Asia Pacific Law Review, 29(2), 325-345.

CHAPTER TWO:
THE ARBITRATION CONTRACT AND COMMERCIAL ARBITRATION IN GCC LAWS

I. THE ARBITRATION CONTRACT

A. DEFINITION OF ARBITRATION

Arbitration serves as a legal method for solving issues within European trade laws, wherein commercial parties agree to raise their case to an impartial third party, called an arbitrator. Like a judge, the arbitrator evaluates the proof presented by each party and renders a decision. This approach offers an expedient and cost-effective alternative to traditional court proceedings, making it a popular choice for international trade disputes in Europe. Furthermore, arbitration allows disputants to choose an arbitrator with specific knowledge and expertise in the field, which can enhance the quality and accuracy of the decision-making process. To facilitate the resolution of commercial disputes involving parties from different EU member states, the European Union has established its own arbitration system, known as the European Court of Arbitration. This court functions under the auspices of the European Arbitration Chamber, and its rulings hold enforceability across all EU member states.

To engage in a scholarly discussion of arbitration, it is necessary to first establish a comprehensive linguistic and legal definition. Upon examining various dictionaries, many linguistic definitions have been discovered, including:

- The procedure involves settling a disagreement or grievance outside of judicial proceedings by submitting it to an impartial third party or panel for a determination that may or may not be obligatory[251].
- Arbitration is a method for resolving a conflict by agreeing to letting an impartial third-party plan outside of the legal court procedure [252].
- The official method of trying to settle a dispute between two people or groups involves assessing all the truths and views[253].

[251]Merriam-Webster. (n.d.). Merriam-Webster online dictionary. Retrieved from http://www.merriam-webster.com
[252]Collins COBUILD. (n.d). Key words for finance. HarperCollins Publishers.
[253]Macmillan Dictionary. (n.d.). Retrieved from http://www.macmillandictionary.com

- A situation where a legal dispute is settled by impartial authorities with the power to make a legal decision instead of going to court; or an example of a conflict between an employer and employees that is handled by impartial officials who want to reach a compromise to avoid a strike or legal battle[254].
- Additionally, it could be defined as: "The formal procedure of appointing an impartial individual, mutually selected by both parties in a dispute, to resolve the disagreement[255].
- The hearing and choosing of a conflict or the settling of differences between parties by an individual or person selected or agreed to[256].
- Arbitration is the judging of a conflict between individuals or groups by someone who is not concerned[257].
- The hearing and resolution of a conflict by an impartial referee appointed or agreed upon by the parties involved [258].
- A method in which an independent individual makes an official determination that completes a legal disagreement without the need for it to be solved in court[259].
- The act of arbitrating, particularly, the settlement of a conflict by an individual or individuals selected to hear both sides and come to a decision—is known as arbitration[260]."

Can alternatively be referred to as:

- The process of resolving a disagreement between individuals involves facilitating their consensus on a mutually acceptable solution[261].

[254]Longman Dictionary of Contemporary English Online. (n.d.). Retrieved from https://www.ldoceonline.com/

[255]Cambridge University Press. (2005). Definition of arbitration. In Cambridge Academic Content Dictionary (© 2005). Cambridge University Press.

[256]Penguin Random House LLC. (2019). Definition of arbitration. In Cambridge Academic Content Dictionary (modified entries © 2019). Penguin Random House LLC.

[257]HarperCollins Publishers. (n.d.). Collins COBUILD Advanced Learner's Dictionary (© HarperCollins Publishers).

[258]Collins English Dictionary: HarperCollins Publishers. (n.d.). Collins English Dictionary (© HarperCollins Publishers).

[259]Cambridge Business English Dictionary: Cambridge University Press. (n.d.). Definition of arbitration. In Cambridge Business English Dictionary (© Cambridge University Press).

[260]Houghton Mifflin Harcourt. (2010). Webster's New World College Dictionary (4th ed.; © 2010).

[261]Cambridge University Press. (n.d.). Definition of arbitration. In Cambridge Advanced Learner's Dictionary & Thesaurus (© Cambridge University Press).

- The way a disagreement is settled by a fair judge, whose decision both sides agree with or which the law requires will be final and binding[262].

Upon studying the main legal systems, we note that arbitration can be defined as:

- Arbitration is a conflict solution method in which the parties agree to submit their disputes to an arbitrator or a panel of arbitrators who are selected to adjudicate the matter.[263]
- Arbitration is a method of dispute solution by which the parties agree to raise their disputes to one or more arbitrators, who make a final decision, called an award.[264].
- Arbitration is a process in which parties agree to raise an issue to one or more arbitrators who make a critical decision[265].

Further, arbitration can be described as:

- A method whereby the party to a conflict raises their differences to the decision of a private tribunal, selected by them, rather than having the matter determined by the ordinary courts of law. [266]
- Arbitration is a dispute resolution method in which parties agree to subject their disputes to one or more arbitrators and be bound by their decision.[267]
- Arbitration is a manner of dispute solution in which the parties agree to raise their disputes to one or more arbitrators, whose decision is binding and enforceable. [268]"

In Arab laws, we discover that arbitration means:

---

[262]Legal Information Institute. (n.d.). Arbitration. Cornell Law School. https://www.law.cornell.edu/wex/arbitration

[263]United Nations Commission on International Trade Law. (2006). UNCITRAL Model Law on International Commercial Arbitration, 1985 with amendments as adopted in 2006. United Nations. https://tinyurl.com/38xcumd8.

[264]International Chamber of Commerce. (2012). ICC Arbitration Rules. Retrieved from https://tinyurl.com/2nu7kskx

[265]Swiss Chambers of Commerce and Industry. (n.d.). Swiss rules of international arbitration. Swiss Chambers of Commerce and Industry. Retrieved from https://www.swissarbitration.org/centre/arbitration/arbitration-rules/

[266]English Arbitration Act 1996. (n.d.). English Arbitration Act (EAA), Retrieved from https://www.acerislaw.com/wp-content/uploads/2024/03/1996-English-Arbitration-Act.pdf

[267]French Civil Code. (2006.). Retrieved from https://tinyurl.com/ybhc2bp4 ,(Article 1442)

[268]German Code of Civil Procedure. (2007). Zivilprozessordnung (ZPO). Retrieved from https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html (Section 1025)

- Arbitration is a private method of conflict solution in which parties agree to raise their disputes to one or more arbitrators who are chosen by them and whose decision is binding and enforceable[269]".
- Arbitration is a process by which the parties to a conflict submit the issue to an arbitral tribunal, empowered to make a final and binding decision.[270].
- Arbitration is a mechanism for resolving conflicts whereby the parties agree to submit their issue to a third party, who renders a critical decision [271].

Furthermore, in the arbitration process, two parties employ an independent, impartial third party to settle a dispute. For a process to be considered arbitration, it must involve a third party, which can be either one individual or a group of individuals. We refer to this person or group as an arbitrator. It means "arbitrator," a person selected to decide a dispute or settle differences, particularly one formally empowered to inspect the facts and decide the issue [272]. From the above definitions of arbitrator, we conclude that an arbitrator is an impartial third party selected or agreed upon by two or more parties to settle a dispute between them. The arbitrator hears the arguments and proof presented by each party and then decides or awards binding on all parties involved. Individuals often employ arbitration as a quicker, more private, and less expensive alternative to litigation. The arbitrator must have experience with the relevant legal and factual issues in the dispute and use the applicable law and rules of procedure when deciding.

Ultimately, based on my perspective, arbitration refers to the process of settling disputes or disagreements between parties by means of a neutral third party, known as an arbitrator. Throughout the arbitration, the arbitrator impartially hears the arguments submitted by both parties and renders a decision that is critical upon both. This method of alternative dispute resolution can be seen as a replacement for litigation in legal terms, as courts tend to be more time-consuming, formal, and costly compared to arbitration.

---

[269]Dubai International Arbitration Centre Rules. (2011)Retrieved from https://sadr.org/assets/uploads/Enforcement_Law.pdf, (Article 1)

[270]Qatar International Centre for Conciliation and Arbitration. (2012). Qatar International Centre for Conciliation and Arbitration Rules. Retrieved from https://tinyurl.com/yzyata7b (Article 1)

[271]Bahrain Chamber for Dispute Resolution. (2021). Bahrain Chamber for Dispute Resolution rules. Retrieved from https://bcdr.org/ or https://tinyurl.com/u6edrthw

[272]Dictionary.com. (n.d.). Retrieve from https://www.dictionary.com/browse/responsibility

B. MEDIATION AND ARBITRATION:

To achieve a complete understanding of arbitration, it is necessary to examine the term "mediation" and differentiate it from arbitration. To do this, we can begin by defining mediation and highlighting its key characteristics, before outlining the differences between them.

I. DEFINITION OF MEDIATION:

The origins of mediation can be traced back to the 14th century. The term "mediation" is derived from the Latin verb mediāre, meaning "to be in the middle" or "to intercede." The related words "intermediary" and "medium" also suggest third-party intervention. During the period of mediation, a third party intervenes in a conflict without favoring either side and works to promote an understanding or reconciliation. The objective of mediation is to identify common ground among all parties involved in the conflict[273].

Mediation is a confidential and voluntary method in which a neutral third party helps disputing parties negotiate a mutually acceptable settlement[274]. Instead of imposing a resolution, the mediator facilitates contact and negotiation between the parties to help them reach a decision that is agreeable to both sides [275]. Therefore, mediation is a method for individuals who are fighting to work out their differences with the help of an impartial third party. The impartial third party helps people make their own decisions and communicate so both sides are satisfied[276]. Additionally, mediation is a different way to settle a disagreement where a neutral third party helps the people who are fighting to talk to each other and come to an agreement that works for everyone[277].

In other words, mediation can be defined as a method through which parties aim to resolve a conflict with the help of an impartial third party who facilitates contact and negotiation to enable the parties to reach an

[273]Dictionary.com. (n.d.). Retrieve from https://www.dictionary.com/
[274]American Bar Association. (2018). What is mediation? https://tinyurl.com/3hu6udha
[275]United Nations. (2012). Guidance for effective mediation. Retrieved from https://dppa.un.org/en/united-nations-guidance-effective-mediation
[276]National Institute of Justice. (2018). Mediation.https://www.crimesolutions.gov/PracticeDetails.aspx?ID=16
[277]LegalMatch. (2021). What is mediation? https://www.legalmatch.com/law-library/article/what-is-mediation.html

agreement[278]. Another way to explain mediation is as a way for resolving industrial conflicts, where an impartial third-party consults with the parties involved and proposes a resolution that is not legally critical. Mediation involves the third party's intervention to facilitate contact and negotiation between the parties to reach an agreement or reconciliation [279].

In their paper, Manzini and Mariotti make it clear that mediation is a voluntary process in which a neutral third party helps the people who are fighting to find a resolution that works for everyone. Mediation, I believe, works pretty well for settling disagreements between businesses. It helps everyone involved keep their working relationships intact while sorting out their issues. They provide several illustrations of successful mediation in various industries, such as how it was used to resolve payment disputes between construction contractors and subcontractors and how it has been employed in the healthcare sector to manage disagreements between patients and healthcare providers[280]. Mediation, as defined by the directive, refers to a structured process in which a group of individuals assists one another with the aid of a facilitator. It stipulates that EU members must promote mediation and ensure adherence to agreements established through this process[281].

Back in July 2004, The European Union Code of Conduct for Mediators made it clear: mediation is when two or more people agree to get a third person's help in sorting out their disputes. In my view, it's a sensible approach to conflict resolution. If you ask me, more places should be doing this kind of thing [282]. In French law, mediation is defined as a voluntary method whereby a neutral third party (the mediator) helps the parties reach a mutually

[278]American Arbitration Association. (2021). Mediation. https://www.adr.org/Mediation. In addition, Goltsman, M., et al. (2009). Mediation, arbitration, and negotiation. Journal of Economic Theory, 144(4).
[279]Collins English Dictionary: HarperCollins Publishers. (n.d.). Collins English Dictionary (© HarperCollins Publishers). Retrieved from http://www.collinsdictionary.com/dictionary/english
[280]Manzini, P., & Mariotti, M. (2002). Arbitration and mediation: An economic perspective (IZA Discussion Papers No. 528). Institute for the Study of Labor (IZA). https://www.iza.org/en/publications/dp/528/arbitration-and-mediation-an-economic-perspective
[281]European Parliament & Council of the European Union. (2008, May 21). Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. Official Journal of the European Union. Retrieved from https://tinyurl.com/2kfp735m
[282]European Union Code of Conduct for Mediators Agreement. (2004). European Code of Conduct on Mediation. Retrieved from https://tinyurl.com/ybyneh

acceptable agreement to resolve their issues. The Code of Civil Procedure defines mediation as a process of confidential, voluntary, and structured dialogue in which a third party, chosen by the parties or appointed by the judge, assists them in reaching a negotiated solution[283]. In Spanish law, mediation is similarly recognized as a means of dispute resolution. The Law on Mediation in Civil and Commercial Matters passed in 2012, describes mediation as a voluntary method of dispute resolution in which the parties, with the help of a mediator, communicate with each other to reach a mutually satisfactory agreement this law highlights the voluntary nature of mediation and provides guidelines for conducting mediation and implementing mediated agreements[284].

Mediations in Arab law are a common way to settle disputes. However, how it is done can vary based on the timing of mediation, and timing is an important part [285]. For instance, in Islamic law there is a term we are used it and this term is " sulh", and the concept of "sulh" in Islamic law referring to the process of mediation aimed at reaching an amicable settlement. Many Arab countries also have laws and regulations that promote mediation. In Saudi Arabia, mediation is acknowledged under the Law of Procedure before Sharia Courts, however in the UAE, the Dubai International Financial Centre (DIFC) has created the DIFC Mediation Centre to provide mediation services for civil and commercial disputes[286].

II. PROPERTIES OF MEDIATION

Mediation is a shaped alternative dispute resolution in which an impartial third party facilitates communication and negotiation between parties in a dispute to achieve a mutually satisfactory agreement. Mediation has several characteristics that distinguish it from other forms of conflict solutions.

---

[283]Decree No. 2007-1388 of September 26, 2007, issued for the application of Law No. 2007-297 of March 5, 2007, relating to the prevention of delinquency and amending the Penal Code and the Code of Criminal Procedure. (2007). Retrieved from https://tinyurl.com/3xr8t2v4, Article 1530

[284]Law No. 5/2012, of July 6, on Mediation in Civil and Commercial Matters. (2012). Official State Gazette of Spain. Retrieved from https://www.boe.es/buscar/act.php?id=BOE-A-2012-9059

[285]Al-Darwish, T. (2019). Islamic law and ADR in the Arab Middle East. Journal of Law and Conflict Resolution, 11(3), 31-38.

[286]Alshaali, A., & Alshaali, H. (2017). Mediation in the UAE: Law and Practice. The Journal of Private Equity, 21(3), 38-46.

After defining mediation, the next step is to analyze its distinct characteristics to compare it with arbitration. The following are some characteristics of mediation:

1. Recourse to Mediation: The act of resorting to mediation is voluntary, and the involvement of all parties depends on their mutual contract to participate in the process. In certain cases, the court before which an action is brought may request the parties to use mediation as a mechanism for resolving the conflict, regarding all relevant factors of the case. Additionally, the court may recommend that the parties attend an information session on mediation, provided such sessions are available and easily accessible [287].
2. Informality: Mediations are quite laid back compared to other ways, like litigation. Instead of being stuck in a courtroom, we might be able to work things out, and rules of evidence don't come into play here.
3. Confidentiality: Mediation is like a private talk, meaning that whatever is said during it can't be used in court. This secrecy usually protects individuals from allowing anything they say to come back to bite them. Honestly, that's a big deal and makes people more likely to be open to these talks[288]. In addition, there's a rule from the European Parliament Article 7, which involves keeping things under wraps during mediation. It states that member countries should not force mediators to testify in court unless the procedural method that was agreed upon is carried out.
4. Neutrality: The mediator is an impartial participant in the process. He doesn't take sides or decide for anyone. The job is to help both sides talk and work together towards an agreement they both can live with. The mediator facilitates communication among the parties. Reaching an outcome that everyone finds acceptable is the goal. Neutrality must stay at the core of what the mediator does.
5. Flexibility: Mediation can be shaped to fit the needs of the parties involved. The mediator, location, and format of the mediation are flexible. At mediation,

[287]American Bar Association. (2012). Standards of practice for family and divorce mediation. Also: European Parliament & Council of the European Union. (2008, May 21). Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. Official Journal of the European Union. Retrieved from https://tinyurl.com/2kfp735m (Article N.2)

[288]American Bar Association. (2005). Guidelines for Mediators.

parties decide what issues they want to cover. In my experience, having this kind of discussion makes people feel more at ease and invested in finding a solution. It is up to the people involved to steer the process in a way that makes sense for them, something I think is often overlooked in other forms of conflict.

6. Focus on Interests: Mediation emphasizes the parties' underlying interests are more important than their positions. The mediator helps the parties identify their interests and work toward a solution that meets them. This focus can lead to a more creative and satisfying resolution than what might be achieved through litigation[289].
7. Effectiveness: Efficiency: Mediation provides a quick and cost-effective out-of-court solution to civil and commercial matters. The processes are tailored to the specific needs of the parties involved, resulting in a more efficient resolution.
8. Mediation Inclusiveness: Mediation Inclusiveness: Mediation inclusiveness refers to the promotion of mediation as a means of resolving cross-border disputes in civil and commercial matters, except for rights and obligations that are not subject to the parties' discretion under the applicable law. It is important to note that this practice does not cover issues related to taxes, customs, or administration. It also does not cover the State's responsibility for actions and inactions taken while exercising its power (acta iure imperii).
9. Failure of Mediation: Failure of Mediation: If mediation fails, it is permissible to resort to arbitration or regular courts, while preserving the statute of limitations. This is confirmed by Article 24 of Directive 2008/52/EC of the European Parliament and of the Council (21 May 2008)[290].

III. The Difference Between Mediation and Arbitration

Mediation and arbitration have been around for ages. Even the Greeks and Persians used mediation. The Romans never had their way, like when they used arbitration when Rome and the Latin League settled through an arbitration clause way back in 493 BC. What is more, the Greeks often helped other city-states solve their quarrels by stepping in as mediators. The Greeks played

[289]Fisher, R., Ury, W., & Patton, B. (2011). Getting to Yes: Negotiating agreement without giving in.

[290]European Parliament & Council of the European Union. (2008, May 21). Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. Official Journal of the European Union. Retrieved from https://tinyurl.com/2kfp735m

middleman, like when the Persian king Artaxerxes II helped Athens and Sparta call a truce in 387 BC [291]. The lessons are clear in how they have been applied throughout time. Both are alternative ways to solve problems. While both try to fix issues outside the courtroom, they aren't exactly the same. Matthael pointed out that Romans turned to arbitration to sort out disputes early on. Knowing these differences is crucial, especially since they help understand how conflicts have been tackled through the ages:

Mediators are neutral third parties who help people in conflict find a middle ground. They don't make decisions or force solutions. The judge, an impartial third party, hears the proof and issues a decision. The arbitrator's word is the law, in contrast to how binding arbitration always allows participants to shape their own resolution. This means everybody can work together to create a solution that suits everyone involved. However, in these cases, everyone has an interest in the final outcome since the arbitrator's decision is binding. Ultimately, the power to decide is in someone else's hands[292].

Arbitration and mediation differ a lot in how they're handled and whether the parties can decide if they want to take part or not[293]. But sometimes, the court can make it mandatory, which isn't always ideal. It's the same with arbitration, which can be formal and closed. Even mediation feels less formal. I see it more as a conversation where everyone talks openly, led by a mediator who keeps things on track. Meanwhile, arbitration is stricter, like being in a courtroom with rules and decisions[294]. Confidentiality also remains under wraps between the people involved and the mediator. Sometimes, arbitration can be more out in the open, depending on the rules they follow[295]. Arbitration is highly regulated because the decisions are supposed to be final

[291]Matthaei, L. E. (1908). The place of arbitration and mediation in ancient systems of international ethics. The Classical Quarterly, 2(4).
[292]American Bar Association. (2002). ADR Definitions and Terms. As well as Dendorfer, R., & Lack, J. (2007). The interaction between arbitration and mediation: Vision vs. reality. Dispute Resolution International, 1, 73. Moreover, European Commission. (2008). European judicial network in civil and commercial matters: Mediation and arbitration.
[293]American Bar Association. (2002). ADR Definitions and Terms.
[294]European Commission. (2008). European judicial network in civil and commercial matters: Mediation and arbitration
[295]International Chamber of Commerce. (2017). ICC dispute resolution bulletin: Confidentiality in arbitration.

and not open for appeal, even outside of the country, it is governed by codes such as the German Civil Procedure Code, the New York Convention, the UNCITRAL Rules, and various arbitration rules (e.g., AAA Rules) [296].

On the other hand, mediation has a lower degree of regulation since it does not result in judgment. Few formal mediation codes exist in Europe, and in the U.S. [297], it is regulated by private organizations and the Uniform Mediation Act. The European Union has recently introduced a voluntary Code of Conduct for mediation[298].

IV. Arbitration and Mediation in Various Sectors

After closely examining mediation and arbitration, it is clear that different industries or disputes find one method more helpful than the other. Let me give you examples where one industry prefers mediation over arbitration. Why? Well, it wraps things up faster than going to court, which is a big deal when you're trying to stick to a building schedule. Plus, you can choose arbitrators who know your business because they're usually spot-on right. On the other hand, in some cases, going to mediation is the way to go. This is often more of a team effort than going to court. It can keep peace between bosses and workers.

1. Construction: Arbitration often gets preferred in construction disputes. It is faster than traditional litigation, which helps projects stay intact. The outcome of arbitration decisions is usually more informed.[299].
2. Employment: I think mediation really helps solve employment disputes because it is more of a team effort than going to court. This way, it can lead to better, inventive answers.[300].
3. Intellectual Property: When there is a dispute over intellectual property, arbitration can be a useful tool. Arbitration usually heats up faster than

[296]United Nations. (1958). The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Retrieved from https://www.newyorkconvention.org/english

[297] Kilian, M., & Dux, B. (2005). La loi sur la médiation. ZKM: Zeitschrift für Konfliktmanagement, 144 et seq. Moreover, Austria. (2004). Zivilrechts-Mediations-Gesetz. Official Gazette of the Republic of Austria. Retrieved from https://www.ris.bka.gv.at/. Also, Belgium. (2005). Law amending the judicial code with regard to mediation. Belgian Monitor. Retrieved from http://www.ejustice.just.fgov.be/

[298]National Conference of Commissioners on Uniform State Laws. (2001). Uniform Mediation Act (UMA). Retrieved from http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.htm

[299]Pickavance, J. (2018). Construction Arbitration Handbook (1st ed.). Wiley.

[300]Graham, K., & Love, A. (2014). Employment Mediation. Bloomsbury Professional.

litigation, which is important in fast-moving industries. Because of all the rush, faster is better. Plus, picking arbitrators who are knowledgeable in business and law is a smart way to get things settled without spending too long on court cases. I kind of lean toward this approach.[301].

4. Healthcare: Arbitration is often used to resolve healthcare disputes, especially where patient care is at stake. It offers a faster resolution compared to traditional litigation, and arbitrators with expertise in healthcare law and medical malpractice can be appointed[302].
5. International Trade: Arbitration is frequently utilized in disputes arising from international trade agreements because it provides a neutral forum that is not bound by any specific country's legal system. Arbitrators with expertise in international trade law can also be selected for better-informed decisions[303].
6. Real Estate: Sometimes, mediation steps in to sort out real estate squabbles, which is often better than going to court. I've discovered one benefit to mediation is making it less adversarial. It also usually brings up unique solutions[304].
7. Family Law: Mediation in family law disputes is important because it lets people work together instead of against each other. It is better than going through a long court battle. The process preserves relationships and can lead to solutions that fit into what families need more closely[305].
8. Insurance: More often than not, arbitrations are used to settle insurance arguments because it's quicker than going to court, and arbitrators can be picked to make better calls[306].

C. LITIGATION AND ARBITRATION: DEFINITIONS AND KEY DIFFERENCES

When thinking about why some people or companies go for arbitration instead of going to court, it's usually about what the results might be. I've

[301]Anderson, M., & Schachter, V. (2012). Arbitration of international intellectual property disputes. Kluwer Law International.
[302]Lipsky, D. B., & Fincher, R. D. (2009). Alternative Dispute Resolution in Healthcare. Journal of Health Law and Policy.
[303]Greenberg, S., Kee, C., & Clause, R. (2018). International commercial arbitration. Kluwer Law International.
[304]McGuire, J. E., & Hinchey, J. W. (2003). Mediation and other non-binding ADR processes in real estate disputes. Journal of Real Estate Research.
[305]Mosten, F. S. (2012). Mediation and collaborative law practice. LexisNexis.
[306]Hall, R. M., & Rothman, R. L. (1999). Arbitration of insurance disputes. The Business Lawyer.

noticed that folks involved in business tend to do this when problems arise. They do this hoping that arbitration will give them a smoother process or better results, or maybe both. Additionally, we note that Drahozal observes: "The starting point is that court litigation is the default; the parties' dispute will be resolved in arbitration only if they agree. Arbitration may be different from litigation in two main ways: First, the process fees of arbitration may be more elevated or inferior to the process expenses of litigation. Second, the outcome in arbitration may be different from the result in court[307]".

I. DEFINITION OF LITIGATION

Before dipping into the distinctions between arbitration and litigation, we ought to first define what litigation is. Basically, litigation is when there's a legal problem, and it's settled through the courts, with a judge or jury making a decision. It is the same concept as solving disputes through the court system. Black's Law Dictionary also describes it as "the process of carrying on a lawsuit, including all legal proceedings therein." This process has several steps like pleadings, discovery, motions, and finally, a structured battle, where each side presents its case[308]. Besides, the Legal Information Institute defines litigation as the method of resolving conflicts through the court system.[309]

According to Islamic law, the judiciary is defined as: 'the obligation to rule on something and settle disputes[310]'. Regarding Arab legal texts, Saudi Arabian law defines litigation as a legal process of resolving disputes through the court system. Saudi Arabia follows a civil law system based on Islamic law (Sharia). Litigation has to do with dealing with legal issues, whether in civil, criminal, or administrative cases. The people must get people to make their case in front of a judge. It's basically about handling legal matters in court[311]. Judges in Saudi Arabia have the authority to consider the law, regardless of what they hear during the trial. On the flip side, in Kuwait, they see litigation

[307]Drahozal, C. R. (2005). Contracting out of national law: An empirical look at the new law merchant. Notre Dame Law Review, 80(3), 523–532.
[308]The Law Dictionary. (n.d.). Black's Law Dictionary, 2nd ed. Retrieved from https://thelawdictionary.org/
[309]Legal Information Institute. (n.d.). Litigation. Cornell Law School. Retrieved from https://www.law.cornell.edu/wex/litigation
[310]Boudi, H. M. M. (2006). Guarantees of the parties before the judiciary in Islamic law (p. 143). Dar Al-Jami'a Al-Jadida, Alexandria.
[311]Saudi Arabian Monetary Authority. (2013). The law of civil procedure. Retrieved from https://www.moj.gov.sa/Documents/Regulations/pdf/En/50.pdf

as how the court determines things between parties. If folks can't sort out their issues, that's not very good. Solving disputes legally is pretty much the essence of this whole thing[312].

In the United Arab Emirates, the Civil Transactions Law defines litigation as "the process of seeking a legal remedy before a competent court of law." In the countries of the Gulf Cooperation Council (GCC), litigation refers to the legal process of resolving disputes through the court system. These nations' legal systems are based on both civil law and Islamic law (Sharia). Litigation can encompass civil, criminal, or administrative cases, where parties present their arguments and evidence before a judge. Judges in these countries have the authority to interpret the law and issue decisions based on the facts and applicable legal principles[313].

Litigation in Spanish law is basically the court system. You have your civil, criminal, and administrative cases. You have a plaintiff and a defendant who present their arguments and evidence to a judge. The judge then makes a decision after considering the facts and the relevant law[314]. Notably, the French see litigation similarly to the Spanish; it's their way of resolving disputes through the courts[315]. They also have cases that are civil, criminal, or administrative in nature, with parties presenting their evidence to a judge about their legal principles. Then there are cases in which sides initiate a court process to advance or defend a legal right [316.] in my view, basically starting with filing a lawsuit, which kicks off steps like gathering evidence, pre-trial motions, and the trial itself. During the trial, both sides present their proof and make their arguments to a judge or jury, who makes the final decision. Courts

[312] United Arab Emirates. (1985). Federal Law No. (5) of 1985 concerning the issuance of the Civil Transactions Law of the United Arab Emirates. Retrieved from https://uaelegislation.gov.ae/en/legislations/1025/download

[313]Gibson Dunn. (n.d.). Litigation and enforcement in the GCC.

[314]BOE.es. (2000). Civil procedure act. Boletín Oficial del Estado. Retrieved January 2, 2025, from https://www.boe.es/buscar/act.php?id=BOE-A-2000-323&tn=1&p=20220330

[315]France. (2006, December 23). Decree No. 2006-1709 of December 23, 2006 taken for the application of Law No. 2005-845 of July 26, 2005 relating to the protection of companies and containing various provisions relating to judicial administrators and legal representatives. Légifrance. Retrieved from https://www.legifrance.gouv.fr/codes/id/LEGIARTI000006418983/2022-12-17/

[316]Amnesty International. (n.d.). Strategic litigation. Retrieved from https://www.amnesty.org/en/strategic-litigation/

work for the public to see, and that keeps things clean in judicial proceedings. This public aspect is what ensures transparency.

II. The Difference Between Litigation and Arbitration

Litigation and arbitration are two different legal processes for settling disputes. Litigation involves taking a dispute to court, where a judge or jury will decide based on the law and the proof presented. In arbitration, an arbitrator (or panel) hears evidence from both parties and renders a binding decision. Key differences include: 1. Arbitration is also often chosen because it's much more private than litigation. This means people can keep their matters confidential, which is often a relief [317]. 2. Arbitration tends to be faster than litigation due to fewer procedural steps[318]. 3. In arbitration, parties can select an arbitrator with expertise in the relevant area[319].

[317]Deye, J. R., & Britton, L. L. (1994). Arbitration by the American Arbitration Association. Notre Dame Law Review, 70(2), 281.

[318]Manzini, P., & Mariotti, M. (2002). Arbitration and mediation: An economic perspective. European Business Organization Law Review (EBOR), 3(3), 629–648.

[319]Martin Domke. (1991). Domke on commercial arbitration (Rev. ed.). As well as, Drahozal, C. R. (2004). A behavioural analysis of private judging. Law & Contemporary Problems, 67(3), 105–132.

II. Commercial Arbitration in Islamic Law and GCC Countries

A. The Role of Arbitration in International Commerce and its Evolution in the Arab World

Arbitration has increasingly become a natural process of achieving justice for trading communities within and outside the Arab world. As Professor A. S. El-Kosheri noted[320], arbitration will become the natural justice in business communities inside and outside the Arab world. Newsday, complex transactions take place, and there is significant inward and outward investment, which necessitates the building of an efficient forum for dispute resolution. Moreover, the recent economic climate has set the Middle East as a significant hub for foreign investment while also experiencing a rise in its foreign market investments. Particularly, the United States of America has invested over 120 billion US dollars in the region, and by the conclusion of 2007, Gulf Cooperation Council Sovereign Wealth Funds had accumulated more than 1 trillion US dollars to allocate towards international investments.[321].

With the increasing volume of trade and the growth in international transactions, arbitration has emerged as the preferred forum for dispute resolution, not only for the world's trading nations but also for Arab countries in international commerce. Ahdab concurs, stating that "Arbitration can serve, as much as possible, the economy of our world, which has become a small town. [322]"

In the past, early issues involving arbitration were viewed negatively by Arab states, which considered it biased in favor of colonial powers and their companies. This led to a long-standing suspicion of international commercial arbitration, a sentiment that persisted until the 1970s. However, during this time, Arab states began receiving sizable awards in international arbitrations, and Arab commercial entities began utilizing arbitration as a tool for their benefit. This shift led to the establishment of regional arbitration centers and the signing of bilateral investment treaties with other states. Additionally, many

[320]Journal of International Arbitration. (2008). Arbitration in the Arab World, 25(2). P. 203, 209.
[321]McKinsey & Company. (n.d.). Petrodollars: Fuelling global capital markets. McKinsey & Company.
[322]Ahdab, A. (1999). Arbitration with the Arab Countries (p. 11). Kluwer Law International. Also, Al-Ramahi, A. (2008). Sulh: A crucial part of Islamic arbitration.

Arab states began adopting national legislation that favored arbitration, and they were among the first to ratify the New York Convention[323]. Before delving into the specifics of the Arab Gulf countries, it is important to note that the GCC generally adopts Islamic law in most of its legal frameworks. Therefore, it is essential to analyze Islamic law's stance on commercial arbitration.

B. COMMERCIAL ARBITRATION IN ISLAMIC LAW

Islamic law crucially shapes the legal rules in Arab countries like Saudi Arabia, Egypt, and Kuwait including Qatar and the United Arab Emirates[324] .In Saudi Arabia and Oman, where there is no formal constitution, Islamic law serves as the constitution [325]. To comprehend how arbitration works in Islamic law, we must look at its beginnings. The word "Islam" translates to submission to God[326], And arbitration, or "tahkim," goes way back in the history of the Quran. This information can tell us a lot about how arbitration in the GCC works today.[327]. Furthermore, the Arabs in the pre-Islamic era comprehended arbitration because adversaries usually resorted to it to settle their disputes. Arbitration was optional and left to the free choice of the parties. Arbitral awards were not legally critical; their enforcement relied only on the moral authority of the arbitrator[328].

In pre-Islamic Arabia, arbitration was a voluntary process that required mutual consent between the parties involved. A specific individual had to be chosen to act as an arbitrator[329]. As an illustration of arbitration in pre-Islamic periods, the Prophet Muhammad (peace be upon him) used arbitration to settle disputes and encouraged others to do the same. One notable example is his

[323]Kluwer Arbitration Blog. (2015, July 1). The evolution of arbitration in the Arab world. Kluwer Arbitration. Retrieved from: https://arbitrationblog.kluwerarbitration.com/2015/07/01/the-evolution-of-arbitration-in-the-arab-world/

[324]Saleh, S. (1984). Commercial arbitration in the Arab Middle East (2nd ed.)

[325]Oman. (1996). The Basic Law of the Sultanate of Oman [Constitution], Royal Sultani Decree No. 101/96. Retrieved from https://tinyurl.com/yywwh4px

[326]Esposito, J. L. (Ed.). (2003). The Oxford dictionary of Islam (p. 144). Oxford University Press. Also, Eaton, G. (1985). Islam and the destiny of man (p. 36). State University of New York Press. Moreover, Esposito, J. L. (1991). Islam: The straight path (p. 14). Oxford University Press. (Original work published 1988), In addition to: Rahman, F. (1968). Islam.

[327]Mahmassani, S. (2nd ed.). (n.d.). The legislative situation in the Arab countries: Its past and present. Dar El-Elm Lil Malain.

[328]El-Ahdab, A. H. (1999). Arbitration with the Arab countries (2nd ed., pp. 11-12).

[329] Sayen, G. (2003). Arbitration, conciliation, and the Islamic legal tradition in Saudi Arabia. University of Pennsylvania Journal of International Economic Law, 24(3), 905-925.

arbitration between the Quraysh tribe during the renovation of the Ka'ba. After the renewal, a dispute emerged over who would get the honor of reinserting the Black Stone. No clan leader was willing to lose the honor to another. Via his successful arbitration, the Prophet Muhammad prevented a potential war among the Quraysh tribes.[330].

These days, arbitration hubs in countries like Bahrain and the United Arab Emirates reflect the continued practice of arbitration in Islamic societies[331]. The Islamic Fiqh Council, affiliated with the Muslim World League (MWL), has highlighted that "arbitration among Muslims must adhere to the principles of Shari'ah law" (Islamic Fiqh Academy). This means that arbitration is permitted only if it aligns with the principles of Shari'ah law, which is considered a divine directive. Deviations from Shari'ah principles in favor of positive laws are viewed as contradictory to sound Shari'ah evidence. The regulations of Shari'ah law govern Islamic arbitration, a variant of conventional arbitration. Islamic arbitration is when two people who are fighting decide to go to a third party to settle their disagreement through a binding ruling based on Islamic Shari'ah (1417/1996). This is based on Resolution No. 91 (9/8) of the International Islamic Fiqh Academy[332].

Arbitration based on laws that are against Shari'ah also applies to negotiations before and after a contract is signed. Islamic law grants people the authority to seek arbitration when issues arise, particularly in cases where private resolution is not possible.[333]. In addition to adhering to substantive Shari'ah principles, there is a procedural requirement that the arbitrator must be Muslim. While both parties can select an arbitrator, a Muslim cannot accept the

[330]Martin, A. T. (2014). Arbitration in the Kingdom of Saudi Arabia. Arbitration International, 30(2).

[331]Kutty, F. (2006). The Shari'a factor in international commercial arbitration. Loyola of Los Angeles International and Comparative Law Review, 28. Retrieved from file:///C:/Users/qasemb/Downloads/ssrn-898704.pdf

[332]Islamic Fiqh Academy. (1996). Resolution No. 91 (9/8) on the principle of arbitration in Islamic fiqh, adopted by the International Islamic Fiqh Academy Council in its 9th session in Abu Dhabi, United Arab Emirates on A.H. 1-6 Dhul Qa'dah 1415 (A.D. 1-6 April 1995). Academy Journal, 4(9), 5–6. 1417.

[333]El Maknouzi, M. E. H., et al. (2023). Islamic commercial arbitration and private international law: Mapping controversies and exploring pathways towards greater coordination. Humanities and Social Sciences Communications, 10(1), 1-8. Furthermore: Islam, M. Z. (2012). Provision of alternative dispute resolution process in Islam. Journal of Business and Management, 6(3), 31-36.

designation of a non-Muslim arbitrator, except in situations of necessity, such as in non-Muslim regions, where the individual may resort to arbitration within the legal courts of those countries to protect their rights and seek compensation, provided no Islamic arbitral tribunal is available[334].

The various interpretations of the two primary sources of Shari'ah—the Quran and the Sunnah—have led to the emergence of three secondary sources of Islamic law: Ijma'a (consensus), Ijtihad (independent reasoning), and Qiyas (analogy). These sources have contributed to the development of different schools of Islamic jurisprudence[335]. To understand arbitration fully, it is necessary to briefly discuss each source:

1. Ijma'a: Similar to the civil law concept of "Doctrine Majoritaire," this refers to the consensus of the majority of Islamic scholars on a specific issue. When such consensus is reached, it becomes a binding source of law[336].
2. Ijtihad: Comparable to the civil law concept of "jurisprudence," Ijtihad involves Islamic scholars using reasoning to interpret the Quran and Sunnah to address new situations, provided their solutions align with the broader principles of these texts[337].
3. Qiyas: A form of Ijtihad, Qiyas involves drawing analogies between similar situations to derive legal rulings when no direct guidance exists in the Quran or Sunnah[338].

The variations developed by Islamic scholars concerning situations and instances where the Quran and Sunnah were not explicitly clear have resulted in the emergence of several schools of thought which are the Hanafi school,

---

[334]Islamic Fiqh Academy. (2011). Resolution No. 1/20 on the conditions of arbitration or the recourse to arbitration based on positive laws contrary to Islamic Shari'ah law, adopted by the International Islamic Fiqh Academy in its 20th session in Makkah al-Mukarramah on A.H. 19-23 Muharram 1432 (A.D. 25-29 December 2010). Islamic Fiqh Council Journal, 26, 393–394. 1432.

[335]Train, S. (2015). An analysis of the influence of Islamic law on Saudi Arabia's arbitration and dispute resolution practices. ARIA, 26(1), 131–134. Also, Kutty, F. (2006). The Sharia factor in international commercial arbitration. SSRN. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=898704

[336]Harb, J.-P., & Leventhal, A. G. (2013). The new Saudi arbitration law: Modernization to the tune of Sharia. Journal of International Arbitration, 30(2), 113–115.

[337]Train, S. (2015). An analysis of the influence of Islamic law on Saudi Arabia's arbitration and dispute resolution practices. ARIA, 26(1), 131–134. Also, Baamir, A., & Bantekas, I. (2009). Saudi law as lex arbitri: Evaluation of Saudi arbitration law and judicial practice. Arbitration International, 25(2), 239–256.

[338]Alkhamees, A. (2011). International arbitration and Sharia law: Context, scope, and intersections. Journal of International Arbitration, 28(3), 255–256.

Maliki school, Shafi school, and Hanbali schools. Several differences among the schools arose on a variety of jurisprudential matters relating to, among other things, civil and commercial transactions[339], and we will discuss the arbitration law in this school:

A. The Hanafi School: Scholars within the Hanafi School place particular emphasis on the contractual nature of arbitration. They assert that arbitration possesses legal parts akin to agency and conciliation. In this view, an arbitrator effectively serves as an agent acting on behalf of a disputant who has designated them for this purpose. The Hanafi School underscores the strong relationship between arbitration and conciliation. Therefore, in their perspective, an arbitral award, bearing a closer similarity to conciliation rather than a court judgment, holds less legal authority than the latter. Nonetheless, within the framework of the Hanafi School, the party involved in the dispute remains bound to comply with the award. This obligation arises from the fact that the agreement to resort to arbitration carries the same binding force as any other contractual commitment.

B. The Shafi School: Within the Shafi School of study, arbitration is identified as a legitimate practice, irrespective of the availability of judicial authority in the locale where the dispute emerged. Nevertheless, in the perspective of this school, arbitrators occupy a lower standing compared to judges. This difference arises from the principle that, in the Shafi School, arbitrators can be returned or dismissed until the moment when the arbitral award is officially issued[340].

C. The Hanbali School: Per the Hanbali School of Jurisprudence, the pronouncement rendered by an arbitrator holds the same legally crucial weight as a judgment administered by a court. Since an arbitrator must have the same qualifications as a judge, their decision is binding on both sides who chose him to settle their dispute[341].

---

[339]Train, S. (2015). An analysis of the influence of Islamic law on Saudi Arabia's arbitration and dispute resolution practices. ARIA, 26(1), 131–134.

[340]Saleh, S. (1984). Commercial arbitration in the Arab Middle East: A study in Sharia and statute law (p.22).

[341]Abul-Enein, M. I. (2000). Liberal trends in Islamic law (Shari'a) on peaceful settlement of disputes. Journal of Arab Arbitration, 2, 19.

D. Maliki School: Maliki School's followers place great faith in the arbitration method, even allowing one of the disputing parties to be selected as an arbitrator by the other party. This method is legitimate because it is based on the moral conscience of the other party. In contrast to the other three major schools of thought, the Maliki school highlights the concept that once arbitration proceedings have begun, the arbitrator cannot be removed or replaced[342].

In all schools, the arbitration agreement serves as the foundation for granting arbitrators the authority to make binding decisions. The arbitration process in Islamic law is based on mutual consent, and whether the agreement should be written or oral is not explicitly addressed by any of the schools[343]. Arbitration is not permitted in matters concerning the "Rights of God" according to the four schools of Islamic Sharia. The subject area is broad, encompassing both criminal law and patrimonial rights. The Quran also excludes some topics, such as guardianship of orphans, which must be brought to courts of law[344]. However, there was a dispute among traditional Muslim jurists about the concept of arbitration. According to one of their views, arbitration is a type of conciliation, like "amiable composition," that is not binding on the parties.[345].

Islamic law professionals have dissimilar opinions about arbitration because "Ali Ben Abi Taleb" tried to employ arbitration in his argument with "Muawya Bin Abi Sofian" (the governor of Syria), but the Khawarege (the people who were against Ali Bin Abi Taleb's use of arbitration) were against it. On the other hand, it must be noted that Western law systems (English law and different European laws) had the same discussion that accompanied the growth of arbitration[346]. The proponents of this view believe that the arbitrator's judgment is not binding nor final unless agreed by the parties. Therefore,

[342]Saleh, S. (1984). Commercial arbitration in the Arab Middle East: A study in Sharia and statute law (p.21).
[343]Abul-Enein, M. I. (2000). Liberal trends in Islamic law (Shari'a) on peaceful settlement of disputes. Journal of Arab Arbitration, 2, 5.
[344]Saleh, S. (1984). Commercial arbitration in the Arab Middle East: A study in Sharia and statute law (P.47).
[345]Abdul Hamid El-Ahdab, Arbitration With the Arab Countries, (The Hague: Kluwer Law International, 1999)
[346]El-Ahdab, A. H. (1999). Arbitration with the Arab countries (p. 16). Kluwer Law International.

arbitration does not have any jurisdictional character but is near to conciliation. Followers of this perspective supported their discussion with the following verse from the Quran: "If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from hers; if they both wish for peace, Allah will cause their reconciliation. Indeed, Allah is Ever All-Knower, Well-Acquainted with all things." [347]

The other perspective asserts that Sharia indeed identified arbitration in its modern meaning. This view draws support from a verse in the Quran, specifically from Surah An-Nisa: "Verily, Allah commands that you should render back the trusts to those to whom they are due; and that when you judge between men, you judge with justice." From this verse, followers of this view argue that if one is permitted to pass judgment, authorization inherently encompasses the capability to make binding decisions. In essence, this interpretation implies that the Quran acknowledges the idea of arbitration with the authority to issue enforceable judgments when settling disputes. For sure, arbitration is legal in Islamic law because it is backed up by the Quran, Sunna, Ijma', and Qiyas. In Islamic law, the Quran is the most important proof that arbitration is okay. It has many verses that support the idea of arbitration to settle disagreements. We previously referred to some of the religious proof that confirms this.

Conclusion: Arbitration is considered a legitimate practice under Islamic law, with its basis in the Quran and Sunnah, and additional express and unanimous approval[348].

Moreover, before delving into the discourse on contemporary commercial arbitration, it is imperative to acknowledge a significant facet of arbitral historiography known as the Medjella. The Medjella, referred to as the Legal Provisions, stands as the inaugural codification of Shariah law during the reign of the Ottoman Empire. Following the decline of the Ottoman Empire, numerous Islamic nations continued to rely on the Medjella until they

[347]The Holy Koran: 4: 35, and 4:58.
[348]Abdul Aziz, M. (2022). The effectiveness of Sharia economic dispute resolution between religious court and national Sharia arbitration board. JISEL.5.2: 216-245.

established their own independent civil legal systems[349]. For example, in Palestine, the Medjella is still used as civil law today. The Medjella encompasses a significant section specifically addressing arbitration. However, the nature of arbitration delineated within the Medjella leans towards conciliation and compromise. It is important to highlight that the final enforceability of an arbitral award relied on a court judgment, as the award itself did not possess an independent res judicata effect. Nevertheless, the contractual character of arbitration was duly recognized and emphasized, underscoring its foundational essence. In cases where arbitration awards were rendered by a panel of arbitrators, unanimity was a requirement. Additionally, either party retained the right to dismiss an arbitrator before the issuance of the award.

The jurisdiction of an arbitrator was narrower compared to that of a court, as it was limited solely to the specific matters concerning the dispute at hand. Schacht characterized the Medjella as an "experiment" influenced by European ideas. He described it as a secular code that was not intended for utilization in the kadis' tribunals and, in practice, was not employed by them. Moreover, the Medjella incorporated certain modifications to the rigid principles of Islamic law[350]. Schacht's characterization aligns with El-Ahdab's assertion that the Medjella continued to be effective, subject to subsequent legislation, in the territories and subsequent states that became detached from the Ottoman Empire after 1918. In these regions, the Medjella was implemented as civil law[351]. In addition, some writers believed that Islamic law recognized only two types of arbitration: arbitration which leads to binding decisions, and arbitration which leads to non-binding decisions. However, a careful and thorough study proves that Islamic law distinguishes between conciliation (which ends with a non-binding decision) and arbitration (which leads to binding decisions). Islamic law permits conciliation in civil, commercial, and family laws and other matters, if they do not involve acts

[349]El-Ahdab, A. H. (1999). Arbitration with the Arab countries (pp. 21-22). Kluwer Law International.
[350]Schacht, J. (1964). An introduction to Islamic law (pp. 92–93). Oxford University Press.
[351]El-Ahdab, A. H. (1999). Arbitration with the Arab countries. The Hague: Kluwer Law International. (P. 21).

against God's commands. Sulh is similar to the Western concept of negotiation and mediation, where parties reach a Negotiated a settlement with or without the help of a third party. The importance of sulh should not be underestimated, as it is a component of every broader dispute-resolution initiative within Islam. Any of the parties, a third party, or even the judges in the trial proceedings may also make recourse to Sulh.

Tahkim, however, diverged from Western arbitration. When Muawiya became the first caliph of the Umayyad dynasty, he designed a fairly structured judicial method that needed the approval of a qadi (court judge) before the enforcement of an arbitrator's decision. Consequently, tahkim became a "very different" institution from arbitration as it is known in the West.[352].

C. THE COMMERCIAL ARBITRATION IN THE LAWS OF GCC

Initially, Arab governments viewed early arbitration disputes with skepticism, considering them to be skewed in favor of colonial powers and their enterprises. This led to a long-standing mistrust of global commercial arbitration, which persisted until the 1970s. During this period, Arab states began receiving significant awards in international arbitrations, and Arab commercial actors started to adopt arbitration as a tool for their benefit. This shift led to the establishment of regional arbitration centers and the signing of bilateral investment treaties with other states. Additionally, many Arab states began to adopt national legislation that favored arbitration. Furthermore, Arab states were among the first to ratify the New York Convention, signaling a shift toward embracing arbitration, which evolved as a mechanism for ensuring natural justice in business communities both inside and outside the Arab world. But this initial response began to change when Saudi Arabia ratified the Riyadh Convention among the Arab League states in 1985 and the New York Convention in 1994, both of which provided for the mutual recognition and enforcement of international arbitral awards. In similarity with the ratification of these two conventions, Saudi Arabia issued an arbitration law in 1983 [353].

[352]Khoukaz, G. (2017). Sharia law and international commercial arbitration: The need for an intra-Islamic arbitral institution. Journal of Dispute Resolution, 2017, 181.

[353]Saudi Arabia. (1983). Arbitration Law, Royal Decree No. M/46, 12 Rajab 1403 (25 April 1983). Retrieved from https://www.saudiembassy.net/arbitration-law. Also, United Nations. (1958, June 10). The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. https://www.newyorkconvention.org/countries

Today, complex transactions take place, accompanied by substantial inward and outward investments, highlighting the need for an effective forum for dispute resolution. To study arbitration law in the Gulf Cooperation Council countries, we must first recognize that the GCC is composed of six Arab countries: the Kingdom of Bahrain, the United Arab Emirates, the Sultanate of Oman, the Kingdom of Saudi Arabia, the State of Kuwait, and the State of Qatar. I will examine the arbitration laws in: Saudi Arabia, UAE and Qatar respectively

1. ARBITRATION LAWS IN THE KINGDOM OF SAUDI ARABIA

Arbitration has a long history in the Middle East, especially in Saudi Arabia. Islamic Shari'ah, the law of the Kingdom, has recognized arbitration (or tahkim in Arabic) as a method of settling disputes since its inception. Moreover, Muslims believe that Islamic law is God's law, as revealed in the Quran. The ultimate source of law in Saudi Arabia is the Quran, a holy book containing 6,236 verses. Indeed, the Saudi Basic Law of Governance, which serves as Saudi Arabia's Constitution, recognizes the primacy of Sharia. The constitution clearly states that the religion of the state shall be Islam, and its constitution shall be the Quran and the Sunna[354].

Is this a limited foundation on which to build a contemporary legal system? The foundation is much broader. A thirteen-century-old legal system cannot be based solely on a few religious passages. Thus, we can trace the roots of Saudi law, which is derived from Islam:

1. The Quran: It is the holy book that contains God's ordinances, revealed to the Prophet Muhammad between 610 A.D. and 622 A.D. Few verses indeed deal with legal matters. Most are religious directions that set general goals for Muslim life and prescribe proper conduct for daily activity. This should be no surprise, since Islamic belief does not separate faith from law. In no Islamic society today is this more pronounced and observed than in Saudi Arabia, where the national constitution is the Quran. The Quran, which in Arabic means 'reading' or 'recitation,' is held by believers as the ultimate authority in legal and religious matters. Later suras of the Quran instruct Muslims on

[354]Basic Law of Governance, Royal Order No. (A/91), 27 Sha'ban 1412H – 1 March 1992, Published in Umm al-Qura Gazette No. 3397, 2 Ramadan 1412H - 5 March 1992.

ethical concerns, such as the duty to give alms, and on ritual matters, such as those concerning certain forbidden foods[355].

2. The Sunna: The second source of Islamic law, which translates from Arabic as "habitual practice," refers to the speech or actions of the Prophet Muhammad or practices that he is believed to have approved[356].
3. The Hanbali School: The official school of Saudi Arabia, which is the least widespread of the four schools (Hanafi, Shafi, Hanbali, and Maliki), and is found only in parts of Pakistan, Syria, and Iraq. The Hanbali school, the official school of Saudi Arabia, is the least widespread of the four major schools (Hanafi, Shafi'i, Hanbali, and Maliki). Elsewhere, it is found only in parts of Pakistan, Syria, and Iraq. The small Hanbali school, which developed in the eighth century, not long after the split of the Muslim world into Sunni and Shiite factions (aligned according to their separate choices for the Caliphate, the Prophet's successor), fell into disfavor. It was rejuvenated in the early eighteenth century by the Wahhabi movement.

The movement's principal, Muhammad Ibn Abdul Wahhab, and the ancestor of Saudi Arabia's founder, Muhammad Ibn Saud, joined forces. Muhammad Ibn Saud became the political head of the Wahhabis, and Ibn Abdul Wahhab became the religious leader. Ibn Abdul Wahhab's limitation of the accepted sources of law to the Quran, the Sunna, and the consensus established by the Prophet's companions became a tenet of the movement and of its present-day nation-state, Saudi Arabia. Even though the Hanbali school, which is the most conservative of the four schools, constitutes the dominant source of interpretation of Sharia in the Kingdom of Saudi Arabia[357]. As mentioned, Saudi Arabia is governed by Islamic law based on the Quran and

[355]Adams, C. (1976). Islamic faith (pp. 33-44). In R. Savory (Ed.), Introduction to Islamic civilization. Also, Jeffrey, A. (1952). The Qur'an as scripture.

[356]Brand, J. L. (1986). Aspects of Saudi Arabian law and practice. BC International & Comparative Law Review, 9, 1.

[357]Liebesny, H. (1975). The law of the Near East and Middle East: Readings, cases, and materials (p. 22). Also, Khadduri, M. (1984). The Islamic conception of justice. The Johns Hopkins University Press. (p. 206). Moreover, Alsirhani, A. (2019). The Refusal of Foreign Arbitral Awards in Saudi Arabia on the Grounds of Public Policy: An Issue of Fairness and Justice (Doctoral dissertation, Victoria University).

the Sunnah (the Prophet Muhammad's acts, speeches, and silent endorsements) [358].

We note that in Chapter 1, Article 1, the Saudi Basic Law states that the Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; the Quran and the Sunnah of His Prophet, God's prayers and peace be upon him, are its constitution.[359].

Supplemental Saudi laws (relating to various aspects of modern life) are called "regulations" and enjoy the full effect of law, provided they are consistent with Shariah law. Similarly, the Omani Basic Law proclaims in Article 2, "The religion of the State is Islam, and the Islamic Shariah is the basis of legislation.[360]" Shari'ah has had a significant impact on the contemporary Saudi legal system. Since 1928, Saudi courts have formally followed the Hanbali School of Islamic Law. The Hanbali School has acquired a significant position in the Arabian Peninsula because of the successful efforts of Muhammad b. 'Abd al-Wahhab and the creation of the Kingdom of Saudi Arabia. Today, this school is the official school of law in Saudi Arabia and Qatar. Additionally, on 1/7/1347 H (1928G), the Saudi Judicial Board issued a resolution mandating that Saudi courts, in secular transactions, rely on Hanbali fatawa, or religious interpretations[361]. In practice, Saudi courts apply Shari'ah to cases involving domestic relations, criminal matters, property disputes, and contract disputes.

In other words, disputes of all types were adjudicated by Shari'ah courts, where judges had received their education in Islamic studies[362]. Arbitration was the primary method used to settle disputes between Saudi and international firms from the beginning of oil exploration until the 1950s. Nevertheless, this widespread endorsement of arbitration in the Middle East

---

[358]Al Ghaydan, M. (1998). The judiciary in Saudi Arabia. Arab Law Quarterly, 13(3).

[359]Saudi Arabia. (1992). Basic Law of Government No: A/90. Retrieved from https://nz.sa/SMJIG

[360]Oman. (1996). The Omani Basic Law No. 101-96: Oman's Constitution of 1996 with amendments through 2011. https://faolex.fao.org/docs/pdf/oma128757E.pdf

[361]Al-Matroudi, A. H. (2006). The Hanbali school of law and Ibn Taymiyyah: Conflict or conciliation. Routledge. Moreover, Saleh, N. (1981). The general principles of Saudi Arabian and Omani company laws.a

[362]Turck, N. B. (1988). Dispute resolution in Saudi Arabia. International Law, 22, 415.Also, Ansary, A.F. (2008). A brief overview of the Saudi Arabian legal system. Hauser Global lex. Retrieved from https://tinyurl.com/32c4hs98

was challenged by a series of contentious international arbitration awards in the oil and gas industry beginning in the 1950s and continuing for over thirty years [363].

Nonetheless, following the famous ARAMCO arbitration in 1958, the Saudi government's stance on arbitration shifted significantly, the case of Saudi Arabia v. Arab American Oil Company (ARAMCO), 27 ILR 117 (1963), represents a significant point in international arbitration in Saudia Arabia. This case arose from a conflict between the Kingdom of Saudi Arabia and ARAMCO over the terms of an oil concession agreement. Saudi Arabia pursued an edit of the terms, which were seen as unfavorable, especially regarding the share of income the Kingdom received from oil[364].

In 1933, Saudi Arabia granted a 60-year concession to the Arabian American Oil Company (Aramco) permitting it to explore, produce, and export oil. By 1938, the company had found one of the world's biggest oil resources, which led to the tremendous development in the oil industry in the Kingdom of Saudi Arabia. In 1954, the Saudi government signed a contract with Greek shipping magnate Aristotle Onassis, giving him rights to transport Saudi oil via his company, SATCO, for 30 years. The agreement effectively pushed Aramco to export its oil employing Onassis tankers, which the company refused, claiming that the deal violated its exclusive rights under the original concession. The dispute went to arbitration, with both parties presenting legal claims. Saudi Arabia claimed that Aramco's rights did not explicitly include maritime transportation, while Aramco claimed that its rights extended to the entire process of extracting, transporting and shipping the oil. The court ultimately ruled in Aramco's favor, stating that the Onassis agreement was

[363]Sapphire International Petroleum v. NIOC, 13 International & Comparative Law Quarterly (1964), 1011. Also, BP v. Libya. (1979). 53 International Law Reports.297. In addition to, TOPCO v. Libya, 17 International Legal Materials (1978), 3. As well as, LIAMCO v. Libya, Award of 12 April 1977, Yearbook VI (1981), 89. And, Kuwait v. AMINOIL, 21 International Legal Materials (1982).

[364] Saudi Arabia v. Arab Am. Oil Co. (ARAMCO), 27 ILR 117 (1963). Also, Al-Ammari, S. (2010). Saudi Arabia and the Onassis arbitration: A commentary. Journal of World Energy Law & Business, 3(3).

inconsistent with Aramco's contractual rights and could not be enforced by the company[365].

Before then, there was no comprehensive set of rules governing commercial arbitration1983[366]. Due to the lack of defined processes and court backing, arbitration between private parties was rare. For example, arbitration rules agreed upon in advance by the parties were not enforced, and it was unclear how awards would be enforced, particularly if issued outside of Saudi Arabia. These issues were somewhat mitigated by the strong support for arbitration within the Saudi business community, whose members willingly complied with most arbitration judgments. However, multinational firms and their lawyers were dissatisfied with arbitration's ambiguous legal status. The Saudi government was also displeased because arbitrations were sometimes held under foreign norms, both within and outside Saudi Arabia[367]. As a result, Saudi Arabia recognized the need for quick and useful business dispute resolution. Legislative authorities acted, resulting in a set of regulations designed to improve arbitration processes. In 1350H-1931G, the Saudi Commercial Court Law was adopted, which contained a few arbitration-related provisions. In 1389H-1969G, the Saudi Labor Law similarly referenced arbitration as a dispute resolution mechanism for labor-related disputes.

To fulfill the demands of a rapidly growing economy, Saudi Arabia issued its first modern arbitration law between 1403H and 1983G. Heeding the trend of arbitration legislation reform, Saudi Arabia legislated a new Arbitration Law in 2012, which drew heavily from the UNCITRAL Model Law to attract international commerce in the Arabian Peninsula by making a flexible commercial arbitration framework. The UNCITRAL Model Law on International Commercial Arbitration serves as the foundation for the new Arbitration Law. Model Law has served as the foundation for arbitration

[365]Schwebel, S. M. (2010). The kingdom of Saudi Arabia and Aramco arbitrate the Onassis agreement. Journal of World Energy Law & Business, 3(3), 245-256.
[366]Saudi Arabia. (1931). Saudi Arabia Commercial Court Regulation, issued under Royal Decree M/32 of 1/15/1350 A.H. (1931 A.D.).
[367]Sayen, G. (1987). Arbitration, conciliation, and the Islamic legal tradition in Saudi Arabia. University of Pennsylvania Journal of International Business Law; 9:211.

legislation in about 70 countries, meaning a global consensus on key aspects of international arbitration procedures[368].

The revised Saudi Arbitration Law was specifically designed to foster an "arbitration-friendly" environment, attracting both domestic and international investors. While the new law includes features based on the UNCITRAL Model Law, it also reflects some constraints due to the predominance of Islamic Sharia in Saudi law. For example, the law specifically requires that arbitration processes comply with Sharia norms. A legal expert in Islamic legal sciences (fiqh) must ensure that both the merits of the dispute and the procedural norms do not violate Islamic Sharia principles[369]. A recent Saudi Arabia Arbitration Law was administered by Royal Decree No. M/34 on April 16, 2012 (the "New Law"), which came into force on July 9, 2012[370]. The New Law, consisting of 58 articles, aims to address the shortcomings of the 1983 Arbitration Law ("Old Law[371]")) and strengthen investors' confidence in effectively resolving potential disputes in Saudi Arabia.

The initial step in comprehending arbitration in Saudi Arabia is to study the Kingdom's Arbitration Law dated April 16, 2012. I will summarize each of the eight chapters of the legislation to provide a comprehensive overview.

A. ARBITRABLE DISPUTES:

The types of disputes that arbitration may settle were not determined by the Old Arbitration Law. The New Arbitration Law explains this in Article 2, stating that it shall apply to any arbitration, regardless of the nature of the legal relationship underlying the conflict. However, this law does not apply to family disputes or non-reconciliation matters. The new arbitration system is similar to the old one in that it follows Article 58 and says that government agencies can't use arbitration unless the Prime Minister says they can or a special system approved by the Council of Ministers says they can. As a result of the discontent in the Kingdom due to the Aramco case, the Saudi Council of

[368]Al-Ammari, S., & Martin, T. (2014). Arbitration in the Kingdom of Saudi Arabia. Arbitration International, 30(2).
[369]Abbadi, S. M. B. (2018). Arbitration in Saudi Arabia: The reform of law and practice.
[370]Saudi Arabia. (2012). Saudi Law of Arbitration, enacted by the Royal Decree No. M/34, dated 24/5/1433H. Retrieved from https://www.wipo.int/wipolex/en/legislation/details/14759
[371]Saudi Arabia. (1983). Law of arbitration, Royal Decree No. M/46 [Old Law]. Retrieved from https://www.saudiembassy.net/arbitration-law

Ministers issued Resolution No. 58, which prohibited Saudi government departments and institutions from resorting to arbitration[372].

The Old Arbitration Law described domestic arbitration, while the New Arbitration Law applied to both local and international commercial disputes. Developed with international commercial arbitration in mind, the Model Law also incorporates basic norms for domestic commercial arbitration. Saudi Arabia has adopted this method, incorporating domestic and international commercial arbitration in its New Arbitration Law. Article 3 of the New Arbitration Law defines what constitutes “international arbitration." According to Article 3 of the New Arbitration Law. The following cases qualify arbitration as international:

1. When signing the arbitration agreement, the parties' head offices may be located in different countries. If a party has multiple places of business, consideration should be given to the place of business most connected to the subject matter of the dispute. Should one or both parties lack a specific business location, the court will consider their place of residence.
2. If the chief offices of both parties to arbitration are in the same country at the time the arbitration agreement is completed, and one of the next places is located outside that country:

a. The arbitration agreement determines the venue of arbitration.
b. Any place where a substantial part of the responsibilities arising from the commercial relationship between the two parties is completed.
c. The place most related to the subject issue of the conflict.

1. If both parties decide to resort to an institution, standing tribunal arbitrator, or arbitration center located outside Saudi Arabia.
2. If the subject matter of the issue covered by the arbitration agreement relates to more than one country.

As studied earlier, the 2012 Saudi Arbitration Law replaced the 1983 Arbitration Law and reformed arbitration processes under the Saudi court system. Under the old law, parties to arbitration agreements needed to receive arbitration instruments from the Board of Grievances to conduct valid

[372]Al-Ammari, S., & Martin, T. (2014). Arbitration in the Kingdom of Saudi Arabia. Arbitration International, 30(2), 387-408.

arbitration proceedings. Article 5 of the old law said: “Parties to a dispute shall file the arbitration instrument with the authority originally competent to hear the dispute. Both parties or their official attorneys, along with the arbitrators, must sign the document. The dispute's nature, parties, arbitrators, and agreement to arbitrate must be included. Attach copies of the relevant conflict documents. This condition has been removed by the new Arbitration Law, with Article 26 saying that: arbitration proceedings shall start on the day on which the other party obtains the request for arbitration made by one of the parties unless the parties decide otherwise. This new system follows standard international practice, whereby either party can begin arbitration by giving notice to the other party without the intervention of the courts. The new Arbitration Law also allows for arbitration if the defendant fails to present its defense or if a party fails to appear, as set out in Articles 34.2 and 35:

- Article 34.2 says that if the defendant doesn't send a written response to his defense as required by Article 30(2) of this Law, the arbitration tribunal will keep going with the proceedings unless both sides agree to something different.
- Article 35: If either party fails to appear at a hearing after notice or fails to present required documents, the arbitration tribunal may resume the arbitration proceedings and issue an award in the conflict based on available proof.

Furthermore, if a party fails to object to a breach of the arbitration legislation or the arbitration agreement within thirty days of discovering the violation, or within an agreed-upon time limit, that party is regarded as having waived its objection. Article Seven stipulates that If one of the parties to the arbitration flows with the arbitration procedures knowing that a violation of a provision of this law or a condition of the arbitration agreement has occurred and does not object to this breach within the agreed span or within thirty days of finding the violation in the absence of an agreement, this shall be considered a waiver of his right to object. Besides, the arbitration law describes how the arbitral tribunal may, if deemed appropriate, pursue support as set out in Article 22.3: The arbitration tribunal may ask for help from the competent agency in the arbitration proceedings if it thinks it is necessary. For example, it may ask the competent agency to call a witness or an expert, demand that a document or a copy thereof be submitted, review the document, or take any other action.

This does not affect the arbitration tribunal's right to conduct the proceedings on its own.

B. ARBITRATION AGREEMENT

The New Arbitration Law has established more formalized requirements for arbitration agreements, with a specific focus on ensuring that they are documented in writing. This contrasts with the previous statute, which did not necessitate a formal written agreement to initiate arbitration. The revised law aligns with the Model Law, requiring that the arbitration agreement be in writing[373]. Key provisions under this section include:

1. Pre- and Post-dispute Agreements: An arbitration agreement can be entered into either before or after a dispute arises. It can be included as a standalone agreement or embedded within a specific contract. If concluded after a dispute arises, the arbitration agreement must clearly define the issues to be addressed; otherwise, the agreement is considered void.
2. Written Form Requirement: For the arbitration agreement to be valid, it must be in writing. Any agreement that is not written will be void. This written form requirement extends to a broad range of communication methods such as documents exchanged between the parties, telegrams, or other electronic and written forms of communication.
3. Incorporation by Reference: An arbitration agreement can also be formed by referencing other documents containing an arbitration clause, whether they are part of the contract or mentioned through other means like model contracts or international conventions.

Further, Article 21 of the New Arbitration Law emphasizes that the arbitration agreement is distinct from the main contract. This is based on the internationally recognized principle of separability, which asserts that the arbitration clause remains enforceable even if the main contract is found to be invalid or void.

C. ARBITRATION TRIBUNAL

The New Arbitration Law refines the rules concerning arbitrator qualifications, replacing the Old Arbitration Law's broader criteria with specific

[373] Saudi Arabia. (2012). Saudi Law of Arbitration, enacted by the Royal Decree No. M/34, dated 24/5/1433H. Retrieved from https://www.wipo.int/wipolex/en/legislation/details/14759

legal qualifications. The previous law emphasized experience, good reputation, and the requirement that the arbitrators be Saudi citizens or non-Saudi Muslims[374]. It also reflected the Hanbali School of Jurisprudence, which had stringent qualifications for arbitrators, including their gender and religious background[375]. Based on New Arbitration Law:

1. General Requirements for Arbitrators:

- Arbitrators must have full legal capacity.
- They must have a favorable reputation and good behavior.
- They must have at least a university degree in Sharia or law, and if the panel includes more than one arbitrator, only the president is needed to complete this qualification.

2. Impartiality and Independence: Article 16/1 states that an arbitrator shall not have any personal interest in the conflict. Once appointed, he shall disclose any possibilities that may give rise to doubts as to his impartiality or independence throughout the arbitration process.
3. Selection of Arbitrators: One Arbitrator: If the tribunal has just an arbitrator, the competent court will select that person if the parties cannot agree on one. And, three Arbitrators: If the tribunal consists of three arbitrators, each party selects one arbitrator, and those two chosen arbitrators point to a third, called the umpire, who will chair the tribunal. If a party fails to appoint an arbitrator within 15 days of a request or if the two selected arbitrators cannot agree on an umpire within 15 days, the competent court will step in and set the umpire within another 15 days.

The structured approach to arbitrator appointment guarantees the prompt and fair resolution of disputes over arbitrator selection. Finally, the New Arbitration Law makes it easier to understand and follow arbitration agreements and tribunals. This reform emphasizes the importance of written agreements and includes methods for selecting arbitrators, especially if there

[374]Saudi Arabia. (1985). Executive Regulations of the Arbitration System, Supreme Order No. (7 2021/M), issued on 8/9/1405H, approving the Executive Regulations, and published in Um al-Qura Newspaper No. (3069) on 10/10/1405H. Retrieved from https://www.wipo.int/wipolex/en/legislation/details/8503

[375]Al-Ammari, S., & Martin, T. (2014). Arbitration in the Kingdom of Saudi Arabia. Arbitration International, 30(2). 387-408.

are disputes over the selection process. These reforms aim to enhance the reliability and integrity of arbitration proceedings.

D. PROCEDURAL RULES

The New Arbitration Law allows for the selection of procedural rules for arbitration, as long as they do not conflict with Shari'ah law or the public policy of the Kingdom of Saudi Arabia. This gives the people involved in arbitration more freedom to choose international arbitration rules or the procedure rules of well-known international arbitration institutions. This makes it easier for the global arbitration community to agree on standards that are universally accepted. Articles 5, 25, and 38 of the law stipulate that the arbitration rules chosen by the parties must align with the principles of Shari'ah and the public policy of Saudi Arabia, ensuring that such rules are compatible with the Kingdom's legal and cultural norms.

E. GENDER OF THE ARBITRAL TRIBUNAL

Under the Old Arbitration Law in Saudi Arabia, there were strict requirements regarding the gender of arbitrators. Arbitrators were required to be Muslim males[376], and in the case of a multi-arbitrator tribunal[377], the chairman was required to be familiar with the rules of Shari'ah law. This condition reflected the traditional understanding of Shari'ah law, particularly within the Shafi, Maliki, and Hanbali schools[378].

Which typically hold that women cannot be appointed as judges or arbitrators. The justification for this view is largely derived from verse 4:34 of the Qur'an, which designates men as "qawwamuna" (protectors) of women, as well as the Prophet Muhammad's statement regarding leadership: "People will not prosper if they appoint a woman in charge of them"—a reference to the appointment of a woman as Queen of Persia. The prohibition against female judges or arbitrators within many Muslim-majority countries, including Saudi

[376]Nesheiwat, F., & Al-Khasawneh, A. (2015). The 2012 Saudi Arbitration Law: A comparative examination of the law and its effect on arbitration in Saudi Arabia. Santa Clara Journal of International Law, 13, 443.

[377]Rizwa, S. U. (2013). Foreseeable issues and hard questions: The implications of US courts recognizing and enforcing foreign arbitral awards applying Islamic law under the New York Convention. Cornell Law Review, 98, 493-498. Also, Carbonneau, T. E. (2011). Carbonneau on international arbitration: Collected essays (p. 422). JurisNet. As well as Carbonneau, T. E. (2007). Cases and materials on arbitration law and practice (p. 1199). Aspen.

[378]Alfatta, A. (2019). The impact of the Shari'ah on foreign direct investment and arbitration: The case of Saudi Arabia and its Vision 2030.

Arabia, has been justified by the perceived notion that women are not qualified to hold judicial authority. The Shafi, Maliki, and Hanbali schools of thought reinforced this by arguing that women were ineligible to be judges, a position largely based on traditional interpretations of Islamic law. This view led to the belief that even if a woman were appointed as an arbitrator, her judgments would not be binding, even if those judgments were in line with Shari'ah law.

However, with the passage of the New Arbitration Law, the gender-specific restrictions on arbitrators have been significantly relaxed, indicating a shift toward greater inclusion. The New Arbitration Law no longer mandates that arbitrators be male. Instead, the law stipulates that any arbitrator must meet the following qualifications:

1. Full Legal Capacity: The individual must have the legal capacity to act in the arbitration process.
2. Good Conduct and Reputation: The arbitrator must be of good moral standing.
3. The arbitrator must possess a university degree in Shari'ah or law at least. If the tribunal consists of more than one arbitrator, it is sufficient for the head to complete this educational condition.

This shift aligns the New Arbitration Law more closely with the Hanafi school of thought, which does not prohibit women from holding judicial roles. According to Hanafi scholars, anyone who is deemed fit to serve as a witness in an Islamic legal proceeding can also serve as a judge[379]. This aligns with verse 2:282 of the Qur'an. Which allows women to act as witnesses in commercial transactions, with the provision that two women can replace one male witness if necessary. This indicates that women can participate in legal proceedings, including arbitration, as long as they are competent and qualified. Importantly, there is no explicit prohibition in the Qur'an or Sunnah against women becoming judges or arbitrators. Historically, women have held roles of judicial authority in Islamic societies. For example, during the Caliphate, Caliph Umar ibn al-Khattab appointed a woman as a bazaar-inspector in

[379]Alqudah, M. A. (2017). The impact of Sharia on the acceptance of international commercial arbitration in the countries of the Gulf Cooperation Council. Journal of Legal, Ethical and Regulatory Issues, 1, 1-12.

Medina, who was empowered to arbitrate commercial disputes[380] This historical precedent suggests that the prohibition against female arbitrators may have more to do with cultural norms than with religious doctrine.

In Saudi Arabia, women's representation in the legal profession has historically faced significant obstacles. Although the Saudi Lawyers Law, issued in 2001, did not specify gender requirements for lawyers, women lawyers were effectively excluded from the profession until 2012, when the Saudi Ministry of Justice issued the first license to a female lawyer. This highlights the challenges faced by women in gaining acceptance within Saudi Arabia's legal framework, even as the New Arbitration Law opens the door for gender-neutral appointments of arbitrators[381]. Despite the New Arbitration Law's progressive stance on gender neutrality, some argue that gender remains a sensitive issue within Saudi public policy, and that the gender of an arbitrator could influence the enforceability of arbitral awards. There is concern that certain segments of society may consider the appointment of female arbitrators as conflicting with Saudi Arabia's interpretation of Islamic law, potentially rendering such awards void[382].

However, there has been some progress. In 2016, Saudi Arabia's Administrative Court of Appeal set its first woman arbitrator in a commercial case, despite objections from one party that it might violate Saudi public order. This marks an important development in the evolution of gender inclusion in Saudi arbitration and signals a potential shift in legal and cultural attitudes toward female participation in the judicial system[383].

In conclusion, while the New Arbitration Law eliminates gender as a qualification for arbitrators, the issue of gender continues to be a subject of cultural and public policy debate in Saudi Arabia. Although women are legally allowed to serve as arbitrators, the societal acceptance of female arbitrators

[380]Alfatta, A. (2019). The impact of the Shari'ah on foreign direct investment and arbitration: The case of Saudi Arabia and its Vision 2030.

[381]CNN. (2013, May 9). Meet Arwa Al-Hujaili: Saudi Arabia's first female lawyer. CNN Business. Retrieved from https://edition.cnn.com/2013/05/09/business/saudi-arabia-first-female-lawyer/index.html

[382]Alaessa, M. (2014). Saudi arbitration law and potential obstacles. Aleqt. Retrieved from https://www.aleqt.com/2014/12/04/article_911865.html

[383]Aldhafeeri, A. F. (2020). International commercial arbitration and arbitrators' gender:Saudi's perspective. Multi-Knowledge Electronic Comprehensive Journal for Education and Science Publication,33, 1-19.

remains complex, and their awards could still face challenges in certain contexts. Nonetheless, the 2016 ruling signifies that Saudi Arabia is taking steps towards greater inclusion of women in legal and arbitration roles, which is an encouraging sign for the future.

F. Seat of Arbitration and Language

The new arbitration laws in Saudi Arabia address the seat of arbitration in Article 28, specifying that the location may be one of the following:

1. Within the Kingdom of Saudi Arabia.
2. Outside the Kingdom of Saudi Arabia.
3. If the parties do not reach an agreement, the arbitral tribunal shall determine the place of arbitration, taking into account the possibilities, including a place convenient for both parties. This doesn't mean that the tribunal can't hold proceedings anywhere it thinks is appropriate for deliberations, hearing from witnesses, experts, or the parties, as well as looking at the dispute's subject or relevant documents.

In terms of language, Article 25 of the Executive Regulations of the old Arbitration Law previously required that Arabic be the only language used in arbitration proceedings within Saudi Arabia, whether during hearings or in written correspondence. The rules mean that the tribunal and arbitrators can only communicate in Arabic. A foreign party who cannot speak Arabic is allowed to bring an interpreter, who will be required to sign the translated data record. This provision led to a challenge, particularly concerning the recognition of Islamic arbitration awards, which were typically drafted in Arabic. To enforce such awards in foreign jurisdictions, an official translation was required. In contrast, Article 29 of the New Arbitration Law introduces greater flexibility. It states:

1. Unless the arbitration tribunal or both parties decide to employ another language, the arbitration will take place in Arabic. This agreement or decision will employ the language of written reports, oral arguments, and any decisions, messages, or awards issued by the tribunal unless otherwise agreed upon by the parties or determined by the tribunal.
2. The arbitration tribunal may require partial or full translations of written documents into the arbitration language(s). In cases involving more than one

language, the tribunal may limit the translation requirement to some of those languages.

As a result, arbitration parties can now use a non-Arabic language, such as English, for their contracts, arbitration proceedings, and awards. These arbitration agreements and awards will still be recognized and enforceable in Saudi courts.

G. ISSUANCE OF AN ARBITRATION AWARD

The old Arbitration Law required that arbitration awards be issued within ninety days from the date of their entry into force, unless the parties agreed otherwise, or the supervising court or arbitral tribunal granted an additional period. We find the following in Article 9: Unless there is an agreement to extend it, the arbitration instrument will determine the dispute on the specified date. If the parties don't set a deadline for the decision in the arbitration process, the arbitrators must make their decision within 90 days of the date of the decision approving the arbitration instrument. If they don't, any party can take the case back to the original authority that had the power to hear it, which can either hear it or extend the deadline for another period of time. The new arbitration law stipulates:

1. The arbitration panel shall issue the final award that ends the entire dispute within the period agreed upon by the two parties. If they do not agree, the arbitration panel shall issue the award within twelve months from the date of commencement of the arbitration proceedings.
2. In all cases, the arbitration panel may extend the arbitration period, provided that such extension does not exceed six months unless the two parties agree on a longer period.
3. If the arbitration award is not issued within the period stipulated in the previous paragraph, either party may request the competent court to issue an order specifying an additional period or terminate the arbitration proceedings. In this case, either party may file a lawsuit before the competent court.
4. If an arbitrator is appointed instead of another following the provisions of this law, the period specified for issuing the award shall be extended by thirty days.

The new arbitration law stipulates that arbitration awards must not violate Islamic law or Saudi public policy[384]. Most arbitral tribunals must issue arbitration awards. The arbitrators must write, justify, and sign the award. It must include the date and place of issuance, the names and addresses of the parties and arbitrators, a summary of the arbitration agreement, pleadings, and reports, including arbitration fees and costs.

H. CHALLENGE OF AN ARBITRATION AWARD

This is what is stipulated in Article 49 of the new Arbitration Law: Arbitration awards issued under this law may not be challenged in any way, except in a suit to invalidate the arbitration award filed under this law. Article 50.1 specifies the cases in which an arbitration award may be challenged:

A. If no arbitration agreement exists, or if such an agreement is invalid, voidable, or ended due to the expiry of its term.
B. If either party, at the time of completing the arbitration agreement, lacks legal ability under the law governing their capacity.
C. If either arbitration party fails to offer their defense due to a lack of proper notification of the selection of an arbitrator, the arbitration proceedings will be suspended for any other cause beyond their control.
D. The arbitration award may exclude the application of any regulations that the parties to the arbitration decided to use to the subject issue of the dispute.
E. If the arbitral tribunal or arbitrators were appointed in contravention of this Law or the agreement of the parties.
F. The arbitrator's decision may rule on matters not covered by the arbitration agreement. However, if parts of the decision relating to matters subject to arbitration can be separated from parts not subject to arbitration, only those parts not subject to arbitration shall be rejected.
G. If the arbitration panel fails to observe the conditions required for the award in a manner that affects its subject matter, or if the award is based on invalid arbitration procedures that affect it.

A party wishing to annul the arbitration award must submit a request to the competent court within sixty days from the date of notification thereof. The

[384] Ansary, A. F. (n.d.). A brief overview of the Saudi Arabian legal system. NYU School of Law Globalex. Retrieved from http://www.nyulawglobal.org/globalex/saudi_arabia.htm#_Toc200894573

New Arbitration Law requires the complaining party to present any objections to the result within 60 days, rather than the victorious party justifying the award when seeking enforcement.

I. ENFORCEMENT OF AN ARBITRATION AWARD

Article 20 of the old Arbitration Law states that: "The arbitrators' award shall be enforceable when it becomes final by order of the authority originally competent to consider the dispute. Any interested party may request this order, provided that Islamic law does not prevent its enforcement. This meant that the award could only be enforced if it was confirmed by the supervisory court, which under the previous Arbitration Law referred to the Grievances Board[385]. The overseeing court, in this case the Grievances Board, could and did look at the dispute again during the enforcement process. This meant that there was a big chance that the court would make its own decision about the dispute, even if the arbitration tribunal had decided. case before the International Chamber of Commerce, Jadawel International (Saudi Arabia) v. Emaar Properties (UAE), made this clear. In September 2008, the arbitration panel rejected Jadawel's claims in its final award. Jadawel appealed against the award to the Second Commercial Court of the Board of Grievances, which proceeded to review the matter. The Board of Grievances refused to enforce the award, overturned it, and ordered Emaar to pay Jadawel damages [386].

This has changed under the New Arbitration Law. "Subject to the provisions of this law, an arbitration rendered by it shall have the authority of a judicial ruling and shall be enforceable," states Article 52 of the New Arbitration Law. Article 50.4 states that the competent court must consider the action for nullification in cases mentioned in this article without inspecting the facts and subject matter of the conflict. For the competent court to order the arbitration award to be enforced Article 53 of the New Arbitration Law has specified the documents that must be brought to it. Article 44 says that these

[385]Saudi Arabia. (2007). Article 13(g) of the Grievances Board Law, Royal Decree No. M/78, dated 19 Ramadan 1428H, corresponding to 1 October 2007G, which covered both foreign court judgments and foreign arbitral awards. Previously Saudi Arabia. (1982). Article 8(1)(g) of the Grievances Board Law, Royal Decree No. M/51, dated 17 Rajab 1402H, corresponding to 11 May 1982G, which only covered foreign court judgments.

[386]Al Tamimi, E. (2009). The practitioner's guide to arbitration in the Middle East and North Africa(p. 371).

must be shown: the original or an attested copy of the award; a true copy of the arbitration agreement; a certified Arabic translation of the award if it was written in a language other than English; and proof that the award was filed with the appropriate court at the time it was issued.

Article 55.2.b also states that the competent court must ensure that the award does not conflict with a previous award in the Kingdom of Saudi Arabia and does not contain any parts that conflict with Islamic law or public order. This article also sets out the requirements for the enforcement of an arbitration award; these requirements are:

a) The award shall not be in conflict with a judgment or decision issued by a court, committee or body competent to resolve disputes in the Kingdom of Saudi Arabia
b) The award shall not be in violation of the provisions of Islamic Sharia and public order in the Kingdom. - If the award is divisible, an order may be issued to enforce the judgment against the party that does not include the violation. -
c) The party against whom the award was issued must be properly notified.

Once the enforcement order is issued by the competent court, the enforcement law requires that the enforcement order be submitted to the enforcement department to actually enforce the arbitration award. The enforcement department is part of the Saudi general courts and is responsible for supervising the enforcement of judgments issued by the various courts in the Kingdom of Saudi Arabia, as well as judgments issued by arbitration bodies and administrative bodies. According to Royal Decree No. M/53, 2012, the Saudi judiciary authority must establish enforcement circuits in the public courts in the main cities and provinces. These circuits carry out the orders or decisions made by the appropriate quasi-judicial committees, like banking dispute committees, in line with the system of implementation[387].

Moreover, in addition to judgments and orders issued by the courts, the enforcement court is responsible for enforcing arbitral awards that have obtained an executive order from the competent court. Article 9.2 states: "Only an enforcement document for a due and specified right may carry out

[387]Roy, K. T. (1994). New York Convention and Saudi Arabia: Can a Country Use the Public Policy Defense to Refuse Enforcement of Non-Domestic Arbitral Awards, The Fordham International Law Journal 18, 920.

compulsory execution." Enforcement documents are arbitral awards that include the enforcement order by the Law of Arbitration." It is also possible for an arbitral award to be overturned during the implementation law stage if the implementing court checks it to make sure it doesn't go against Shari'ah, which is what Article 6 of Resolution No. 91 (8/9) says. The Principle of Arbitration in Islamic Jurisprudence: If there aren't any Islamic courts on the international level, Muslim states or Islamic institutions can go to non-Islamic international courts to try to find a Shari'ah-compliant solution. However, the big drawback for any offshore investor is that arbitration in Saudi Arabia is very complex, time-consuming, and subject to interference by local courts[388].

So, the arbitral award will be looked over twice to make sure it follows Islamic Shari'ah and public order. The first time will be by the competent court, and the second time will be by the implementing court, as stated in Article 11 of the Enforcement Law.

J. SHARI'AH AND INTERNATIONAL ARBITRATION

Article 2 of the New Arbitration Law in the Kingdom of Saudi Arabia says that this law applies to all arbitrations, no matter what kind of legal relationship is at issue, as long as both parties agree that the law applies. This is true whether the arbitration takes place in the Kingdom or abroad as part of an international business dispute. The way this article is written gives international agreements the most weight, but the requirement of Shari'ah compliance makes it more important for a national judge to look closely at whether a foreign arbitral award can be enforced.

K. CONCLUSION

In general, after studying the new arbitration law and the old arbitration law, we can note that the new arbitration law provides a notable improvement and development over the old arbitration law. International arbitration practices are more closely aligned with the new arbitration law. It also respects the right of the parties to manage their dispute resolution process with minimal court intervention. The parties to the arbitration will have greater flexibility in selecting arbitrators, determining the rules and institutions of arbitration,

[388]Nesheiwat, F., & Al-Khasawneh, A. (2015). The 2012 Saudi Arbitration Law: A comparative examination of the law and its effect on arbitration in Saudi Arabia. Santa Clara Journal of International Law. 13, 443.

determining the center of arbitration, and choosing the language they want to use in the arbitration, all while adhering to the teachings of Islamic Sharia and Saudi arbitration laws.

2. The Arbitration Law in the United Arab Emirates

As mentioned earlier, arbitration is a form of private justice that is based on the approval of all parties. According to the Arbitration Law, arbitration is an agreement between the parties to refer to a conflict to arbitration, irrespective of whether the agreement is made before or after the claim arises. An arbitration agreement must be on paper, either as a separate agreement or as a clause in the agreement or any other document that contains an arbitration clause. These days, due to growing commerce and trade, various types of disputes are arising between companies. Arbitration has become a powerful and widely used tool for resolving disputes. It is difficult to determine the exact rate of international disputes, but some commentators have suggested that more than 90 percent of disputes are governed by arbitration clauses. The intense globalization and enhancement of business have affected the formulation of international contracts, many of which are determined by arbitration law.

In Arab countries, the growing interest in arbitration as a viable form of alternative conflict resolution has accelerated dramatically over the past five years. Today, companies operating in the Middle East are increasingly shifting to arbitration instead of litigation to address legal issues[389]. The Arab Middle East has witnessed significant growth in the number of arbitrations, with an estimated 750 arbitrations per year just in the UAE[390] , as well as a rise in investment arbitration disputes in the wake of the Arab Spring. For example, the share of cases registered with the International Centre for Settlement of Investment Disputes in the Middle East and North Africa was 14% in 2013 (Tunisia: 1, Egypt: 3, Algeria: 2), 10% in 2012 (Tunisia: 1, Egypt: 2, Algeria:

[389] Lee, C. E. (2013). More opt for arbitration to settle commercial disputes in the Middle East. Saudi Gazette. Retrieved from: http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20130703172138

[390]Thomson, D. (2013, June). Arbitrating in the Middle East. Global Arbitration Review.

2) and 9% in 2011[391]. Moreover, the Middle East is on track to become a hub for international arbitration, with parties involved in arbitration proceedings often choosing an Arab country as the seat of arbitration and the law of an Arab country as the substantive law applicable in the proceedings.

ICC statistics show that in 2011, Arab countries were chosen as the arbitration center in 79% of cases relating to the Middle East, with the applicable law of the Arab country being preferred in 60–65% of cases over the past three years. In particular, ICC statistics show that in West Asia (Qatar, Bahrain, Yemen, Lebanon, Syria, UAE, Jordan, Oman, Saudi Arabia, etc.), the figure of conflicts increased from 0.9% in 2003 to 3.9% in 2010, observed by smaller rates of growth in subsequent years: 3.3% in 2011, 2.6% in 2012, and 2.4% in 2013. Also, in 2010 and 2011, Arab countries were selected as the seat of arbitration in 79% of cases involving the Middle East, while the applicable law of an Arab country was selected in 65% and 63% of cases in 2010 and 2011, respectively. The percentage increased slightly to 64% in 2012. Interestingly, 57% of these cases had the same arbitration seat and law. Commentators have observed that businesses operating in the Middle East are increasingly turning to arbitration over litigation in resolving disputes [392].

Also, if we look at the rulings of the courts in Qatar and the United Arab Emirates, such as: Qatari Court of Cassation ruling 87/2010 (65) which states: (explaining "arbitration… is an exceptional mode of dispute resolution between the parties, based on a departure from the usual modes of litigation along with the guarantees they provide") [393]. And Dubai Court of Cassation Ruling, petition No. 51/92 which states: (arbitration is an exceptional mode of dispute resolution and should therefore be expressly agreed upon) [394], we will

[391]International Centre for Settlement of Investment Disputes (ICSID). (2013). The ICSID caseload statistics. ICSID.

[392]Comair-Obeid, N. (2014). Salient issues in arbitration from an Arab Middle Eastern perspective. Arbitration Brief, 4, 52. Also, Lee, C. E. (2013). More opt for arbitration to settle commercial disputes in the Middle East. Saudi Gazette. Retrieved from: http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20130703172138

[393]Qatar Court of Cassation. (2010). No. 87/2010 (65). Retrieved from: Comair-Obeid, N. (2014). Salient Issues in Arbitration from an Arab Middle Eastern Perspective. Arb. Brief, 4, 52. Retrieved from: https://tinyurl.com/4526wz23

[394]Dubai Court of Cassation. (1992). Petition No.51/92. Retrieved from: Comair-Obeid, N. (2014). Salient Issues in Arbitration from an Arab Middle Eastern Perspective. Arb. Brief, 4, 52. Retrieved from: https://tinyurl.com/4526wz23

notice that some arbitration decisions confirmed that: Arbitration is still viewed as a departure from the usual methods of litigation and the guarantees it provides, and as such, arbitration is considered an exceptional means of resolving disputes and must be explicitly agreed upon.

To illustrate, in many jurisdictions in the Middle East and North Africa region, including but not limited to Kuwait[395], Dubai[396], Bahrain[397], Lebanon[398], Egypt[399], Jordan[400], Qatar[401], and Syria[402], the principle of separability is recognized.

This means the arbitration contract signed by the parties constitutes a separate agreement. However, any signatory to an arbitration contract must possess a "Special Power of Attorney," explicitly allowing them to approve an arbitration clause[403].In addition, in this section, we will discuss the commercial arbitration law in the UAE from different perspectives:

A. INTRODUCTION OF THE UNITED ARAB EMIRATES:

The United Arab Emirates is located near the Persian Gulf in the northeastern part of the Arabian Peninsula. The UAE was founded in 1971 by Sheikh Zayed Al Nahyan and created a federation of seven emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Ras Al Khaimah, and Fujairah[404]. Another aspect of the legal history of the present-day UAE can be traced to its encounters with the British Empire in the nineteenth century. Multiple British peace treaties, including the Treaty of Peace in 1820, the

[395]Kuwaiti Civil Code Article.702 (requiring that each party to an arbitration clause obtain a special power of attorney that explicitly entitles the party to agree to the clause).
[396]UAE Law No.11 of 1992 (UAE Code of Civil Procedure) Article.203(4) (providing, "It shall not be permissible to arbitrate in matters that are not arbitrable. An agreement to arbitrate shall not be valid unless made by persons having the legal capacity to make a disposition over the right of the subject matter of the dispute")
[397]Bahraini Civil and Commercial Procedure Act Article.43 (requiring special authorisation in order for a party to act as a signatory to an arbitration agreement).
[398]Lebanon Decree Law No.90 of 16 September 1983 (Lebanon Code of Civil Procedure) Article.381
[399]Egypt Law No.131 of 1948, Al Jarida Al-Rasmiyya.
[400]July 1948 (Egypt Civil Code). Article 702. 29 Jordan Civil Code Article.838.
[401]Article 721 of the Qatar Code of Civil and Commercial Procedure provides "a special Power of Attorney is required for each act which is not an act of management [an administrative act], particularly sales, conciliations, mortgages, admissions and arbitration and also in directing the oath and pleading before the court". Qatar Code of Civil and Commercial Procedure. Article 721.
[402]Syria Law No.84 of 1949, 18 May 1949 (Syria Civil Code) Article.668.
[403]Dubai Court of Cassation, Decision No.191/2009 (September 13 2009).
[404]The Emirate of Ras Al Khaimah has officially joined the federation on the 11th of February 1972.

Maritime Truce in 1835, and the Treaty of Peace in 1853, were executed with each separate sheikhdom in the Gulf. From then onward, the Gulf sheikhdoms were referred to as the Trucial States[405].

Moreover, since the commercial exploitation of oil by the Petroleum Developments in the 1970s, the Emirates transitioned into rich rentier states "overnight," changing not only the architectural geography of the country but also diversifying its economy and improving legal and demographic developments.

The UAE is famous for its oil production, mega shopping malls, and tourism. It also has a unique economic background, having historically relied on fishing as a primary source of revenue for thousands of years. Historically, parties involved in conflicts in the UAE have opted to resort to court to settle their issues. This was due to the general belief that arbitration was expensive and time-consuming, and enforcement of an arbitration award was seen as difficult. Nevertheless, as the UAE continued to attract foreign investors, constructors, and the business community, arbitration has increasingly become a popular mechanism for dispute resolution[406].

Before the recent developments in arbitration institutions, two types of arbitration existed in the UAE. The first style is mandatory arbitration, where a case arising from an agreement is managed through arbitration by a committee instead of a court. This committee is formally formed by the relevant government department. The other type is consensual arbitration, where the parties voluntarily agree to arbitration[407]. Due to rapid business developments and foreign investors' claims in the UAE, the UAE government has demonstrated its commitment to developing its arbitration culture. It has openly

[405] H. M. Al- Baharna, British Extra- Territorial jurisdiction in the Gulf 1913-1971; An Analysis of the System of British Courts in the Territories of the British Protected States of the Gulf during the PreIndependence Era, (Slough: Archive Editions Ltd, 1998), 8- 9 and M. A. J. Al Fahim, From Rags to Riches; A Story of Abu Dhabi, (Abu Dhabi: Makarem G Trading and Real Estate LLC, 2013), 33- 35.6

[406] J. kwan and E. Teale "Arbitration in the United Arab Emirates: the traps, the tricks and tips for the unwary", In International Arbitration Law review 2006.

[407] Abdullah, M. T. (2013). Role of UAE courts in international commercial arbitration.

considered feedback from foreign investors regarding the shortcomings of the current arbitration mechanism[408].

B. THE RELATIONSHIP BETWEEN THE UAE AND ISLAMIC LAW IN COMMERCIAL ARBITRATION:

One of the major achievements of the UAE government was the codification of the UAE's Civil (Commercial) Code, also comprehended as the Civil Transactions Code, in 1986. The provisions, containing roughly 1,528 articles, were primarily based on Islamic Sharia law. This aligns with Article 7 of the Constitution, where Sharia has emerged as a significant source of legislation[409].

Moreover, if we look at history, we can see that the Ottoman Majella and the Jordanian Civil Code served as models for the basic framework and formulation of the Civil Code. According to Article 1 of the Civil Code, judgments should be based on the provisions of this law. However, if the Civil Code lacks any provision, the judge should pass judgments based on Islamic Sharia. Article 1 of the Civil Code states: "If no provisions can be found, the judge should choose the most appropriate solution from the schools of Imam Malik, Hanbal, or a subsidiary from the schools of Imam Shafi'i and Hanafi." If the judge can't find a solution there, he should judge according to the local customs of the emirate concerned, provided they do not conflict with public order or morals." Second, Article 2 of the Civil Code also stresses how important Sharia is. It stipulates that the judge, when interpreting civil law, must seek assistance from the rules and sources of Islamic law.

Together with Article 3 of the Civil Code, these three articles incorporate aspects of Sharia and Islamic jurisprudence into the legal framework governing the UAE[410]. Similarly, Article 27 of the Civil Code bans the application of laws that contradict Sharia, or "public policy or morals," in

[408]Reza Mohtashami, 'Recent Arbitration-related developments in the UAE', Journal of Inte rnational Arbitration, Val 25, No 5, 2008

[409]Constitute Project. (2004). Constitution of the United Arab Emirates, 1971 (rev. 2004). Retrieved from https://www.constituteproject.org/constitution/United_Arab_Emirates_2004

[410]B. S. A. Al Muhairi, The Islamisation of laws in the UAE: the case of the Penal Code, 11 ALQ no. 4 (1996), 350- 371, at 359.

the UAE [411]. The UAE follows the Sunni, within which four schools have developed to interpret Sharia. By Article 1 of the Civil Code, if no appropriate provision is found in UAE law, the judge must decide according to Sharia, regarding the most appropriate solution from the schools of Imam Malik and Imam Ahmad bin Hanbal. If none is found in these schools, the judge must move on to the schools of Imam al-Shafi'i and Imam Abu Hanifa. Article 27 of the Civil Code states that laws may not be applied if they are inconsistent with Sharia[412].

From a historical perspective, we can see the difference between arbitration under Sharia and in the West. In England, for example, arbitration can be traced back to earlier Christian periods. Although the decision of a bishop was not enforceable by law, the parties' agreement to appoint him included a penalty if his judgment was not obeyed, and the penalty was enforceable[413]. The judgment itself became enforceable with the introduction of the first English Arbitration Act in 1698. Today, the award is binding, except for a limited right of appeal[414].

Within the UAE, the Maliki and Hanbali Schools place significant confidence in arbitration and regard the arbitrator's decision as crucial. Indeed, under the Maliki School, the arbitrator's appointment cannot be revoked after the arbitration begins. Moreover, the Shafi'i perspective views the position of an arbitrator as inferior to that of a judge, and the appointment can be revoked at any time before the publication of the award. On the other hand, the Hanafi School sees the arbitrator as the agent of the party who appointed him, with no requirement for neutrality or impartiality. As a result, the arbitral award holds less force than a court judgment[415].

[411]Nurmohamed, R. (2020). Shari'a law and its impact on the development of Muslim and non-Muslim business relations in The United Arab Emirates. Law and Development Review, 13(2), 443-472.
[412]Brawn, D. (2014). Commercial Arbitration in Dubai. management, 80(2).
[413]James Behrens, "The History of Mediation of Probate Disputes" (2002) 68 Arbitration 138.
[414]Lord Hacking, "Arbitration Law Reform in Europe" (1999) 65 Arbitration 138.
[415]Brawn, D. (2014). Commercial Arbitration in Dubai. management, 80(2).

The position under Sharia is therefore somewhat fluid, but an arbitral award is not enforceable until it has been ratified by a judge as being compliant with the law, and it may be set aside if it does not comply[416].

C. WHY THE UAE ARBITRATION CENTER CAN LEAD IN THE GULF AND BEYOND

Legal and professional experts have observed that the UAE's Arbitration Centers have great potential to become leading centers in the Gulf and globally. There are numerous reasons behind this opinion, including the following:

1. Geographical Location:

The United Arab Emirates is situated at a significant geo-economic location, and for several reasons, it serves as a strategic hub[417]. First, the UAE can serve as a link between Eastern and Western Europe. Secondly, it can also provide a good venue for arbitration for countries like Pakistan, Sri Lanka, India, Bangladesh, Nepal, and other areas in Central and South Asia. It is worth noting that, at the present period, there is no world-class and reliable international arbitration hub in most South and Central Asian states. On the other hand, the UAE has confirmed its capability to provide arbitration, as a rapidly emerging tool for resolving commercial disputes, to these countries and their parties in commercial and other disputes at a world-class level of superior quality.

2. Neutral Seat:

For obvious reasons, the seat or location of arbitration is critical in any arbitration proceeding. The parties to the conflict and their legal professionals are keen to choose an independent place for arbitration because the place plays a major role in the arbitration process. Among the reasons are[418]: 1. The arbitration law of the country where the seat is located will apply to the case. 2. It is important that the country where the seat is located is a signatory to the New York Convention of 1958. If it is not, enforcing arbitral awards issued in non-signatory countries could be problematic. 3.The country where the arbitration took place must review the award.

[416]Joseph Schacht, An Introduction to Islamic Law (Oxford University Press, 1982) p.189
[417]Abdullah, M. T. (2013). Role of UAE courts in international commercial arbitration.
[418]R. Merkin & L. Flannery, Arbitration Act 1996, 4th ed. (MPG Books 2008)

Therefore, significant care is required, and the parties need to make their choice of arbitration venue with due diligence. The UAE offers an independent, impartial, and neutral seat for arbitration, which is why the world chooses it as their seat for arbitration.

D. Arbitration in the United Arab Emirates

If we examine arbitration regarding the legislation on arbitration, we can notice that there was no different or special law on arbitration in the UAE until 2018. Indeed, the civil procedure law of the UAE was a vital source of arbitration practice in the country[419]. Arbitration was governed by Federal Law No. 11 of the UAE Civil Procedure Law of 1992. This law provides a legal framework for domestic and international arbitration. Chapter Three of the UAE Civil Procedure Code deals with arbitration. Article 203 defines arbitration in general and states that for an arbitration agreement to be valid, it must be evidenced in writing[420]. It is interesting to note that the English Arbitration Act of 1996 also requires the agreement to be in written form, either as an arbitration clause or as a separate arbitration agreement[421] .

Another important rule in Article 203 is that in the presence of a valid arbitration agreement, if a party files a suit in court regarding the dispute and the other party does not appear at the first hearing, the arbitration proceedings will be deemed canceled. In difference, under section 44 of the UK Arbitration Act 1996, the arbitral tribunal contains substantive authority over its own jurisdiction. Once the arbitral proceedings begin, the court cannot stop them, except under exceptional circumstances. Moreover, Articles 203 to 218 of the CPL address arbitration in general. Chapter Four of the Code of Criminal Procedure deals with the enforcement of foreign judgments. Articles 235 to 238 discuss the enforcement of foreign judgments and awards. Chapter Five deals with enforcement procedures, and Articles 239 to 243 cover the rules relating to enforcement procedures. Also, Federal Law No. 11 contains important rules about the arbitration agreement. According to Federal Law No. 11, the

[419]Whelan, J. (2010). UAE Civil Code and Ministry of Justice Commentary.
[420]United Arab Emirates. (1992). UAE Civil Procedure Code, Federal Law No. 11 of 1992. Retrieved from https://tinyurl.com/yhv6w99x
[421]Arbitration Act, 1996, § 7. Retrieved from https://www.indiacode.nic.in/bitstream/123456789/1978/3/a1996-26.pdf

arbitration agreement must be on paper, and the figure of arbitrators must be odd. Under Federal Law No. 11, arbitrators can be selected in three ways: by nomination by the parties, by appointment through an arbitral organization, or by appointment by a relevant competent court at the seat of the arbitration. Federal Law No. 11 also addresses the issue of public interest and public policy.

Also, according to the law of the United Arab Emirates, no law that contradicts the principles of Islam may be enacted in the United Arab Emirates. In practice, any un-Islamic practice is considered against public policy and, therefore, is not permitted. Arbitrators do not have the ability to force a party to the arbitral proceedings to act or produce certain documents. Instead, the arbitrators must suspend the proceedings and apply to the competent court. The UAE law does not determine the applicable law in arbitration proceedings; instead, the disputing parties are free to choose the applicable law as they wish. However, the parties must follow the mandatory provisions of the UAE law. Failure to comply with these mandatory conditions may impact on the enforceability of the relevant arbitration award[422].

In this context, we must understand that several laws apply to arbitration in the United Arab Emirates. These include:

1. Federal Decree Law 15/2023, issued on 4 September 2023, to amend the UAE Federal Arbitration Law (Law 6/2018) [423].
2. UAE Arbitration Law, Federal Law No. 6 of 2018 on Arbitration[424].
3. Decree No. (34) of 2021 regarding the Dubai International Arbitration Centre[425].

Prior to these developments, the arbitration method went through different stages and regulations, starting with Articles 203 to 218 of the Civil Procedures Law (Federal Law No. 11 of 1992) and ending with the UAE Arbitration Law, federal Law No. 6 of 2018. In this text, we will concentrate only on the laws applicable during this time, examining them sequentially:

---

[422] Abdullah, M. T. (2013). Role of UAE courts in international commercial arbitration.
[423]Federal Decree-Law No. 15 of 2023. (2023). On amending certain provisions of Federal Law No. 6 of 2018 on arbitration. Retrieved from https://goo.su/RfJSz
[424]United Arab Emirates. (2018). UAE Arbitration Law, Federal Law No. 6 of 2018 on Arbitration. Retrieved from https://tinyurl.com/te7wbemz
[425]Dubai Government. (2021). Decree No. (34) of 2021 concerning the Dubai International Arbitration Centre. Retrieved from https://tinyurl.com/ynv58vsb

CHAPTER ONE: DEFINITIONS AND SCOPE OF APPLICATION

To develop a comprehensive understanding of arbitration law in the United Arab Emirates, it is crucial to begin by exploring the key definitions outlined in the legislation. By familiarizing ourselves with these definitions, we can establish a solid foundation for further analysis and understanding of the law. Further, according to Article 1 of the UAE Arbitration Law, Federal Law No. 6 of 2018. Any disagreement between two or more parties can be made by a binding decision made by an arbitral tribunal, as long as all parties agree to it. This process is governed by the law.

This definition fits with what arbitration means in the legal world, which is that it is a way to settle a dispute without going to court, where both sides agree to let an impartial panel decide the outcome[426]. Furthermore, an arbitration agreement is described as: an understanding between the parties to resort to arbitration, whether such an agreement is made before or after the dispute arises. The same law also clarifies the meaning of "parties" the Claimant and the Respondent, who may be any number of individuals or entities. A claimant is defined as the party initiating arbitration proceedings, and a respondent is the party against whom the claimant has commenced arbitration proceedings. We will explore this topic in more detail in the next section.

The same law also defines the arbitration body as: A body consisting of one or more arbitrators to settle the dispute referred to arbitration. To deepen our understanding, we will study this topic from a jurisprudential perspective and interpret it through the lens of legal scholars. It is essential to note that without an arbitration agreement between the claimant and the respondent, the arbitral tribunal lacks jurisdiction[427].

Additionally, the outcome of an arbitration agreement can be categorized as positive or negative. A negative outcome means that the courts are prohibited from hearing such disputes, while a positive outcome obliges the parties to submit the dispute to arbitration and grants jurisdiction to the arbitral

[426]Dowers, N. A. (2015). Interface between jurisdiction instruments and arbitration.
[427]Haikola, E. (2013). Arbitral tribunals and national courts: Constant battle or efficient cooperation? (Master's thesis, University of Lapland).

tribunal[428]. We will discuss this topic in further detail later. If we examine international arbitration tribunals, we find that limited data suggests that women are underrepresented on arbitral tribunals, even more so than at senior levels in law firms[429].

On the other hand, the UAE Arbitration Law provides for specific cases in which arbitration is considered global, even if it is completed within the UAE. Before discussing these cases, we must comprehend what "international arbitration" means: It is a private method for settling disputes arising from global relationships[430]. UAE arbitration law classifies arbitration as international in any of the following situations, regardless of whether it takes place inside the UAE:

1. The arbitration agreement applies if the parties have their places of business in two or more states at the time of its conclusion. Although a party may have multiple places of business, the place closest to the arbitration agreement shall be the reference point. If a party has no place of business, his or her habitual residence shall be the reference point.
2. The place where a significant part of the obligations arising from the commercial relationship between the two parties are implemented, or the place most closely related to the subject of the dispute.
3. If the parties have expressly agreed that the subject matter of the arbitration agreement pertains to more than one country,

Additionally, Decree No. (10) of 2004, which we will analyze in detail later in this dissertation, established the Dubai International Arbitration Centre.

CHAPTER TWO: ARBITRATION AGREEMENT

To begin arbitration procedures, we must first and foremost understand the legal agreement between the parties and the arbitral institution. The legal nature of the relationship between the institution and the parties is usually raised in the context of responsibility issues. Indeed, one of the most significant implications of qualifying the relationship as a contract is the application of the

[428]Fouchard, P., Gaillard, E., & Goldman, B. (1999). On International Commercial Arbitration (pp. 381, 402). Kluwer Law International. In addition to, Poudret, J.-F., & Besson, S. (2007). Comparative Law of International Arbitration (pp. 314-315). Sweet & Maxwell.
[429]Greenwood, L., & Baker, C. M. (2012). Getting a better balance on international arbitration tribunals. Arbitration International, 28(4), 653-668.
[430] Yüksel, E. B. (n.d.). International arbitration.

general rules of contractual liability to any misconduct by the institution[431]. For the existence of a legally binding agreement, civil law systems require the parties' mutual consent[432]. Under the common law doctrine, the essential elements of a contract are mutual consent and consideration[433]. Mutual consent refers to the concurrence of the parties' wills, which is reached through the express or implied declaration of an offer and corresponding acceptance[434].

Despite some controversy regarding what constitutes an offer and acceptance between the parties and the institution, the legal connection between them is generally regarded as contractual[435]. In addition, as we have already mentioned, most laws do not define arbitration. "The Model Law, like most traditions and national regulations on arbitration, does not explain the term 'arbitration.' It merely makes clear, in Article 7(1), that it covers any arbitration, whether issued by a permanent arbitral organization," says Binder. He further mentions that 'the number of additional definitions included in some states' corresponding provisions indicates that the term provided by the Model Law was not sufficient to satisfy many legal systems'[436].

---

[431]Blackaby, N., Partasides, C., & Others. (n.d.). International arbitration (pp. 332-333). Paragraphs 5.61-5.64. Also, Karrer, P. A. (2004). Responsibility of arbitrators and arbitral institutions. In L. W. Newman & R. D. Hill (Eds.), The Leading Arbitrators' Guide to International Arbitration (pp. 479-493). Juris Publishing. In addition to, Schwarz, F. T., & Konrad, C. W. (2009). The Vienna Rules: A commentary on international arbitration in Austria (pp. 189-192). Paragraphs 8-028–8-036. Kluwer Law International. As well as, Gaillard, E., & Savage, J. (1999). Fouchard Gaillard Goldman on International Commercial Arbitration (pp. 602-604). Paragraphs 1109-1110. Kluwer Law International.

[432]Ellenberger, J. (2011). Introduction to § 145. In Palandt, Bürgerliches Gesetzbuch, Beck'sche Kurz-Kommentare (Vol. 7, 70th ed., p. 157, para. 1). CH Beck. Moreover, Kramer, E. A. (2006). Introduction to § 145. In F. J. Säcker (Ed.), Munich Commentary on the Civil Code (Vol. I, 5th ed.). CH Beck. (beck-online). Retrieved from https://beck-online.beck.de

[433]Wörlen, R. (2007). Introduction to English Civil Law for German-Speaking Lawyers and Law Students (Vol. 1, 4th ed., p. 125). Alpmann und Schmidt Juristische Lehrgänge. Also, Dörrbecker, A., & Rothe, O. (2005). Introduction to the US-American Legal System for German-Speaking Lawyers and Law Students (Vol. 1, 2nd ed., p. 143). Alpmann und Schmidt Juristische Lehrgänge.

[434]Timár, K. (2013). The legal relationship between the parties and the arbitral institution. ELTE Law Journal.103.

[435]Blackaby, N., Partasides, C., & Others. (n.d.). International arbitration (p. 332, para. 5.61). Also, Kuckenburg, J. (1997). Contractual relationships between ICC, parties, and arbitrators. In DIS-Materialien Band 1 (pp. 78-102, p. 80ff). Moreover, Remón Peñalver, J., & Allan, V. (2010). International arbitration as an analogue to the international civil society. In M. Á. Fernández-Ballesteros & D. Arias (Eds.), Liber Amicorum Bernardo Cremades. (pp. 1013-1024, p. 1019). The Law. As well as, Schwarz, F. T., & Konrad, C. W. (2009). The Vienna rules: A commentary on international arbitration in Austria. Kluwer Law International. (p. 9, para. 1-021).

[436]Binder, P. (2010). International commercial arbitration and conciliation in UNCITRAL Model Law jurisdictions (3rd ed., p. 41,46 and 47).

Including the Federal Arbitration Act of the United States, we note that Carbonneau states that “the court concluded that since the Federal Arbitration Act of the United States did not define the term ‘arbitration,’ any referral to a third party constitutes an agreement to arbitrate. The court stated that no ‘magic word such as ‘arbitrate’ … [were] needed to obtain benefits of the Act [the FAA]"[437]. Also, The Arbitration Act, 1996, (U.K.) lacks a definition of arbitration; however, it contains a definition of the arbitration agreement and only applies to written arbitration agreements [438]. And regarding the French Civil Procedure Code. The Code de procédure civile (C.P.C.), Articles 1442-1507 (Fr.), does not provide a definition of arbitration. According to Rouche and Pointon (2009), 'The main sources of current French arbitration law, which have already been cited, are the provisions of Articles 2059 to 2061 of the Code Civil and Articles 1442 to 1507 of the Code de procédure civile (CPC)[439].

Furthermore, Seppala suggests that domestic arbitration in France is also regulated by Article 631 of the Commercial Code[440]. In France, Gaillard and Savage say that arbitration is a way for two or more people who are interested in a problem to settle it by giving the job to one or more other people, called an arbitrator or arbitrators. These people get their power from a private agreement, not from the government, and they have to follow the agreement to decide the case[441].

Therefore, the courts of any given country should intervene to clarify what is meant by arbitration in that country, although this likely would result in a variety of definitions of the term. Additionally, Binford discusses this concept in the AHLA Seminar Material on long term care and the law[442]. Gaillard and

[437]Carbonneau, T. E. (2007). Cases and materials on arbitration law and practice . (pp. 1-2).
[438]Flanner, L. (2013). Chapter 11: The English statutory framework. In Arbitration in England, with chapters on Scotland and Ireland (pp. 208-210).
[439]Rouche, J., & Pointon, G. H. (2009). French arbitration law and practice: A dynamic civil law approach to international arbitration (2nd ed., p. 9).
[440]Seppala, C. R. (1982). French domestic arbitration law. International Law, 16, 749-753.
[441]Gaillard, E., & Savage, J. (1999). Fouchard Gaillard Goldman on International Commercial Arbitration (p. 9). Kluwer Law International.
[442]Binford, G. (2007). AHLA seminar material, long term care and the law. Orlando, FL, February 21, 2007.

Savage also distinguish between arbitration, conciliation, and mediation, providing valuable insights into the different dispute resolution mechanisms[443].

Also, the arbitration agreement is the foundation of arbitration. Furthermore, the arbitration agreement is the sole source of the arbitrators' authorization, and their actions are merely a continuation of that agreement[444]. "It is also crucial to acknowledge that an arbitration agreement within the United Arab Emirates must be entered into by an individual possessing the legal capacity to act, or by an authorized representative of a legal entity empowered to execute such an agreement. Failure to meet this requirement renders the agreement null and void. This is evident in Article 4 of the UAE Arbitration Law, Federal Law No. 6 of 2018 on Arbitration"[445].

The Dubai Court of Cassation's Petition No. 220/2004[446] says that in order to sign an arbitration agreement legally, the person doing so must either have a validly executed special power of attorney or be able to give up, settle, or give up the right to pursue a claim on behalf of a given company. Article 190 of the Qatar Code of Civil and Commercial Procedure also gives relevant advice[447].Note that the managing director is presumed to have the authority to sign an arbitration agreement. Accordingly, it is noted that if a lawyer has a power of attorney to represent his client in court but does not have a special power of attorney to represent him in arbitration, the lawyer will be prevented from pleading and representing because of the lack of a special power of attorney for arbitration even if it gives him an implied authority, for example by giving the lawyer documents to present in arbitration. A third party also has the right to agree to an arbitration clause provided that this right is expressly stated in the third party's power of attorney. Without the valid power of

[443]Gaillard, E., & Savage, J. (Eds.). (1999). Fouchard Gaillard Goldman on International Commercial Arbitration. Kluwer Law International (pp. 12-17).
[444]Kyprianou, A. L. (2023). The autonomous theory of international commercial arbitration: An autopoietic perspective (Doctoral dissertation, University of Leicester).
[445]United Arab Emirates. (2018). UAE Arbitration Law, Federal Law No. 6 of 2018 on Arbitration. Retrieved from https://tinyurl.com/te7wbemz
[446]Dubai Court of Cassation. (2004). Petition No.220/2004. Brawn, D. (2014). Commercial Arbitration in Dubai. Management, 80(2). Retrieved from https://tinyurl.com/y3epznrk
[447]Qatar Code of Civil and Commercial Procedure, Law No. 13 of 1990. (1990). Retrieved from https://tinyurl.com/5dva2tav

attorney granted by a person authorized to grant it, no one may bind any of the parties to arbitration and the court may refuse to ratify the award[448].

Regarding the parties who have agreed with a minor or a guardian, we can note the following: First, the parties must understand that arbitration agreements are acts that 'vary between profitable and detrimental' and require the recognition of both the guardian and the minor once the minor reaches legal age. Second, even if the guardian agrees to enter an arbitration contract, the court still views this action as requiring the consent and ratification of the minor after they reach legal age. This implies that arbitration falls outside the limits of the guardian's capacity to agree. According to Federal Law No. (5) of 1985, regarding the publish of the Civil Transactions Law of the United Arab Emirates (Art. 159), the financial dealings of a minor of the age of discretion shall be valid if they are purely for their benefit and void if they are purely to their detriment[449]. Additionally, dealings that fall between pure benefit and detriment shall require the consent of the guardian within permissible limits or ratification by the minor after reaching adulthood. The age of discretion is set at 7 complete Hijri years[450].

Furthermore, the court ensures that a minor has the freedom to review the arbitration agreement once they come of legal age. It also grants the minor legal right to withdraw from the agreement once they reach legal age. This represents the court's view of the dangers incurred by opting out of the court's jurisdiction and choosing to substitute the natural judge with an arbitrator[451]. Likewise, the arbitration agreement can be established before the occurrence of a dispute, either as a separate agreement or as a provision included within a specific contract. Alternatively, the agreement may also be formed after the issue has arisen.

The establishment of arbitration occurs when the parties agree to submit their dispute to arbitration. In the major contract, the parties can include an

[448]Brawn, D. (2014). Commercial Arbitration in Dubai. management, 80(2).
[449]United Arab Emirates. (1985). Federal Law No. (5) of 1985 concerning the issuance of the Civil Transactions Law of the United Arab Emirates. Retrieved from https://uaelegislation.gov.ae/en/legislations/1025/download
[450]Razeeq, M. (2006). Al-Madkhal ila Dirasat al-Qanoon [The introduction to the study of law] (2nd ed., pp. 197, 199-200).
[451]Abdulla, M. I. A. (2017). Assessing the United Arab Emirates decisional law on arbitration.

arbitration clause, which comprises the arbitration agreement[452]. As mentioned earlier, the arbitration agreement may also take the form of a submission agreement created after the dispute has arisen, or it can even be an entirely independent contract that is, however, attached to another contract between the parties [453].Also, Arbitration is a special form of judicial litigation in which the parties of the arbitration agreement resort to an arbitrator without submitting their disputes to the court in order to settle their dispute arising through a contractual relation or non-contractual relation by rendering a binding award after hearing the case and what the parties have to say[454]. Further, it is crucial to note that an arbitration agreement should be treated as distinct from other conditions of the contract. Consequently, if the contract itself is declared null and void, rescinded, or terminated, it shall not affect the validity of the arbitration agreement, provided it remains valid on its own merits.

One more thing that is written in Article 8 of Law No. 6 of 2018 on Arbitration in the UAE is that if there is a reasonable agreement to settle a disagreement through arbitration, any lawsuit in the UAE must be thrown out if the defendant brings that agreement up before making any claim or defense about the claim itself. Chapter III of the UAE CPL deals with arbitration. Article 203 addresses arbitration generally and states that, to be a valid arbitration agreement, the agreement must be evidenced in writing. It is also worth mentioning that the English Arbitration Act 1996 requires the agreement to be in written form, either as an arbitration clause or as a separate arbitration agreement. Similarly, the UAE Arbitration Law in Article 7 provides that the arbitration agreement can be incorporated by reference and made through correspondence, including emails.

In addition to the above, the arbitration agreement and the award cannot be treated as a typical contract or as a court judgment. An arbitration agreement

[452]Blackaby, N., Partasides, C., & others. (2015). Redfern and Hunter on international arbitration: Student version (6th ed.). Oxford University Press. Also, Born, G. B. (2014). International commercial arbitration (2nd ed.). Kluwer Law International.
[453]Kröll, S. M., Lew, J. D. M., & Mistelis, L. A. (2003). Chapter 6: Arbitration agreements - Autonomy and applicable law. In J. D. M. Lew, L. A. Mistelis, & S. M. Kröll (Eds.), Comparative international commercial arbitration. Kluwer Law International.
[454]Abu Dhabi Court of Cassation. (2008, December 25). Appeal No. 519/2008. In Abdulrahim Abdulla, M. I. (2017). Assessing the United Arab Emirates Decisional Law on Arbitration. Retrieved from https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1008&context=sjd

has been characterized as a sui generis contract; a contract that is not governed by the general principles applicable to other contracts[455].

CHAPTER THREE: ARBITRAL TRIBUNAL

As is famous, arbitration is an alternative to litigation for resolving disputes. The semi-formal nature of current arbitration makes it reasonable to view it as private litigation, in contrast to the public litigation process in court. Furthermore, Queen Mary's international arbitration surveys have consistently shown that commercial parties choose arbitration. In its 2006 survey, 76% of respondents chose arbitration. In 2008, 88% used arbitration, and in 2013, 52% selected arbitration. By 2015, 90% of respondents continued to prefer arbitration[456].

Arbitration, as a private process, entails that the decision-makers are private individuals, not officers of the state, such as national judges. Interestingly, Article 37(1) of the East African Court of Justice Arbitration Rules provides that arbitrators must be selected from among the judges of the East African Court of Justice. This is not the rule, even for supranational courts that also provide arbitration services. An instance is the Joint Court of Justice and Arbitration of Ohwada. whose Rules clearly state that the CCJA does not resolve disputes but appoints arbitrators.[457] These private individuals form the arbitral tribunal and render final and critical decisions (duly recognized under the laws of most States) on a particular conflict submitted to them by particular parties. In the UNCITRAL Model Law (2006), Article 2(b) says that an "arbitral tribunal" is either a single arbitrator or a group of arbitrators. Article 2(c) says that a court is a body or organ of a state's legal system[458].

[455]Kyprianou, A. L. (2023). The autonomous theory of international commercial arbitration: An autopoietic perspective (Doctoral dissertation, University of Leicester).
[456]Queen Mary University of London. (n.d.). Queen Mary International Arbitration Survey. Retrieved from https://arbitration.qmul.ac.uk/research/index.html.
[457]East African Court of Justice. (2004). Arbitration rules of the East African Court of Justice. Arusha, Tanzania. Retr0ieved from https://tinyurl.com/fbkrdpzt . Also, OHADA Common Court of Justice and Arbitration (CCJA). (1999). CCJA Arbitration Rules. Retrieved from https://tinyurl.com/fcddxn74
[458]United Nations Commission on International Trade Law. (2006). UNCITRAL Model Law on International Commercial Arbitration, 1985 with amendments as adopted in 2006. United Nations. Retrieved from https://tinyurl.com/38xcumd8

National court judges perform the same judicial, decision-making function. Thus, arbitrators are private judges[459] .It is this status of arbitrators and the decisions they make over substantive disputes under various national laws that raises the tension between arbitral tribunals and national courts[460].This tension appears because both judges and arbitrators make binding decisions on conflicts brought before them by parties, albeit in various forms. One example of this tension was obvious in the call for a rebalancing of the two methods (arbitration and litigation) in England by Lord Chief Justice Thomas of Cwmgiedd in2016 [461].

As well, arbitrators now settle big, expensive disputes. Controlling such large disputes may make the judiciary dislike or feel like they're competing with them. Arbitration laws in different jurisdictions usually have the powers of arbitral tribunals, and in some jurisdictions, the same laws also set out some of the supervisory authorities that courts can exercise over arbitration within their jurisdiction. An example is the 1996 English Arbitration Act (EAA), Sections 42-44[462]. If we look back at the UAE arbitration law, we can find examples of powers courts can exercise over arbitration within their jurisdiction.

One example is Article 11, which talks about choosing the Arbitral Tribunal. Article 11 stipulates that if the Authorized Entity fails to select the arbitrator by the steps outlined in either the parties' agreement or the current law, any party may request the court to carry out the necessary steps to select the Arbitral Tribunal's members. The Court's judgment, in this regard, shall not be subject to appeal through any means of alternative. In addition, all arbitrations are based on an understanding between the parties, and without such an understanding, the arbitral tribunal lacks jurisdiction. The arbitral tribunal can justly decide issues that the parties have agreed upon[463].

---

[459]Mustill, M. J., & Boyd, S. C. (2001). Commercial arbitration (2nd ed., p. 220). Butterworths.
[460]Onyema, E. (2017). The jurisdictional tensions between domestic courts and arbitral tribunals. Journal of International Arbitration, 34(3).
[461]Eder, B. (2016, April 28). Does arbitration stifle the development of the law: Should Sect. 69 be revitalised? Keynote address at the Chartered Institute of Arbitrators (CIArb) London branch AGM.
[462]English Arbitration Act 1996. (1996). English Arbitration Act (EAA), Retrieved from https://www.acerislaw.com/wp-content/uploads/2024/03/1996-English-Arbitration-Act.pdf
[463]Redfern, A., & Hunter, M. (2015). Law and practice of international commercial arbitration (6th ed., p. 295). Sweet & Maxwell. Also, Kurkela, E. (2015). Competition laws in international arbitration (p. 610). Kluwer Law International

However, any decision made by the arbitral tribunal about its jurisdiction is under the control of the national courts, who hold the final word in this regard[464]. Moreover, by including an arbitration agreement, parties waive their right to have their disputes resolved by the court and grant jurisdiction powers to private individuals, the arbitrators[465]. The composition of the arbitral tribunal in the United Arab Emirates mandates the presence of an odd number of arbitrators. This means that a single arbitrator can constitute the arbitral tribunal, and that a majority of votes determine the arbitral tribunal's decisions. Note that Article 9 of the Amity Arbitration Act specifies the formation of the arbitral tribunal.

1. The arbitration panel shall consist, by agreement of the parties, of one or more arbitrators. If the parties do not agree on the number of arbitrators, three arbitrators shall be appointed, unless the competent authority decides otherwise.
2. If there are multiple arbitrators, their number must be odd, otherwise the arbitration shall be void.

Additionally, the effect of the arbitration agreement can be divided into positive and negative effects. The negative effect signifies that the courts are forbidden from hearing such disputes, while the positive effect binds parties to raise their disputes to arbitration and provides jurisdiction to the arbitral tribunal[466].

When an arbitral tribunal decides that there is no reasonable arbitration agreement between the parties, the question arises: How can an arbitral tribunal make a choice when it lacks jurisdiction to do so? This question arises because there is no basis for this jurisdiction[467]. A resolution to this issue could be to direct all jurisdiction-related questions to the national courts. However, this could allow the respondent to significantly delay the arbitration proceedings by

[464]Redfern, A., & Hunter, M. (2015). Law and practice of international commercial arbitration (6th ed., p. 304). Sweet & Maxwell. And Poudret, J.-F., & Besson, S. (2007). Comparative law of international arbitration (p. 385). Sweet & Maxwell.

[465]UN Dispute Settlement. (n.d.). UN Dispute Settlement. Retrieved from https://linksshortcut.com/oJWir . Moreover, Fouchard, P., Gaillard, E., & Goldman, B. (1999). On international commercial arbitration (p. 381). Kluwer Law International.

[466]Poudret, J. F., & Besson, S. (2007). Comparative Law of International Arbitration (pp. 314-315). Kluwer Law International.

[467]Born, G. B. (2010). International arbitration and forum selection agreements: Drafting and enforcing (3rd ed., p. 129). Kluwer Law International.

questioning the existence or validity of the arbitration agreement. This delay could harm the efficiency of the arbitration process. We introduced the doctrine of kompetenz-kompetenz to prevent these drawbacks[468]. It grants arbitral tribunals the power to rule on their jurisdiction. Article 36(6) of the Statute of the ICJ first refers to this principle, as stated [469]:

1. The jurisdiction of the Court shall contain all cases referred to it and all cases specifically provided for in the Charter of the United Nations or in treaties and conventions in force.
2. States parties to the Statute may, at any time, declare that they recognize, as compulsory, as an ipso facto, and without special agreement, the jurisdiction of the Court in legal disputes concerning: A. The understanding of the treaty. B. Any inquiry about international regulation. C. The existence of any fact which, if confirmed, would comprise a breach of an international commitment. D. The nature or extent of compensation for a breach of an international commitment.

Since then, Article 41(1) of the ICSID Convention has integrated the doctrine.

1. The Tribunal shall be the judge competent to consider its jurisdiction.
2. If a party says that a dispute is not within the jurisdiction of the Center or the Tribunal, that will be looked at by the Tribunal. The Tribunal will then decide whether to deal with it as a preliminary question or add it to the main case [470].

Most importantly, Article 16(1) of the UNCITRAL Model Law provides [471]:

3. The arbitral tribunal may exercise its jurisdiction, including any objections as to the existence or validity of the arbitration agreement. For this objective, we treat the arbitration clause in the contract as an independent agreement, different from the other terms of the contract. The arbitral tribunal's decision that the contract is null does not entail the invalidity of the arbitration clause.

---

[468]Cook, A. (2014). Kompetenz-kompetenz: Varying approaches and a proposal for a limited form of negative kompetenz-kompetenz. Pepperdine Law Review, 42, 17.

[469]International Court of Justice. (n.d.). Statute of the International Court of Justice. Retrieved from https://www.icj-cij.org/index.php/statute

[470]International Centre for Settlement of Investment Disputes. (2006.). Convention on the settlement of investment disputes between states and nationals of other states. Retrieved from https://goo.su/Wm2l

[471]Lew, J. D. M., Mistelis, L. A., & Kröll, S. M. (2003). Comparative international commercial arbitration (p. 333). Kluwer Law International.

4. The filing of the statement of defense must precede the raising of a plea of lack of jurisdiction at the arbitral tribunal. Having selected or participated in the selection of an arbitrator does not prevent any party from raising such a plea. Once you raise the matter in the arbitral proceedings, you must allege that the arbitral tribunal exceeded its powers. If the arbitral tribunal deems the delay justified, it may accept the plea.
5. The arbitral tribunal may decide on the objection referred to in paragraph (2) of this article, either as a preliminary issue or in an award on the merits. As a first step, if the arbitral tribunal decides that it has jurisdiction to hear the case, any party may request the court referred to in Article 6 to do so within thirty days of the date on which it is notified. Such a decision shall not be subject to appeal, and the arbitral tribunal may continue the proceedings and make an award while the request is pending.

The bottom line is that in the UAE Arbitration Law, the arbitral tribunal is competent to rule within the scope of its jurisdiction. This is explained in Article 19:

1. If someone says that the arbitral tribunal doesn't have the power to hear their case, the tribunal can say that it doesn't have to. This contains a claim that the arbitration agreement does not exist, is invalid, or does not use the conflict. The arbitral tribunal may rule on such a subject either as a preliminary matter or in a final award on the merits of the dispute.
2. If the arbitral tribunal decides on a preliminary issue that it has jurisdiction, any party may, within fifteen (15) days from the date of notification of the decision, request the court to decide on the matter. The court shall decide on the request within thirty (30) days of the date of its submission, and this decision shall not be subject to appeal. The arbitration proceedings shall be suspended until the request is decided unless the arbitral tribunal decides to continue the proceedings upon the request of a party.
3. The party requesting the continuance of the arbitration proceedings shall pay the costs of the arbitration if the court judges that the arbitral tribunal lacks jurisdiction.

As for the selection of the arbitral tribunal, organizations usually appoint arbitrators by forming an arbitral tribunal, sometimes from an

exclusive list of arbitrators, or by giving the parties some space to select the members of the arbitral tribunal. Once the tribunal is formed, the institution often fades into the background, allowing the arbitrators to proceed as they wish, rendering an award unrestricted by the institution. However, the institution may retain a supervisory role[472]. In the Arabian Gulf, the traditional application of Islamic Sharia imposed restrictions on who could serve as an arbitrator. The arbitrator had to meet qualifications similar to those of a judge, including being of mature age, wise, free, male, and Muslim. The prohibition on women arose from the lesser weight given to women's testimony, based on the belief that their testimony was less credible[473].

However, some scholars note that there were female arbitrators. The prohibition on non-Muslims stemmed from the belief that only a Muslim could properly apply Sharia in judgments between two Muslims. This attitude is changing, and today, excellent arbitrators in Dubai are not necessarily Muslim or male. As for "free," slavery was abolished in the UAE in 1963[474].

The UAE Arbitration Law acknowledges this change in Article 11. The Court may, upon request from any party, ask an arbitration organization in the state to supply a checklist of arbitration experts from which the Court can select an arbitrator, after paying the costs established by the arbitration organization. Regarding arbitration in the United Arab Emirates, if we study the law through critical thinking, we can identify the requirements that must be met by an arbitrator to be selected. These requirements are outlined in Articles 10 and 11 of the UAE Arbitration Law. According to Article 10, the following requirements must be met by the arbitrator: First, the arbitrator shall be a natural person. Second, the arbitrator shall be of legal age. Third, the arbitrator must not be incapacitated. Fourth, the arbitrators couldn't have lost their civil rights because they were bankrupt (unless they did something good to fix it) or because they were convicted of a felony or misdemeanor involving moral

[472]Haikola, E. (2013). Arbitral tribunals and national courts: Constant battle or efficient cooperation? (Master's thesis, University of Lapland).
[473]Kutty, F. (2006). The Shari'a factor in international commercial arbitration. Major Research Paper, Part Time LL.M. Program, Osgoode Hall Law School, York University. Retrieved from https://ssrn.com/abstract=898704
[474] Brawn, D. (2014). Commercial arbitration in Dubai. Management, 80(2). Retrieved from https://goo.su/xdWPE

turpitude or dishonesty (even if they did something good to fix it). Fifth, the arbitrator must not be a part of the board of trustees or the administrative branch of the arbitration organization responsible for managing the arbitration case in the country.

In addition, Federal Decree-Law No. 15 of 2023 added a new regulation: "The arbitrator may not have a direct relationship with any of the parties to the arbitration case that would prejudice his objectivity or integrity." This rule has changed some parts of Federal Law No. 6 of 2018 on Arbitration. In addition, it is significant to mention that under the UAE Arbitration Law, the arbitrator does not have to be of a specific gender or nationality. If we go back to Article 11 of the UAE Arbitration Law, we will discover the procedures for choosing the arbitration panel, which are outlined in the next points:

1. The parties may decide on the procedures for selecting the arbitrator or arbitrators, including the period and way of appointment.
2. If the arbitration panel consists of one arbitrator and the two parties are unable to agree on the arbitrator within fifteen (15) days from the date of one party's written request to the other party, the competent authority shall appoint the arbitrator upon the request of one of the parties. Article 14 of the Law does not permit any form of appeal against this decision.
3. If the arbitration panel consists of three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall choose the third arbitrator. If one of the parties does not appoint an arbitrator within fifteen (15) days from the date of receipt of the request, or if the two arbitrators do not agree on the third arbitrator within fifteen (15) days from the date of the last appointment, the competent authority shall appoint him upon the request of one of the parties. Article 14 of the Law also prohibits any form of appeal against this decision.

On the other hand, concerning temporary or precautionary measures, it is obvious that parties to arbitration usually need urgent interim measures. State courts cannot assess the preconditions for issuing the requested measures as effectively as arbitrators can. Tribunals are more familiar with the case and proceedings, but they cannot guarantee effective protection, especially when the measures require coercion or are directed at third parties outside the

arbitrators' jurisdiction. Several arbitration regulations consider that arbitrators have jurisdiction to order interim measures. Nowadays, most modern legislation and institutional arbitration rules state clearly that arbitrators have the power to grant interim measures[475.] The jurisdiction of the court to grant interim measures may be determined on the basis of applicable arbitration laws, arbitration rules, and/or the arbitration agreement. When considering an application for interim measures, the tribunal is bound to consider the relevant arbitration laws and rules, as well as the provisions of the arbitration agreement. The relevant arbitration laws, rules, and/or arbitration agreements may serve as the basis for the tribunal's authority to grant interim measures.

When looking at an application for interim measures, the tribunal must also look at the arbitration agreement's terms as well as the arbitration laws and rules that apply. Without a specific basis in the arbitration law, we cannot assume jurisdiction. However, in most cases, arbitrators do have jurisdiction when the parties have submitted to arbitration under specific rules that grant such jurisdiction. It should be noted that exceptions exist; for example, in Italy and Swiss domestic arbitration, this does not apply, as the law denies arbitrators the ability to grant interim measures[476].

Most arbitration rules or regulations do not provide clear criteria for granting interim measures but simply say that “the court may request any interim measures it deems fit.” [477] Article 18 of the UAE Arbitration Law says that "the president of the court may, at the request of a party or the request of the arbitral tribunal, order such temporary or conservatory measures as he considers necessary for the current or coming arbitration proceedings, whether before or during the arbitration proceedings." This is also important to know. Moreover, Article 21 establishes a specific situation under which arbitrators may grant interim or precautionary measures. The following is a summary of this case:

[475]Savola, M. (2003). Arbitrator-ordered interim measures of protection in international arbitration.
[476]Poudret, J. F., & Besson, S. (2007). Comparative Law of International Arbitration.(pp. 520-522). Kluwer Law International.
[477]Haikola, E. (2013). Arbitral tribunals and national courts: Constant battle or efficient cooperation? (Master's thesis, University of Lapland).

1) The arbitral tribunal may, at the request of a party or on its own initiative, order such interim or conservatory measures as it deems necessary, taking into account the nature of the dispute, including:

A. The court issues an order to preserve evidence that may be material to the resolution of the dispute.

B. Taking measures to preserve goods that form part of the subject matter of the dispute, such as ordering the goods to be deposited with third parties or the sale of perishable goods.

C. Preserving assets and property that may be subject to enforcement in a subsequent award. d. Maintaining or restoring the status quo pending resolution of the dispute.

D. Taking measures to prevent or refrain from taking actions that are likely to cause present or imminent prejudice or prejudice to the arbitration itself

2) The arbitral tribunal has the authority to mandate interim or conservatory measures from the applicant, along with the provision of appropriate security to offset the associated costs. If the arbitral tribunal subsequently determines that the applicant is not qualified to seek such orders, it may also require the applicant to bear any damage resulting from their enforcement.

3) The arbitral tribunal may modify, suspend, or terminate an interim measure it has ordered, either at the request of a party or, in exceptional cases, on its own initiative after prior notice to the parties.

4) If a party is assisted by an interim measure, it may request the court to make the order of the arbitral tribunal or any part thereof enforceable. It must have the written permission of the arbitral tribunal to do so. After receiving the request, all parties must receive copies of the request for permission or enforcement under this Article within 15 days.

CHAPTER FOUR: ARBITRATION PROCEEDINGS

The basis of arbitration is consent, which is obvious in the arbitration agreement. By this agreement, the parties agree to oust the jurisdiction of the courts and opt to arbitrate disputes, typically on a bilateral basis. In doing so, they agree to arbitrate with certain other parties (their contractual counterparts) according to specified procedures. They do not merely agree to arbitrate with anyone in any set of proceedings. Therefore, consent is at the heart of any issue

of joinder. As a rule, parties enter into these agreements with the express intention of keeping their disputes out of the public eye, avoiding public discussions that can be painful and potentially injurious, even to the successful party.

In most cases, such discussions are particularly harmful to the unsuccessful party. It is because arbitrations are personal that arbitrators have no power to order concurrent hearings or, it is suggested, any other form of joiner without the parties' consent[478]. The parties' consent plays a crucial role when involving third parties in an ongoing arbitration proceeding[479]. One major obstacle to joinder is the consensual nature of arbitration[480]. Most important arbitral rules have a consensual test in their joinder rules, even though they have different requirements. This is because of the principle of consent and the possible problems that come with it.

Some arbitration regulations need the express consent of the parties. To illustrate, the Hong Kong International Arbitration Hub Centre Rules require all parties, including the other party, to expressly agree to join[481]. Furthermore, Article 22.1(X) of the ICC Rules provides that the consent of both the applying party and the additional party to join must be expressly set out in the arbitration agreement[482] . However, other arbitration institutions have different regulations for approval. The consent of all parties, including the third party, is required under Article 7 of the ICA Rules, but it does not mean the “express” consent of the joiner [483].

Furthermore, the 2021 ICC Arbitration Rules significantly changed the joinder clause. The previous rules required the consent of all parties before a

[478]Ashford, P. (2021). The power to join parties or consolidate separate arbitrations in international arbitration. Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, 87(3).
[479]Choi, D. (2019). Joinder in international commercial arbitration. Arbitration International. (P 33) . https://doi.org/10.1093/arbint/aiz001.
[480]Siig, K. (2007). Multi-party arbitration in international trade: Problems and solutions. International Journal of Liability and Scientific Enquiry. (P73) https://www.inderscience.com/offers.php?id=14582
[481]Hong Kong International Arbitration Centre Administered Arbitration Rules. (2018). Retrieved from https://tinyurl.com/mwy5fjnu
[482]London Court of International Arbitration. (2020). LCIA Arbitration Rules 2020, effective 1 October 2020. London Court of International Arbitration. Retrieved from https://tinyurl.com/3ujjabew
[483]Singapore International Arbitration Centre. (2016). SIAC Arbitration Rules, 6th Edition, 1 August 2016. Retrieved from https://tinyurl.com/t2ew4vfa

joinder could take place. On the other hand, Article 7(5) of the new ICC Rules provides that a tribunal may add a third party if an existing party requests it to do so and the new party agrees to the terms of reference and the structure of the tribunal. This change explains the conditions and how to apply for joinder[484]. Some organizations follow a model that does not explicitly require consent in the joinder provisions, in contrast to the arbitral rules mentioned above. Article 18 of the CIETAC Rules, for example, doesn't need a separate consent element for certain parties in arbitration. It just says that CIETAC will make a decision after hearing from all parties, including the new party, if the arbitral tribunals think that joining is necessary[485].

Under arbitration law, we can observe that the arbitration process typically involves two parties. However, in some special cases, the arbitral tribunal can intervene or rejoin parties to the arbitration, even though the UAE Arbitration Law did not choose the requirements or procedures for the joinder.

According to Article 22 of the UAE Arbitration Law, Federal Law No. 6 of 2018, a third party can be added to an arbitration dispute by the Arbitral Tribunal. This can happen at the request of either a party or the party joining the arbitration, as long as the third party is a party to the arbitration agreement and all parties, including the third party, have a chance to be heard. To clarify, the initiation of arbitration is the first formal step that a claimant must take and is, in many ways, the most significant. After examining the joinder of parties to arbitration, we will start with the initiation of the arbitration proceedings[486].

A clause relating to the date of the beginning of arbitration appears in almost all institutional or special rules. For instance, Article 3 of the UNCITRAL Arbitration Rules addresses the initiation of arbitration, mandating the sending of a notice of commencement[487]. Article 4 of the ICC Rules

[484] International Court of Arbitration. (2020). Arbitration rules (in force as from 1 January 2021) & mediation rules (in force as from 1 January 2014). Retrieved from https://goo.su/1nYNP

[485]China International Economic and Trade Arbitration Commission. (2014). CIETAC arbitration rules (Revised and adopted by the China Council for the Promotion of International Trade/China Chamber of International Commerce on November 4, 2014; effective as of January 1, 2015). Retrieved from http://www.cietac.org/Uploads/201902/5c6148b100105.pdf

[486]Tweeddale, A. (2002). Delay in commencing an arbitration. Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, 68(3).

[487]United Nations Commission on International Trade Law (UNCITRAL). (1998.). Arbitration rules. Retrieved from https://tinyurl.com/3vnjycc4

contains similar provisions. Arbitration shall be deemed to have commenced when the tribunal receives a request for arbitration. If we return to the UAE Arbitration Law, we find that Article (27) stipulates when the arbitration procedures begin:

1. Unless the parties agree otherwise, the arbitration procedures shall begin on the day following the completion of the formation of the arbitration panel.
2. The notification of the arbitration request will be treated as filing a lawsuit to impose a precautionary attachment.

And about the notice and how it is delivered, we celebrate that Article 24 of the UAE Arbitration Law provides: 1. Unless otherwise agreed by the parties, the provisions noted in this clause shall be applicable: A. A written notice is considered accepted if it is given in person, to the individual's place of employment, to his usual home, or to a mailing address that is known to both parties or is recorded in the arbitration agreement or the document that governs the relationship that is the subject of arbitration. As long as the required checks are completed and none of these addresses can be located, a written message is considered accepted if it is sent to the individual's last known place of career, his usual residence, or his mailing address by registered letter, express mail, or any other way that shows evidence of attempted delivery. Any fax number or email address previously used by the parties in their transactions or to notify each other of their contacts is a "mailing address.".

B. According to this law, the day of delivery marks the receipt of the message. A message sent by fax or e-mail shall be deemed received on the date on which it was sent, as indicated by the data, if there is no indication of an error in the sending process. All receipts must be received or sent before six o'clock in the evening in the country in which the message was received; otherwise, it shall be deemed sent the following day.

2. In estimating periods according to current law, the time begins on the day following the date of receipt of the letter or any other correspondence. If the last day falls on an official holiday or a business holiday at the head office or place of business of the addressee, the period shall extend to the first business day following it. The estimation includes official holidays or business days that fall during the period.

3. The conditions of this article shall not apply to contacts made in court proceedings.

Additionally, registered mail or personal service must be used to deliver the notice of the arbitration hearing[488]. Also, Article 26 of the UAE Arbitration Law and Article 18 of the UNCITRAL Model Law mirror the concept of equivalent between the parties. The law stipulates that the parties must receive equal treatment and have ample opportunity to present their claims and defenses. We can note this in the text of the following articles:

- Article 26 of the UAE Arbitration Law stipulates that arbitration parties shall be handled equitably, ensuring that each party is afforded an equal and comprehensive opportunity to submit their claims and defenses.
- Article 18 of the UNCITRAL Model Law stipulates: The parties shall be treated equitably, and each party shall be afforded a comprehensive opportunity to present their case.

As we have noted, the parties to arbitration need to specify the hub or location of the arbitration agreement in the arbitration agreement, and there are three different measures to evaluate when selecting the hub of arbitration: strategic, useful, and lawful [489]. Furthermore, the choice of the seat of arbitration affects the law applicable to the arbitration agreement. The procedural law of the place of arbitration applies if the parties cannot agree. The parties are free to select a procedural law other than the law of the site of arbitration, although this is rarely seen in practice [490].

The parties also have the right to determine a specific law that applies to the arbitration agreement, or they may select a specific procedural law. Thus, the location of arbitration becomes vital because it will decide the law applicable to the arbitration agreement[491].

Article 20 of UNCITRAL Model Law stipulates that:

---

[488] Pirsig, M. E. (1956). Some Comments on Arbitration Legislation and the Uniform Act. Vanderbilt Law Review. 10, 685.

[489]United Nations Conference on Trade and Development, Dispute Settlement; International Commercial Arbitration, The Arbitration Agreement. Retrieved from https://tinyurl.com/mrx9ss32

[490]Yüksel, E. B. (n.d.). International arbitration.

[491]United Nations Conference on Trade and Development, Dispute Settlement; International Commercial Arbitration, The Arbitration Agreement. Retrieved from https://tinyurl.com/mrx9ss32

1. The parties are free to decide on a place of arbitration. A tribunal will choose the arbitration location based on the facts of the case and what is most convenient for both parties unless both parties agree.
2. Notwithstanding the provisions of the first paragraph of this Article, the arbitral tribunal may meet at any place it deems appropriate to converse among its members, hear witnesses, experts, or parties, or inspect goods, other property, or documents unless the parties decide otherwise.

Article 28 of the UAE Arbitration Law states that:

1. The parties may agree on the place of arbitration. If they do not agree on a location, the arbitral tribunal shall select the appropriate location according to the facts of the case and what is most appropriate for the parties.
2. Unless the parties decide otherwise, the arbitral tribunal may:

a) Hold arbitration sessions in any location it is considered appropriate for conducting any of the arbitration procedures, with sufficient advance notice to the parties.
b) Hold arbitration sessions with the parties or conduct contemplations by any means of modern electronic and technology. The arbitral tribunal shall send the minutes of the session to the parties.

Decree-Law No. 15 of 2023 amended the article and introduced the following changes: 1. The parties may consent to undertake arbitration and establish its actual or virtual location via contemporary technology methods or inside technical domains. If there is no agreement, the arbitral tribunal decides where the arbitration process should be. 2. The arbitral tribunal also make sure to give the hearing transcript to the parties. 3. The arbitration center has to provide proper technology so that proceedings can happen electronically, fitting the state's technical standards.

Article 28 of the Amendment Law now specifically acknowledges and establishes virtual hearings as a legitimate option for arbitration proceedings. Also, it authorizes the parties to determine whether the arbitration will arise in a physical venue or remotely, employing modern technical methods. Moreover, the task of the arbitration panel is to determine the most appropriate arbitration venue when the parties cannot reach consensus. The decision of the panel will depend on the exact circumstances of the case and the suitability of the parties

involved. The Amendment Law represents a significant shift in the allocation of responsibilities in arbitration proceedings. Notably, it imposes major obligations on arbitral institutions. These institutions are now mainly responsible for making sure that the right technology is available to support arbitration processes that use modern technology and follow the rules and laws of the state. The change not only shows that the arbitral institution plays a key role in making sure that arbitration goes smoothly but also is more resilient to new technology.

Article 28 of the Amendment Law also aligns the UAE with international trends, enhancing the legitimacy and credibility of virtual arbitration processes. The Arab Middle East, and particularly the UAE, has seen an unprecedented increase in the number of arbitrations, with an estimated 750 arbitrations occurring annually in the UAE alone[492]. Finally, the place of arbitration determines the procedural law that applies to arbitration and the court that will handle any problems that arise before or during the arbitration, unless both parties agree to a different rule. So, before the parties choose a place for arbitration, they need to make sure that the procedural law and courts there are neutral enough (or at least not openly hostile) to handle any problems that might come up during the process[493].

Furthermore, the language of arbitration is as important as the place of arbitration, particularly in international disputes. Unlike domestic arbitration, where the parties usually share the same language and culture, international and multinational disputes involve more complexity regarding language. The parties' contracts may be drafted in different languages, which may differ from the language of the seat of arbitration. Additionally, the language of reference may differ from the chosen language of the proceedings, and the arbitrators' native language may not align with the language of the proceedings[494]. Article 22 of the UNCITRAL Model Law on International Commercial Arbitration addresses this issue as follows.

---

[492]Thomson, D. (2013, June). Arbitrating in the Middle East. Global Arbitration Review.

[493]United Nations Conference on Trade and Development, Dispute Settlement; International Commercial Arbitration, The Arbitration Agreement. Retrieved from https://tinyurl.com/mrx9ss32

[494]Bantekas, I. (2010). The proper law of the arbitration clause: A challenge to the prevailing orthodoxy. Journal of International Arbitration, 27(1), 2-4.

1. The arbitral tribunal will select the language or languages for the proceedings, unless the parties agree otherwise. In the absence of such an agreement, the arbitral tribunal shall select the language or languages for the proceedings. Such agreement or determination shall apply, unless otherwise stated, to any written statement by a party, any hearing, any award, decision, or other communication by the arbitral tribunal.
2. The arbitral tribunal may request that any documentary proof be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

If the parties fail to specify a language, the tribunal is responsible for determining one or more languages for the proceedings [495]. In doing so, the tribunal must consider several factors, and all relevant languages become potential candidates for the proceedings. Language issues are significant for the parties in several respects:

- First and foremost, parties will need to translate all relevant documents and cover interpretation fees throughout the proceedings[496]. Depending on the jurisdiction, these expenses may be prohibitive and unnecessary if the parties can select a suitable language and arbitrators who can make translation and interpretation redundant[497].
- Second, translation and interpretation can prolong the proceedings and increase legal costs, especially if the law of the seat or the jurisdiction of enforcement requires certified translations[498].
- Third, translation is not always clear and is subject to mistakes and inaccuracies. These errors can be detrimental to the parties because they may affect the arbitrators' evaluation of substantive law and their responsibilities

[495]Ilias Bantekas. (2021). Party autonomy and default rules regarding the choice of number of arbitrators. 22 Cardozo J. Conflict Resol., 1, 31.
[496]Sarcevid, S. (2008). Translation in international arbitration. In V. K. Bhatia et al. (Eds.), Legal discourse across cultures and systems (pp. 291-293).
[497]Bantekas, I. (2020). Language selection in international commercial arbitration. Ohio State Journal on Dispute Resolution. ., 36, 127
[498]Harpole, S. A. (2016). Language in arbitration procedure: A practical approach for international commercial arbitration. Contemporary Asia Arbitration Journal, 273, 290 (2016).

under it. In addition, errors can occur during enforcement, and the tribunal may no longer be able to correct the award[499].

In terms of law, it is important to note that the New York Convention has six official languages, but Arabic is not one of them. When issues arise due to the use of English or a party's inexperience with English proceedings, the tribunal should exercise patience, explain matters clearly, and, if necessary, grant extensions of time. However, the tribunal must remain vigilant against any manipulative tactics employed by a respondent seeking to obstruct or delay the arbitration proceedings[500]. For a foreign arbitral award to be recognized and implemented, Article IV of the New York Convention lists the papers that must be contained, which are[501]: 1. The person seeking recognition and enforcement must be current. A. properly authenticated original award or a certified copy of it is required. B. The original agreement mentioned in Article II or a certified copy of it at the time of the application. 2. If the award or agreement is not in the official language of the enforcing country, the applicant must translate it into that language. An official or sworn translator, or a diplomatic or consular agent, must approve the translation.

Additionally, referring to UAE Arbitration Law, Article 29 states:

A. Unless otherwise approved by the parties, the language of the arbitration proceedings shall be Arabic.
B. The arbitration processes shall use the agreed or selected language unless the parties agree on a different language. This includes any written information sent by the parties, any oral hearings, and any award, decision, or other contact from the arbitral tribunal.
C. The arbitral tribunal may translate all or some of the written documents submitted in the case into the arbitration language(s). Unless this is in violation of Federal Law No. 6 of 2012 regulating the translation profession.

Moving on, there is no doubt that evidence plays a crucial role in arbitration. The regulation of the taking of evidence and related procedures, as

[499]Bantekas, I., & Ullah, I. (2021). Remedies against incomplete, erroneous and unclear international arbitral awards. North Carolina Journal of International Law, 46. (forthcoming).
[500] Brawn, D. (2014). Commercial arbitration in Dubai. Management, 80(2). Retrieved from https://nz.sa/GKQmH
[501]United Nations. (1958). The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Retrieved from https://www.newyorkconvention.org/english

well as the discovery of evidence, are vital components of the arbitration process[502]. It is essential that every arbitrator understands the law governing evidence, as well as the rules that apply based on the law of the arbitration venue and its procedural background[503].

When parties present statements of claim or memorials supported by documents, they effectively convert these files into "proofs" a process that is not governed by the formal admission rules commonly familiar to lawyers. In some cases, conflicts may be resolved entirely based on the written submissions and supporting papers unless one of the parties requests a hearing or the tribunal decides to convene one independently. Significantly, there is no formal procedure for submitting documents as "evidence." Therefore, unless the arbitrators specifically request a particular method for submitting documents, the parties are free to present their submissions in the form they deem most effective. After completing the rounds of submissions, the parties should consider jointly submitting a single, undisputed set of documentary evidence to avoid duplicate submissions. It is also increasingly common in cases involving extensive documentation for the parties to submit these documents on CD-ROM or other electronic media[504].

Besides, arbitration hearings may be held in person or virtually, relying on the agreement between the parties or the arbitration regulations that explicitly allow virtual hearings or grant the arbitral tribunal the authority to order them. Below are examples of how different arbitration rules address virtual hearings[505]:

1. American Arbitration Association (AAA) Commercial Rules: The AAA Commercial Rules state that, "When deemed appropriate, the arbitrator may allow the presentation of proof by alternative means, including video conferencing, internet communication, telephonic conferences, or other methods, as long as they provide a full opportunity for all parties to present

[502] Cooley, J. W. (2005). The arbitrator's handbook (2nd ed., p. 92). NIFTA.
[503] Varady, T., Barceló, J. J., & von Mehren, A. T. (2006). International commercial arbitration (p. 453). Thomson/West. Also, Bělohlavek, A. J. (n.d.). B2C: Consumer protection in arbitration (p. 65).
[504] Von Mehren, G. M., & Salomon, C. T. (2003). Submitting evidence in an international arbitration: The common lawyer's guide. Journal of International Arbitration, 20, 285.
[505] Hanessian, G., & Casey, J. B. (2020). Virtual arbitration hearings when a party objects: Are there enforcement risks? NY Dispute Resolution Lawyer, 13(2), 25.

evidence that the arbitrator considers material and relevant to the resolution of the dispute. When involving witnesses, these methods must allow for cross-examination[506]."

2. London Court of International Arbitration (LCIA) Rules: The Rules of the International Court of Arbitration provide that: the arbitral tribunal shall manage the manners of any hearing in advance, in consultation with the parties. The arbitral tribunal shall have the power under the arbitration agreement to choose the date, form, content, procedure, period limits, and geographical place of the hearing. As to the form, hearings may be conducted by video or telephone conference, in person, or by a combination of the three. The tribunal may order the parties to address specific questions or issues arising out of the conflict[507].
3. United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules: The UNCITRAL Rules provide that the arbitral tribunal may direct such witnesses, including expert witnesses, to be examined using telecommunications that do not need their presence at the hearing (such as videoconferencing).
4. International Centre for Dispute Resolution (ICDR) Rules: The ICSID Rules provide that the tribunal shall complete proceedings with a view to expediting the resolution of conflicts. The tribunal may hold a preparatory conference with the parties to manage, schedule, and agree on the proceedings, including the setting of deadlines for the submission of briefs. The tribunal and the parties may deliberate on leveraging technology, particularly electronic communications, to improve the efficiency and economics of the proceedings[508].”
5. International Institute for Conflict Prevention and Resolution (CPR) Arbitration Rules: The Rules of Civil Procedure state that the tribunal may complete the arbitration in such manner as it considers appropriate, ensuring that each party

[506] American Arbitration Association. (2013). Commercial arbitration rules (Article 32(c), effective October 1, 2014). Retrieved from https://tinyurl.com/4wv3z5z5
[507] London Court of International Arbitration. (2014). LCIA arbitration rules (Article 19.2, effective October 1, 2014). Retrieved from https://nz.sa/NGbtP
[508] ICDR Arbitration Rules. (2014). Effective June 1, 2014. Retrieved from https://tinyurl.com/yc3yz2yn

has a fair possibility to present his case and maintain equality of treatment. The court shall determine how the parties present their case[509].

6. Stockholm Chamber of Commerce (SCC) Arbitration Institute Rules: The SCC Arbitration Rules provide that the arbitral tribunal shall conduct the arbitration in such manner as it deems appropriate, taking into account the rules and any agreement between the parties [510].
7. Hong Kong International Arbitration Centre (HKIAC) Rules: The HKIAC Rules say that the arbitral tribunal must follow the right steps to avoid wasting time or money. They must also take into account how complicated the issues are, how much is at stake, and how to best use technology. They must also make sure that all parties are treated equally and give each one a fair chance to make their case [511].

UAE Arbitration Law: Article 33.3 of the UAE Arbitration Law states that hearings may be held via current means of communication that do not need the parties to be present in person at the hearings. Furthermore, Article 33, paragraph 4, provides that the arbitral tribunal shall notify the parties of the dates of the hearings in sufficient time as it deems appropriate. Concerning experts, Article 33, paragraph 5 of the UAE Arbitration Law stipulates that, "The parties may, at their fee, pursue the service of experts and legal agents, including lawyers, to represent them before the Arbitral Tribunal. The Arbitral Tribunal has the right to ask a party to provide proof of the authority it has granted to its representative, following the format it specifies.

Article 34 provides that:1. The arbitral tribunal may select more than one expert to raise a report, selecting their task and timeframe unless the parties decide otherwise. The parties must obtain a copy of this decision. 2. The arbitral tribunal may select more than one expert to raise a report, selecting their task and timeframe unless the parties decide otherwise. The parties must obtain a copy of this decision. 3. The arbitral tribunal may select more than one expert to raise a report, selecting their task and timeframe unless the parties

[509] CPR. (2019, March 1). Rules for administered arbitration of international disputes. Retrieved from https://drs.cpradr.org/rules/arbitration/administered-arbitration-rules-2019
[510] Stockholm Chamber of Commerce. (2023). Arbitration Rules of the SCC Arbitration Institute adopted 1 January 2023. Retrieved from https://tinyurl.com/ybsv2vpu
[511]HKIAC Administered Arbitration Rules. (2018). Retrieved from https://tinyurl.com/3hsvm98w

decide otherwise. The parties must obtain a copy of this decision. 4. No party may oppose the expert's certifications, or independence, unless the objection appears after the appointment. 5. The court shall notify the parties of a copy of the expert's opinion when it is presented, allowing them to comment within the period limits. 6. The tribunal may, on its initiative or at the request of one of the parties after receiving the expert's statement, hold a hearing to examine the expert's findings, and the expert shall be subject to cross-examination by the parties. 7. The arbitration panel shall determine the value of the expert's fees and expenses to be paid by the parties.

These provisions have been amended by Decree-Law No. 15 of 2023, which says: 1. Arbitration proceedings and hearings shall be on camera unless the parties decide otherwise. 2. The arbitral tribunal shall decide whether to hold oral hearings to hear evidence or oral arguments or whether to conduct proceedings on the basis of documents and other materials. 3. The arbitral tribunal shall inform the parties sufficiently in advance of the hearing time. 4. Parties may utilize legal experts and lawyers to represent them, and the tribunal may request evidence of authority from the representatives. 5.Will record and distribute to the parties a brief of the proceedings at each hearing 6.Witness hearings, including those of experts, will comply with the legislation in force in the state. 7. The Arbitral Tribunal has discretionary authority to select the relevant rules of proof. 8. The Tribunal may decide the admissibility and relevance of proof and set the time, and form for its request.

Now, we will discuss the difference between experts and witnesses. The role of an expert is to provide independent and objective proof according to his specialized knowledge. Mr. Niels Bohr described an expert as "a man who has made all the mistakes in a very narrow field[512]". Experts are appointed on the basis of their expertise, and although parties may refer and pay their own experts, these experts are usually screened for potential bias, and are periodically labeled as "hired gunmen"[513].

On the other hand, witnesses are commonly individuals who testify to truths they have attended or experienced instead of offering specialized

[512] Bohr, N. (2010). An expert is a person who has made all the mistakes that can be made in a very narrow field.
[513]Hosking, R. (2015). The Role of the Court and experts in international arbitration.

analysis or opinions. Experts typically help clarify complex issues, while witnesses provide factual accounts relevant to the case. The arbitration regulations set out clear guidelines handling both roles, which are vital to the arbitration process[514]. We will now examine the most well-known arbitration laws that control the role and operations of experts in the context of arbitration, as follows:

1. Article 21 of the LCIA Rules: This article states that the arbitral tribunal may, after consulting the parties, choose one or more experts to report a statement to the arbitral tribunal and the parties on specific conflicts in the arbitration selected by the arbitral tribunal.
2. Article 29 of the UNCITRAL Arbitration Rules[515]: A. The arbitral tribunal may, after consultation with the parties, select one or more independent experts to write on exact issues, and the parties shall be notified of the terms of appointment of the expert appointed by the arbitral tribunal. B. Before accepting an appointment, the expert shall submit to the tribunal and the parties a statement of his capabilities and a statement on his impartiality. The tribunal will deal promptly with any complaints raised by the parties. Only new information that arises after the appointment can trigger objections. C. The parties must provide the expert with any relevant details and allow access to documents, goods, or property necessary for inspection. The tribunal will handle any disputes regarding the relevance of this information. D. Upon receiving the expert's report, the tribunal must share it with the parties, who can then express their opinions in writing. Parties are entitled to examine any documents on which the expert relied. E. Upon request of any party, the expert may be heard at a hearing. Parties will have the opportunity to question the expert, and they may present their own expert witnesses to testify to relevant issues.
3. Article 25 of the AAA/ICDR Rules[516]: A. The arbitral tribunal, after conferring with the parties, may select one or more independent experts to write on issues

[514] Ahmed, B., Randeniya, C., Bandara, M., & Garg, T. (2014). Litigation and Enforcement in the United Arab Emirates: Overview

[515] United Nations Commission on International Trade Law. (2021). UNCITRAL Arbitration Rules (2021). Retrieved from https://tinyurl.com/3b6558md

[516] International Centre for Dispute Resolution. (2014). International dispute resolution procedures (including mediation and arbitration rules). Rules amended and effective June 1,

identified by the tribunal. B. The parties must provide the expert with any details or allow a review of papers or goods. C. After receiving the expert's opinion, the tribunal will share it with the parties and permit them to express their thoughts in writing. Parties may review any documents the expert used in their report. D. At the request of any party, the tribunal will allow the parties to ask the expert at a hearing. During this hearing, parties can present expert witnesses to testify to the relevant issues.

4. Article 34 of the UAE Arbitration Law: A. The arbitral tribunal may, unless the parties agree, select one or more experts to make a statement and may determine their terms of reference and timetable. The parties will receive a copy of the award. B. The parties shall provide the expert with data relating to the conflict and allow him to examine any relevant documents, goods, real estate, or other property. Any disputes between the expert and the parties regarding this matter shall be resolved by the court. C. Before acceptance of the task, the expert must provide a report of his/her capabilities and a declaration of integrity and independence. The parties must notify the court of any objections within the specified period. The court will decide on these objections, and its decision will be binding. D. No party may object to the qualifications, impartiality, or independence of the expert unless the objection is based on information discovered after the expert's appointment. E. The tribunal will send a copy of the expert's report to the parties immediately upon its submission and give them the opportunity to comment within the specified time limits. F. After receiving the expert's statement, the tribunal may hold a hearing, either on its initiative or at the request of a party, to hear the expert's statements. During this hearing, the parties can ask the expert and investigate documents the expert relied on in the report. A party may pursue the assistance of their experts, subject to the provisions of Article 33 of the UAE Arbitration Law. G. The parties will bear the fees and expenses incurred by the appointed expert, as determined by the tribunal.

In addition to specific arbitration laws, two other key sources of rules and procedures related to the use of experts in arbitration are: 1. The ICC's

---

2014; fee schedule amended and effective July 1, 2016. American Arbitration Association. Retrieved from https://www.adr.org/sites/default/files/ICDR%20Rules_0.pdf

Rules for Expertise: These rules support the three services provided by the International Chamber of Commerce (ICC), which are[517]:

- Proposal of experts: Facilitating the identification of appropriate experts for the dispute.
- Appointment of experts: Assisting in the formal process of selecting experts.
- Administration of expertise proceedings: Overseeing the procedures involving expert testimony to ensure the fair and smooth process of expert involvement.

2. The Chartered Institute of Arbitrators' Protocol for the employment of Party-elected Expert Witnesses in International Arbitration ("the CIARB Protocol") sets out three fundamental principles:[518]:

- Each party is entitled to know, in advance of the hearing, the expert evidence relied on by the other party.
- Experts should not act as advocates for the party who selected them.
- There should be as much agreement as possible between the experts before the hearing.

The distinction between an arbitrator and an expert in arbitration is crucial to comprehend, specifically in the context of arbitration procedures and laws in the UAE. Also, the arbitrator differs from the expert in several issues, which we will review:

1. Authority[519]: Arbitrator has judicial authority and can issue a binding award that resolved the case between the parties, this award is enforceable. Expert: An expert delivers specialized knowledge or thoughts to help the arbitrators understand difficult technical points. Nevertheless, experts do not have the authority to issue binding decisions. Their role is to provide advice or proof to establish their expertise.
2. Qualifications and Capabilities: Arbitrator: In UAE arbitration law, there are no exact educational or professional qualifications mandated for arbitrators. The qualifications and knowledge of the arbitrator are typically agreed upon by the

[517]International Chamber of Commerce. (2003). The ICC's Rules for Expertise. Retrieved from https://iccwbo.org/wp-content/uploads/sites/3/2013/11/ICC-Expertise-rules-1.pdf

[518]Chartered Institute of Arbitrators. (2007). Protocol for the use of party-appointed expert witnesses in international arbitration. Retrieved December 20, 2024.Retrieved from https://nz.sa/DSZBw

[519]Construction Specification Institute. (2011). Construction contract administration practice guide. John Wiley & Sons. (P.210)

parties involved in the issue. However, some arbitration centers may require a certain level of educational qualifications and knowledge for the expert. Expert: experts must complete specific qualifications as per the UAE Ministry of Justice. Experts must have at least a bachelor's degree in their field of expertise and have a minimum of ten years of experience to be certified and registered with the Ministry of Justice[520].

Therefore, while an arbitrator may not necessarily need specific education or qualifications in certain jurisdictions, an expert must meet strict standards to be recognized as a professional qualified to provide expert testimony. In addition to comprehending the parts of arbitrators and experts, it is essential to explore witness testimony in the context of arbitration, as it forms a crucial part of proof in conflict solutions.

1. There are rules governing witness testimony.

- SIAC Rules: The Singapore International Arbitration Centre (SIAC) Laws authorize tribunals to handle any party or individual to provide proof by affidavit or oral testimony. The tribunal has the power to decide how to witness.
- IBA Rules: Those IBA Rules give clear directions about what witness statements should look like and what they need to say. It's clear to me that the process has to be fair but also strict. Key things are required for this, including keeping everything organized and making sure witnesses can say what they need to. Key requirements include[521]:

- Identification of witnesses and the subject of their testimony.
- A detailed statement of the facts on which the witness will swear, with reference to supporting documents.
- A statement regarding the language of the witness's statement and their anticipated language during testimony.
- An affirmation that the statement is truthful, signed by the witness.

[520] El Sayed, M. I. N. A. (2022). The Role of Arbitrator in the Arbitration Process (Doctoral dissertation, The British University in Dubai).

[521] IBA Rules on the Taking of Evidence in International Arbitration. (2020). Adopted by a resolution of the IBA Council 17 December 2020. International Bar Association. Retrieved from https://tinyurl.com/ysw4jn55

2. Witness Statements:

- Under the IBA Rules, witness statements must be submitted in advance of the evidentiary hearing. These statements must contain specific details, such as the witness' name, relationship to the parties, background, qualifications, and the facts they will testify about. Any supporting documents must also be submitted at this stage.
- If the witness fails to appear for testimony without a valid reason, the tribunal may disregard their statement, unless there are exceptional circumstances that justify considering the statement.

3. Rights of the Parties and Procedural Flexibility:

- Parties may revise or submit additional witness statements as long as these address new developments or respond to issues raised in another party's witness statements or expert reports. This ensures that the testimony remains relevant and up to date.

4. Cross Examination:

- Witnesses who testify orally at an evidentiary hearing are subject to cross-examination by each party, and the tribunal can also ask questions. This process is crucial for testing the credibility and reliability of the witness's testimony.

5. Examination Procedure:

- The AAA-ICDR Rules also make clear that the tribunal can determine how and when to offer proof, and that evidentiary hearings can be divided into various stages, such as jurisdiction, responsibility, and harms[522].
- Similarly, the ICC Rules allow the Court to handle the hearings and restrict or direct the scope of the analysis during the cross-examination method.

6. Testimony in Written Form:

- Many international arbitration bodies may convert oral testimony into reported statements before hearings. The AAA-ICDR Rules (Article 20(5)) reflect this practice by allowing the submission of written witness statements. Since the witnesses are not required to appear in person at every stage of the proceedings, they often do this for efficiency and cost-effectiveness.

[522]AAA-ICDR (International Centre for Dispute Resolution). (2010). International dispute resolution procedures including mediation and arbitration rules. Retrieved from https://nz.sa/fZpNq

7. The Role of the Arbitrators:

- The mannerisms of hearings are mostly at the discretion of the arbitrators. As noted in Article 16 of the AAA-ICDR Rules, the tribunal can manage the proceedings, focusing on the issues that are most vital to the solution of the issue. Arbitrators may select limited cross-examination or lead parties to concentrate on key issues.

Also, we note that the manners of arbitration hearing depend on the arbitrators. As stated in Article 16 of the AAA-ICDR Regulations:

- Subject to these Regulations, the tribunal may proceed with the arbitration in any way it deems appropriate, provided that the parties are treated equally, individually have the right to be heard, and is afforded a fair opportunity to explain their case. The tribunal may, in its discretion, conduct proceedings to expedite the resolution of the dispute. It may hold a preparatory conference with the parties to manage, schedule, and agree on procedures that will expedite subsequent proceedings.
- The tribunal may, within its discretion, choose the order of proof, divide the proceedings, reject irrelevant or cumulative testimony or other evidence, and inform the parties to concentrate their submissions on issues that, if resolved, may lead to the termination of the case in whole or in part.
- One party sends the documents or information submitted to the tribunal to the other party or parties at the same time.

Additionally, Article 26 of the ICC Rules states: “The arbitral tribunal shall have full control over the hearings, during which all parties shall be entitled to be present. The arbitral tribunal and the parties must agree to admit individuals who are not participating in the proceedings. Cross examinations are usually permitted during the hearing, although arbitrators may also question witnesses directly or take steps to limit the scope and duration of cross-examination. It is also worth noting that the legal expertise of the arbitrator will have a significant impact on the overall conduct and structure of the proceedings[523].

[523] Von Mehren, G. M., & Salomon, C. T. (2003). Submitting Evidence in an International Arbitration: The Common Lawyer's Guide. Journal of International Arbitration. 20, 285.

A common method in international arbitration is to convert oral testimony into written statements submitted before the hearing. This is mentioned in Article 20(5) of the AAA ICDR Rules, which states: Witness proof may also be offered in the form of written statements signed by them. Similar to document evidence, witness testimonies are often partly written for efficiency and cost reasons. However, witnesses do not typically write their own statements; these are usually prepared by the counsel or the party. This may influence the content of the statements. On the other hand, oral questioning remains essential for the procedure as it allows the arbitrators to test the credibility of the witness's written testimony[524].

In court proceedings, witness testimony must align with documentary evidence. Witnesses are questioned by the judge, and they must sign the court's record of their statements. While there is no general disclosure requirement, a party may be required to disclose documents on which they rely. This is stated in Federal Law No. 10 of 1992 on Evidence in Civil and Commercial Transactions[525], Article 36, which states: The following situations prohibit the admission of witness testimony, even if the value does not exceed five thousand dirhams:

1. When it's necessary to refute or expand on the contents of a written document,
2. If the object of the claim consists in the balance or part of a right that can only be established in writing.
3. If the claim of one of the parties to the litigation exceeds five thousand Dirhams, then the excess is renounced."

Article 44 of the same law further explains: 1. The court shall address questions to the witness, who will first answer the questions asked by the party who called them to testify. Then the other party may ask questions, and the party who first questioned the witness may ask follow-up questions. Once the party's questioning is completed, no new questions may be asked except with the authorization of the court. 2. The judge handling the session, or any of its components, or the delegated judge, as the case may be, must directly direct to

[524] Malacka, M. (2013). Evidence in International Commercial Arbitration. International and Comparative Law Review, 13(1), 95-102.
[525] Federal Law No. (10) of 1992. (1992). On Evidence in Civil and Commercial Transactions. Retrieved from https://tinyurl.com/yc84renk

the witness the inquiries they deem helpful in revealing the truth. Testimony is oral, and the witness may not be assisted by written notes unless authorized by the court or delegated judge, provided that the nature of the case permits. If the witness omits anything that should be mentioned, the court or delegated judge shall prompt them.

Furthermore, Article 27(2) of the 2008 DIFC Arbitration Law[526] states that the Arbitral Tribunal can meet anywhere it believes is appropriate to talk among its members, hear witnesses, experts, or the parties, or look at goods, other property, or documents unless both sides agree otherwise [527]. Also, I would like to discuss the subject of the witness oath. The Code of Civil Procedure specifies the key details that should be provided by the witness, as well as the witness's oath, in Articles 210 and 211, which state: "The witnesses shall state their surname, first names, date and place of birth, domicile, occupation, and, if necessary, their family relationship or affinity with the parties, or their relationship of subordination, collaboration, or common interests with them." "Persons heard as witnesses must take an oath to tell the truth. The judge will remind them that they incur a financial penalty and imprisonment in case of false testimony. Persons who are heard without taking an oath will be informed of their obligation to tell the truth."

Article 41/2 of the Evidence Law also states that "the witness shall take an oath saying: I swear by God to tell the truth and nothing but the truth." However, the court ruled that it is not always necessary for the witness to swear by God. Islamic Sharia scholars and jurists agree that the oath based on "I swear" reflects the meaning of the oath, and it is acceptable for the witness to simply say, "I swear," as this implicitly conveys the required commitment. Therefore, it is permissible to swear an oath according to the religious beliefs of the witness. It is also acceptable for the arbitral tribunal to administer the oath using a formula of its choosing, as long as it does not violate public policy, such as requiring an oath to something other than God. Furthermore, there is no

[526] Dubai International Financial Centre (DIFC). (2008). DIFC Law No. 1 of 2008: Arbitration Law. Dubai International Financial Centre. Retrieved from https://tinyurl.com/eah7f2er
[527] Toope, S. J. (1990). Mixed international arbitration (pp. 30-32). Grotius. (Reprinted in Yearbook Commercial Arbitration, 13, 156, 160, UK, 1988).

legal requirement for a witness to place their hand on the Quran or Bible when administering an oath[528].

It should be known that in UAE court sessions, the oath administered to witnesses during arbitration may not strictly adhere to the legal formula[529]. An important example of this is the well-known Dubai case of International Bechtel Co. Ltd. v. the Government's Department of Civil Aviation, and Bechtel was the prevailing party in this arbitration and was successfully awarded an award for USD 25 million.

which significantly impacted the UAE's reputation as an arbitration-friendly jurisdiction. The Dubai Court of Cassation ruled that the witnesses summoned during the arbitral proceedings did not swear an oath at all. The court concluded that, based on the evidence, the arbitrator had informed the witness: I must inform you as a witness that you are under obligation to tell the facts. Failing to do so may result in serious consequences. Are you aware of that?" The witness confirmed this understanding[530]. This judgment is a landmark case in the UAE arbitration context. The court set aside the arbitration award because the witnesses had failed to take the oath required under Dubai law, a requirement that cannot be waived. This judgment highlights the critical importance of adhering to local procedural rules in arbitration, even when the parties have agreed to alternative methods. Furthermore, the UAE CPC also states: "The arbitrators must administer an oath to the witnesses, and anyone who commits perjury before the arbitrators shall be considered guilty of the crime of perjury." Ultimately, by studying the UAE Arbitration Law, we note that it states: The arbitration panel may hear the testimony of witnesses, including experts, via modern means of communication that do not demand their presence at the session."

CHAPTER FIVE: ARBITRAL AWARD

Now, let us dive into the arbitration award. We will study the correct methods followed in arbitration, as explained in the following points:

---

[528] Badr, A. A. (2019). Jurisdictional challenges and enforceability of arbitral awards in the UAE (Doctoral dissertation, Université Paris Cité).

[529] Beswetherick, M., & Hutchison, K. (2012). Enforcement of arbitration awards: Moving in the right direction. Clyde and Co. Retrieved from http://www.clydeco.com

[530]Dubai Court of Cassation. (2004, May 15). Dubai Cassation Petition 503/2003, International Bechtel Co. Ltd. v. Department of Civil Aviation of the Government of Dubai.

First: select Applicable Law

The dispute will be decided by the arbitration tribunal using the law which the parties have picked out themselves. These laws are relevant to the substantive issues of the dispute. Where the law of a particular state is specified, it should be interpreted as referring to the substantive rules of that law, rather than to the rules governing conflicts between different laws. This interpretation is subject to the condition that it does not violate the state's public order and moral standards unless the parties have agreed otherwise.

On the other hand, if the parties agree that a model contract, international agreement, or any other document controls the legal relationship, the regulations of that document will apply. This includes any arbitration clauses, as long as they do not conflict with the morals of the state and public order. If the parties disagree as to the rules of law relevant to the conflict's subject matter, the arbitral tribunal shall apply the substantive rules of law it considers to be most relevant. This is evident in Articles 37 and 38 of the UAE Arbitration Law, which states:

1. Article 37(1): The arbitral tribunal shall determine the conflict following the rules of law selected by the parties and applicable to the subject matter of the dispute. Any designation of the law of a particular State shall be construed as a reference to the substantive rules of that law and not to a conflict of laws, provided that it is not contrary to the public order and morals of the State unless the parties decide otherwise.
2. Article 37(2): If the parties decide that the legal relationship between them is subject to the provisions of a model contract, an international agreement, or any other document, then those provisions, including particular arbitration clauses, shall be applicable, provided that they do not disagree with public policy or public morals in the country.

The law further explains: 1. If the parties cannot agree on the substantive laws that apply to the conflict, the arbitral tribunal shall use the substantive laws that it considers most relevant to the dispute. 2. In determining the substance of the conflict, the arbitral tribunal shall consider the terms of the contract, which is the subject of the conflict, as well as any relevant customs applicable to the transaction and between the parties. 3. The arbitral tribunal may decide the case

in accordance with the principle of equity and fairness or as an accepted judge, instead of the current law. However, this can only happen if both parties have provided their consent or agreement.

Dubai provides an example of reconciling the autonomy of the parties to choose the applicable law with compliance with Sharia law. Arbitrators must abide by the laws designated by the parties to the dispute. If the parties do not specify the applicable law in the arbitration clause or arbitration agreement, the arbitral tribunal will decide which law applies based on such matters as the place of performance of the contract and the nationality and residence of the parties. The arbitration panel must refrain from applying the provisions of the applicable law that contradict Islamic law. It can also look at the rules of different schools of law, the rules of Islamic jurisprudence councils, and the opinions of the Shariah supervisory boards in Islamic financial institutions for help. However, it has the final say on how to interpret Islamic law[531].

Second: Time Limits for the Award

The parties must agree on a period limit for the Arbitral Tribunal to administer the award, terminating the dispute. The Arbitral Tribunal must make the award within six months of the first hearing unless there is a span limit or a process for choosing the date. The Arbitral Tribunal may extend this span by up to an extra six months unless otherwise decided by the parties. This is consistent with Article 42 of the UAE Arbitration Law, which states:

1. The arbitration panel must issue the award within the time decided upon between the two parties. In the absence of such an agreement, the Arbitral Tribunal must render the award within six months from the first hearing. The Arbitral Tribunal may lengthen this span by up to six additional months unless otherwise agreed by the parties.
2. If the award is not issued within the specified period, the arbitral tribunal or either party may ask the court to set an additional period for issuing it or terminating the arbitration proceedings. The court's decision will be final unless otherwise agreed by the parties.

[531]International Islamic Centre for Reconciliation and Arbitration. (2016). Arbitration rules. Retrieved from https://www.iicra.com/arbitration/

3. If the court terminates the arbitration procedures, either party may file a lawsuit before the originally competent court.

Furthermore, we see that Article 41 of the UAE Arbitration Law outlines the form and contents of the arbitral award: A. The arbitrator must complete the award in writing. B. If the arbitral tribunal includes more than one arbitrator, the award must be signed by the majority, and if the majority does not sign the award, it must be signed by the chairman of the arbitral tribunal unless the parties decide otherwise. In this case, the award must include written or attached dissenting opinions. C. The arbitrators must sign the award, and if they omit a signature, they must explain why. The award is reasonable if signed by the majority. D. Unless the parties decide otherwise or the reasons are not required by law, the arbitral award shall state its reasons. E. The award must include the names and addresses of the parties; the names, nationalities, and addresses of the arbitrators; the arbitration agreement; a summary of the claims, documents, and reasons; and, if necessary, the date and place of issuance. F. The arbitration award shall be deemed to have been issued at the place of arbitration even if it is signed outside that place, whether signed in person or electronically, unless the parties agree otherwise. G. Unless otherwise specified, the sole arbitrator or the last arbitrator signs the award on the date of issuance.

The UAE Arbitration Law agrees with the UNCITRAL Model Law, particularly in its requirements about the form and contents of the arbitral award. As outlined in Article 31 of UNCITRAL Model Law: 1. The arbitrators must issue and sign the arbitral award in writing. If there are multiple arbitrators, the signatures of most of the arbitral tribunals are sufficient, with the reason for any missed signatures stated. 2. Causes for the Award: The award should have the reasoning behind the judgment unless the parties have agreed otherwise or if it is based on agreed-upon terms under Article 30. 3. Date and Place of the Award: The date and place for the award have to be chosen based on what Article 20(1) says. It refers to the site of the trial where the award is to be made. 4. Delivery of the Award: After the award is done, each party has to get a signed copy. This focuses on written forms and documents being full and clear.

The UAE Arbitration Law supports these rules, so they stay in line with global standards. Getting the date and place recorded correctly also matters for enforceability in arbitration. I think having these things written down really makes the parties feel more confident. Furthermore, it aids in comprehending the necessary steps and provides a feeling of certainty that everything is in order. This commitment to the UNCITRAL Model Law reinforces the UAE's position as a pre-eminent arbitration center with a legal framework that is in line with international best practices.

Third: End of arbitration processes

Article 45 of the Arbitration Law in the United Arab Emirates deals with when the arbitration processes termination: 1. The procedures are finished when the arbitration panel issues the award .2. The proceedings may also be terminated in the following cases: If the parties agree to terminate the arbitration proceedings, If the claimant abandons the case, the Arbitral Tribunal must recognize a serious interest in continuing the proceedings at the respondent's request.

1. Article 208 of the UAE Civil Procedure Code: When arbitrators work together on an investigation, it is clear that teamwork is essential. All arbitrators must work together to investigate the same problem.

1. Article 212 of the UAE Civil Procedure Code:

- Plurality Decision and Requirements for the Award: Article 212(5) requires the award to be completed in the report, autographed by the arbitrators, and include critical details, such as: The Agreement of Arbitration, Outline of the Parties' Reports, Reasons and Context of the Award, Date and location of Issue, Autographs of Arbitrators
- Dissenting Votes: In cases of conflict, the arbitrators are needed to include the dissenting vote, ensuring that the causes for any differing opinions are documented. If the majority of the arbitrators sign, the award stays valid, even if the rest do not.

2. Article 47 of the UAE Arbitration Law: The arbitral tribunal may not render a final award if the parties have not paid all the arbitration costs. Also, if they refrain from rendering an award due to non-payment of fees, the parties may

apply to the court and have the award rendered upon payment of the fees or if the court changes the fees.

4. Article 46 of the UAE Arbitration Law: Arbitration Expenses: The arbitral tribunal is responsible for deciding the costs of arbitration, including paying the legal costs, but a court might change it later depending on how much work each party has done, how tough the case was, and the level of skill needed. If some decisions were made wrong, we could still argue about them in court later, also if the parties agree on certain costs, they are not allowed to contest the costs.

5. Article 53 of the UAE Arbitration Law: UAE Arbitration Law does provide some solid grounds for objecting to an arbitration award and getting it annulled. This is something that's crystal clear. These include: Null or non-existent arbitration agreement: if there is no arbitrate on agreement, or if it is null or canceled under applicable law. Party incapacity: if a party cannot legally enter into the arbitration agreement. Failure to notify or inability to defend: if one of the parties did not receive adequate notice or was unable to present its case due to procedural failures. Failure to apply the agreed law: If the arbitration panel fails to apply the law agreed upon between the parties to the subject matter of the conflict. Improper Tribunal Composition: If the formation of the tribunal violated the agreement of the parties or the provisions of the law. Violation of Arbitration Procedures: If the arbitration proceedings were flawed in a way that influenced the award. Matters Beyond the Scope of the Arbitration Agreement: If The award handles issues outside the scope of the arbitration agreement, although if those matters can be separated from the issues within scope, only the irrelevant parts of the award may be annulled.

The UAE has set up a complete set of laws for arbitration that are in line with best practices around the world and include strong ways to enforce, overturn, and challenge arbitral decisions. The laws and articles discussed in this analysis reflect the UAE's commitment to maintaining a balanced, efficient, and fair arbitration system. We will now delve into the essential details regarding the nullification and enforcement of arbitral awards, as well as the handling of objections.

1. Action for nullification of the arbitral award (Article 54 of the UAE Arbitration Law) Finality of Court's Decision: The court's decision in the annulment case cannot be changed; it is final. There is just one way to challenge it: through a cassation request. Also time Limit for nullification: If the parties want to cancel the award, they have to start the action within 30 days of getting the notice. This deadline is the deadline they have to meet to annul the award. Also, Effects of Nullification: The effects of nullification can vary depending on what the court decides. The arbitrator's decision might be annulled, either full or partly. Sometimes, the part that's been voided may need to be looked at again. And Effects on arbitration agreement: The arbitration agreement is still valid even after it has been thrown out, unless the reason for its invalidation is that it does not exist, has expired, or can't be put into action. Waiver of Nullification: A party's earlier waiver of the right to challenge the award does not prevent them from pursuing nullification if the requirements for annulment are met. Finally, Opportunity to Remedy: The court may stay the annulment proceedings for up to 60 days to allow the arbitral tribunal to amend the award or proceedings in a manner that removes the grounds for annulment.

2. Grounds for Nullification (Article 53 and Article 216 of the UAE Arbitration Law) The grounds for challenging an arbitral award are clear, and these include: There is either no arbitration agreement or an invalid one and, Incapacity of a party at the time of the arbitration agreement, and Failure to present a defense due to improper notice or procedural violations. Also, Non-application of the law agreed by the parties. Also, the Improper constitution of the arbitral tribunal. Moreover, Invalidity of arbitration proceedings: if the arbitration method is defective in a way that affects the award. As well as, Exceeding the scope of arbitration agreements: The award must remain within the agreed scope of the arbitration.

3. Enforcement of the arbitration award (Articles 55, 56 and 57 of the Arbitration Law in the United Arab Emirates) Recognition and Enforcement: To enforce an arbitral award in the UAE, the party requesting enforcement must apply to the President of the Court accompanied by key documents, including: A. The original or certified copy of the award. B. The arbitration agreement. C. A certified Arabic translation if the award is in a foreign

language. D. The court shall submit a copy of the minutes of depositing the judgment. E. The court has 60 days to order recognition and enforcement unless valid grounds for nullification exist.

- Stay of execution during an annulment suit: Filing an annulment suit does not automatically stop the execution of the judgment. The court shall decide to suspend execution within fifteen days from the date of the first session if there are serious reasons. Financial security for stay: If someone asks for a delay, the court might need him to give money security or insurance to pay his lawyer or attorney. Court enforcement decisions can be taken within two days of getting the enforcement notice. They will have a way to challenge the ruling if he doesn't agree with what the court says.

4. Comparison with International Standards (UK Arbitration Act 1996): The UAE has put together an arbitration framework that aims to be modern and efficient for settling disputes. It aligns closely with the UK's arbitration laws, which can be found on their website, where the UK has recently released some updates to align with their Arbitration Act of 1996. The Court there has the power to confirm, change, or scrap the relevant provisions (Article 67). This sets up a straightforward way to handle these jurisdictional arguments, which is quite similar to how the UAE handles this. In my view, these systems have really firmed up their processes. They not only solve the disputes efficiently but also ensure they stick to the recognized norms on the international stage. I'm inclined to think these mechanisms are important because they bring in a kind of legal predictability and fairness. In the UAE, having a dispute can just drag on endlessly.

5. Global Positioning of UAE Arbitration: Arbitration in the UAE, especially in Dubai, is a top choice for arbitration worldwide. Their focus on technology, straightforward rules, and swift enforcement makes it a prime spot for international cases. The UAE has an unambiguous UNCITRAL Model Law, which boosts trust among everyone involved in the process. The emphasis on tech advancement, clear rules, and direct alignment with UNCITRAL gives both local and international parties the confidence they need.

Conclusion: The UAE has built a strong legal system to ensure arbitration works fairly and quickly to solve legal issues. The country is very

appealing to those seeking arbitration to solve problems; it has straightforward rules for canceling, challenging, and enforcing arbitration agreements, so disputes can be sorted out quickly. Moreover, its effort to align with global standards keeps it a top spot for arbitration.

3. ARBITRATION LAW IN QATAR

Before we talk about arbitration law in Qatar, we will look at the Qatar Court of Cassation's decision No. 87/2010 (65), which states that "arbitration is an exceptional method of conflict solution between the parties, based on a departure from the usual methods of litigation and the warranties they provide." Based on this, we observe that arbitration is still perceivable in some Arab countries, particularly in Qatar and the UAE, as a departure from the usual modes of litigation along with the guarantees they provide[532]. For this reason, arbitration practitioners in Arab countries in the Middle East ought to be aware of those practical cases relating to the exact conditions of arbitration methods in the region to which local courts may be especially sensitive, and failure to do so may cast doubt on the enforcement or ultimate award of an arbitration award. The most prominent legal considerations that must be taken into account are the following:

The condition of a special power of attorney to raise conflicts to arbitration in many Middle Eastern jurisdictions, including, United Arab Emirates, Egypt, Jordan, and Qatar, the principle of severability of the arbitration clause is recognized. Thus, any possible signatory to an arbitration agreement must have a “special power of attorney,” which expressly authorizes him to agree to the arbitration clause. Indeed this condition can be found in the Qatari Civil and Commercial Procedure Code, which states that “arbitration shall only be useful for those who have the capacity to dispose of their requests” (Article 190) and that “any act other than administrative acts requires a special power of attorney, especially in gifts, sales, reconciliation, mortgage, acknowledgment, arbitration, oath-taking and pleading before the courts.” Also, for an arbitration agreement to be correct, the signatory must have the power of attorney or must have the authority to act, settle, or waive the right to

[532]Qatar Court of Cassation. (2010). No. 87/2010 (65). Retrieved from: Comair-Obeid, N. (2014). Salient Issues in Arbitration from an Arab Middle Eastern Perspective. Arb. Brief, 4, 52. https://tinyurl.com/4526wz23

pursue a claim on behalf of a particular part. In conclusion, the condition of a special power of attorney is required to bind one of the parties to the arbitration and confirm the enforceability of any arbitration awards, thus avoiding the invalidation of the arbitration agreement or the invalidation of arbitration awards by the courts[533]. In addition, in this topic, we will bring up the commercial arbitration law in Qatar for discussion from different perspectives and points as follows:

A. INTRODUCTION TO THE STATE OF QATAR:

Qatar is an independent state located in the middle of the western coast of the Arabian Gulf. Its land and sea borders are with Saudi Arabia, and its maritime borders are with Bahrain, the United Arab Emirates, and Iran. Qatar's official religion is Islam, and its official language is Arabic, despite the widespread use of English. Doha is the capital and seat of government and the headquarters of leading commercial and financial organizations. Qatar has a population of close to two million residents, of which only 20% are Qatari citizens, and the remaining 80% are expatriates, of which the majority come from other Arab states, Iran, Pakistan, or India. Qatar is one of the world's most dynamic and rapidly developing economies, the global economy nearly tripled in size between 2005 and 2011, reaching a nominal GDP of about US$173.3 billion. The nation has one of the highest per capita GDPs in the world, as well as a modern legal system[534].

Qatar became independent from a British protectorate on 3 September 1971[535]. As a consequence, the parties under the Qatari British Party completed their contracts to the treaty of 1916, according to which Qatar was under the protection of Britain and agreed that the ruler of Qatar would have no dealings with other foreign powers without express British permission. [536]. In addition, the status of Islamic law began to harden in the early 1970s when several Arab

[533] Comair-Obeid, N. (2014). Salient Issues in Arbitration from an Arab Middle Eastern Perspective. Arb. Brief, 4, 52.

[534]Maita, A. (2013). Development of a commercial arbitration hub in the Middle East: Case study—the state of Qatar. International Journal of Arbitration Studies, 15(3).

[535]U.S. Department of State. (n.d.). A guide to the United States' history of recognition, diplomatic, and consular relations, by country, since 1776: Qatar. Retrieved from https://history.state.gov/countries/qatar

[536]Luscombe, S. (2015). British Empire: Middle East: Qatar. Retrieved from http://www.britishempire.co.uk/maproom/qatar.htm

constitutions declared Islamic law to be the primary source of legislation, for example, Egypt (Article 2 of the Constitution of September 11, 1971) [537], Bahrain (Article 2 of the Constitution of December 6, 1973), Qatar (Article 1 of the Interim Constitution of April 2, 1970), and the United Arab Emirates (Article 7 of the Interim Constitution of July 18, 1971). The old constitution of the Yemen Arab Republic (Constitution of December 28, 1970) went so far as to refer to Islamic law as the source of all laws[538].

Regarding Qatar and the Sharia law, we note that the state of Qatar follows the Maliki schools, as well as Algeria, Bahrain, Chad, (Upper) Egypt, Kuwait, Mali, Morocco, Nigeria, and Tunisia. Also, the specific marker in this school is its dependence on the customary practices of the people of Medina as a source of proof of how the Sharia should be applied. The Maliki trust in arbitration can be seen by the fact that this school allows one of the disputants to be selected as an arbitrator by the other disputing party. This school does not allow an arbitrator to be fired after the arbitration proceedings have begun[539]. Prior to independence, the religious system, based partly on Islamic law, limited the jurisdiction of the court in Qatar. The legislature derived joint judicial authority from the abolition of traditional norms and customs relating to pearl diving matters. Furthermore, the jurisdiction of the joint court, which consisted of the ruler of Qatar or his agent and the British mayor or his agent, suffered from many disputes arising from the British and other foreigners; a British judge controlled the court. This was because the government of Qatar at that time had no authority over foreign residents.

However, the government changed this situation after freedom for two reasons: the first was that the government issued the first law regulating the Court of Justice in 1971, and the law was based on several legal principles: the first is the principle of litigation in two degrees. The law defines the composition of the judicial courts as follows: A. Criminal Court, including the Minor Criminal Court and the Major Criminal Court. B. Civil Court, including

[537]The Egyptian Constitution, Egypt. (2014). The Egyptian Constitution. Retrieved from https://www.constituteproject.org/constitution/Egypt_2014

[538]Saleh, S. (1994). Fading vestiges of Shari'a in commercial agency/distributorship (Termination and compensation). Arab Law Quarterly, Vol. 9 Part 1, pp 91-106 at 91.

[539] Smolik, A. (2010). The effect of Shari'a on the dispute resolution process set forth in the Washington Convention. Journal of Dispute Resolution. P. 151.

the Minor Civil Court and the Major Civil Court. C. Labor Court; and D. Court of Appeal. The second illustrates the principle of the personal judge, as the law stipulates that both the Minor Criminal Court and the Minor Civil Court consist of a single judge.

Finally, the third principle is the principle of judges, which states that the High Criminal Court consists of a president and two judges from the Minor Criminal Court and the Minor Civil Court. Three judges will form the Major Civil Court. The president of the Judicial Courts or one of his deputies will preside over the Court of Appeal, along with two deputies and judges.

The law has evolved to form a diverse civil and criminal judicial system, in addition to the Sharia judiciary, which the Qatari legislator has retained in this system due to its great importance. Secondly, and in particular, the significant progress made by the Qatari government towards full sovereignty and the implementation of its laws over all residents, Arabs and foreigners[540]. It is noted that this law did not mention arbitration and that the Qatari legislator continued to grow and deepen its laws due to the ongoing economic prosperity. However, Egyptian and French regulations remain the main source of Qatari law, while "Islamic Sharia" applies to aspects of family, inheritance, and some criminal laws [541]. Because Qatar's economy was growing all the time and arbitration was already accepted as a way to settle disputes related to business contracts, especially those involving foreign parties, the government released and passed the Civil and Commercial Procedure Code in 1990. This was a huge step forward in Qatari law compared to earlier stages. This development resulted from the adoption of Chapter 13 of this law currently in force in Qatar as the first law dealing with arbitration. There are several shortcomings in the 1990 law that could constitute an obstacle to foreign investment and international business in Qatar.

These shortcomings are due to two main factors: First, the law derived its provisions from the old Egyptian Civil and Commercial Procedures Law

[540]Bayat, M. (2009). The basics of the Qatari judicial system, past and present. Journal of Economics and Law of University of Damascus.
[541]Sharar, Z. (2011). Does Qatar need to reform its arbitration law and adopt the UNCITRAL Model Law for Arbitration? A comparative analysis. The Legal & Judicial Journal, Ministry of Justice - State of Qatar, 2. pp.3–38

No. 13 of 1968, which contained many conflicting issues[542].The multiple revisions of this regulation and the changes in Egypt's legal method reveal these issues. Secondly, although some specific provisions for arbitration have been included in the current Commercial and Civil Procedure Code, they are outdated and not compatible with international standards, thus threatening foreign investment and global commerce in Qatar.

Also, we can note that there are three legal arbitration jurisdictions in Qatar: the State of Qatar, the Qatar Financial Centre (QFC), and the Qatar International Centre for Arbitration (QICA). Although Qatar has introduced several laws to encourage arbitration as an alternative manner for resolving conflicts, it stays the case that Qatar has no special law on arbitration until Law No. 2 of 2017, promulgating the Civil and Commercial Arbitration Law. Also, under the Emiri Decree No. 29 of 2003, Qatar confirmed the New York Convention. It is also a partner of the Riyadh, GCC, and ICSID Conventions. Qatar has also joined several bilateral treaties specifically dealing with arbitration [543]. It is worth noting that the State ratified the New York Convention in 2002 without any orders or reservations, and in 2005 the Qatar Financial Centre was established, which subsequently issued the Qatar Financial Centre Arbitration Rules. The Qatar Chamber of Commerce and Industry also launched the Qatar International Centre for Conciliation and Arbitration, the first arbitration institution in Qatar, in 2006 [544].

However, it is important to distinguish between the State of Qatar and the Qatar Financial Centre. Being a civil law jurisdiction, the State's Civil Code is based on Egyptian law, which is derived from the French legal system as explained in the previous chapter. When no particular section of the State's Civil Code deals with the matter at hand, the court turns to Sharia law, Islamic law, relevant customs, or the rule of equity. The QFC, on the other hand, is a distinct legal jurisdiction that has embraced this framework, which is fundamentally distinct from a civil law framework and has its roots in common

[542]Al-Emadi, T. (2011). Qatar arbitration law: Some central issues. QNRS Repository, 2011(1).
[543]Al Qahtani, A. H. (2016). The Dubai experience: Evaluating the effectiveness and efficiency of international commercial arbitration laws in the Gulf Arab Region (Doctoral dissertation, Macquarie University).
[544] Aljohar, A. (2016). Finality of arbitral awards: Comparing approaches in Sharia law and international law (Doctoral dissertation, University of Essex).

law. The Qatar International Court and Dispute Resolution Centre, which is the QFC's court, is also known as the QIC-DRC[545].

Currently, Qatar's constant positive development has strongly attracted the interest of speculators, investors, institutions, and non-sovereign organizations. Studying the basic economic data for Qatar can prove this growth in interest. Accordingly, Qatar is one of the fastest-growing economies in the world and had a higher per capita income than countries in the EU in 2007. Surprisingly, the real growth of Qatar's GDP reached 7.8% in 2007. Moreover, the state has taken great steps to diversify its economy and move away from its dependency on hydrocarbons towards a knowledge-based economy[546].

Part of Qatar's Emir international vision includes a commitment to become a global hub for dispute solutions, including international commercial arbitration. There are many causes why Qatar could also appear as the region's leading hub for international commercial arbitration. For illustration, the next causes [547]: 1. Central geographic place. 2. Modern, clean, and efficient infrastructure. 3. World-class contacts. 4. One of the fastest-growing businesses in the world. 5. The highest per capita income on the earth. 6. A progressive, ambitious leader. 7. The economy is self-sufficient and leads the region in terms of the outlook for the business environment.

B. ARBITRATION IN THE STATE OF QATAR:

As mentioned earlier, there are two jurisdictions in Qatar whose laws contain specific provisions related to arbitration: the State Law jurisdiction and the Qatar Financial Centre jurisdiction. In addition to these, the applicable Qatari Arbitration Law No. 2, which was issued in 2017, also plays a key role. The following sections will explore each of these jurisdictions in more detail.

1. THE STATE LAW JURISDICTION:

Arbitration is regulated by the law of the State of Qatar under Articles 190-210 of Law No. 13 of the Civil and Commercial Procedures Law of

[545] Al Naddaf, H. (2015). Qatar. Global Arbitration Review, World Edition.
[546]Al-Obaidli, J. M. A. (2016). Arbitration law in Qatar: The way forward (Doctoral dissertation).
[547] Maita, A. (2013). Development of a commercial arbitration hub in the Middle East: Case study—the state of Qatar. International Journal of Arbitration Studies, 15(3).

1990[548]. This Code was established based on the old Egyptian Civil and Commercial Procedure of 1968, which had numerous shortcomings[549]. Furthermore, the CCP does not reflect the modern arbitration standards required to address the growing investment and construction developments currently underway in Qatar. Moreover, there are several issues related to the CCP Law[550]:

A. Arbitration Clause and Arbitration Agreement: Article 190 of the CCP Law outlines four conditions necessary for a valid arbitration agreement: A. The agreement must be in writing. B. The agreement must specify the subject matter of the dispute. C. All participating parties must possess full legal capacity (thus preventing minors, mentally incapacitated people, and bankrupt individuals from entering into arbitration). D. The settlement must be amicable. Failure to satisfy any of these requirements will render the arbitration agreement null and void. Therefore, it is crucial to amend the interpretation of the 'writing requirement' to align with the best international practices, as reflected in Model Law's interpretation of this requirement.

B. Scope of the Arbitration Clause: There is no explicit reference to arbitrability under Qatari law, and Article 190 of the CCP only refers to the points that can be settled amicably, without further elaboration. This indicates the incomplete and ambiguous nature of Article 190.

C. Legal Capacity: The New York Convention establishes that a party's legal capacity is governed by “the law applicable to them.” However, in Qatar, Article 190 of the CCP stipulates that arbitration is valid only if the participating parties have the 'capacity to dispose of their rights,’ without providing a clear definition—especially for government bodies entering contracts.

D. The Kompetenz-Kompetenz Principle and Autonomy of the Arbitration Agreement: Article 16(1) of the Model Law talks about these two

[548]Insolvency Law Academy. (1990). Law No. 13 of 1990: Civil and Commercial Procedure Law. https://n9.cl/xdn40

[549]Shaaban, H. S. (1999). Commercial transaction in the Middle East: What law govern. Fall Law and Policy in International Business.

[550]Maita, A. (2013). Development of a commercial arbitration hub in the Middle East: Case study—the state of Qatar. International Journal of Arbitration Studies, 15(3).

important rules, but they are not at all in the CCP rules that govern arbitration in Qatar.

E. Finality of the Arbitral Award: The CCP allows three kinds of recourse against an arbitral award: the appeal, the petition for reconsideration, and the request for the award to be set aside. However, Articles 202-209 set forth vague and ambiguous conditions and time limitations regarding these appeals, leading to uncertainty in their application.

2. THE QATAR FINANCIAL CENTRE (QFC) REGULATIONS:

Following the QFC's establishment in March 2005 as a hub for financial and business services in Doha, Qatar, QFC Law Number (7) of 2005[551] was enacted to create a legal and regulatory framework that operates independently of, and in parallel with, the Qatari legal system. However, QFC laws do not cover areas like criminal law. Financial services firms are subject to the QFC's own rules and regulations, which address issues such as contracts, insolvency, and anti-money laundering.

Even though there are laws and rules in the QFC, Qatari civil law is still used there, unless it is specifically not allowed, conflicts with the rules, or is about something that the rules and laws don't cover. The Qatar Financial Center Regulatory Authority (QFCRA) issues licenses and keeps an eye on all banking, financial, and insurance companies that work in or from the QFC. It does this by following internationally recognized legal principles, which are similar to those used in London and other major financial centers.

Additionally, the QFC Law established the QFC Authority Tribunal and the QFC Civil and Commercial Court, which were later merged to form the current Qatar International Court (QIC). This created a separate legal system distinct from that of the Qatari courts. Originally, the QFC Court was intended to handle both litigation and alternative dispute resolution for civil or commercial disputes arising from contracts concluded under QFC Law. Over time, this scope was expanded to include disputes beyond the Qatari business community. The Court now provides commercial dispute resolution services for parties worldwide, in collaboration with the Center for Effective Dispute

[551] Qatar Financial Centre. (2024). Qatar Financial Centre Law: Law No. (7) of 2005, Version No. 5, includes amendments made by Law No. (16) of 2024 https://linksshortcut.com/IDxoV

Resolution (CEDR). As a result, Qatar now has two distinct jurisdictions: the State of Qatar, which operates under a mix of Sharia and civil law, and the Qatar Financial Centre, which follows a common law system.

The Qatar Financial Centre (QFC) jurisdiction follows the Common Law legal system. Since March 2003, Qatar has been a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on the Principle of Reciprocity. Furthermore, Qatar ratified its membership of the ICSID Convention in November 2010 and is a party to both the Riyadh Convention and the Gulf Cooperation Council Convention. Although Qatar is a party to at least 51 general Bilateral Investment Treaties (BITs) containing arbitration provisions, the majority of which permit arbitration under the ICSID Convention on the Settlement of Investment Conflicts between States and Nationals of other States, it has not signed any bilateral treaties specifically related to arbitration[552].

In addition, QFC Law Number (7) of 2005 allows the QFC to establish rules (the QFC Arbitration Regulations) that create an arbitral body with authority over QFC-related matters. The QFC Arbitration Regulations came into effect in November 2005. These rules apply when parties select the QFC as the arbitration venue and are based on UNCITRAL Model Law, with certain modifications. Below are some of the more notable features of the QFC Arbitration Regulations:

1. The Arbitral Panel can make decisions about its own area of responsibility, such as any questions about the existence or legality of the Arbitration Agreement (Competenz-Competenz) (Article 21). 2. Unless the parties decide otherwise, the arbitral tribunal may, at the request of a party, grant interim measures of protection (Article 22). 3. Article 25 allows parties to agree on the Arbitral Panel's procedure during proceedings, subject to the Regulations. 4. The parties are free to agree on the seat of arbitration (Article 26).5. Article 28 allows the parties to decide which language or languages to use in the arbitral proceedings. 6. The parties may choose the applicable law for the substance of the dispute. In the absence of such a designation, the

[552] Maita, A. (2013). Development of a commercial arbitration hub in the Middle East: Case study—the state of Qatar. International Journal of Arbitration Studies, 15(3).

Arbitral Panel will apply the applicable law as determined by the conflict of laws rules (Article 34).

3.QATAR ARBITRATION LAW NO. 2 (2017):

In 2017, Qatar issued Arbitration Law No. 2, which comprises 8 chapters and 38 articles[553]. In this section, we will break it down and discuss it in detail. Before we talk about the arbitration articles of the law, it's important to remember that the law only applies to civil and business disputes, as shown in the following six legal provisions:

1. Article (1): The provisions of the Arbitration Law in Civil and Commercial Matters attached to this law shall be applied.
2. Article (2): The provisions of the Law of Arbitration in Civil and Commercial Matters attached hereto shall not apply to conflicts that cannot be resolved by arbitration under any other law or conflicts that may only be submitted to arbitration following the provisions of regulations other than those of this attached law.
3. Article (3): The provisions of the attached Arbitration Law in Civil and Commercial Matters shall apply to every arbitration existing at the time the law comes into force and to every arbitration that begins after the law comes into force.
4. Article (4): The Civil and Commercial Procedures Law's Articles (190) to (210) in Book One will be thrown out, along with any other parts that are at odds with the attached law.
5. Article (5): The Minister of Justice shall issue the decisions necessary to enforce the provisions of the attached law.
6. Article (6): All competent authorities, each within their jurisdiction, shall implement this, Law. It shall be published in the Official Gazette.

Based on the above, we note the following: The arbitration law includes all civil and commercial matters. Also, the arbitration law got rid of Articles 190–210 of the Civil and Commercial Code of Procedure Law (Law No. 13 of 1990) (the CCPL). These articles dealt with general issues like how to make an arbitration agreement, how to hire and fire arbitrators, how to stop lawsuits,

[553] Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration Law. https://www.qicdrc.gov.qa/sites/default/files/2021 12/law_02_2017_booklet.pdf

how to give and challenge awards, and how to pay the costs. In Qatar, arbitration and proceedings after arbitration are still governed by the CCPL rules, as long as they are not changed by Qatar Law No. 2/2017 and do not go against the rules of the Qatari Arbitration Law. Following this introduction, the law will be broken down into eight successive chapters, which will be examined in detail as follows:

CHAPTER ONE: DEFINITIONS AND GENERAL PROVISIONS (ARTICLES 1-6):

First, arbitration is defined as "a legal, mutually agreed-upon way to settle disagreements without going to court, whether the proceedings are run by a permanent arbitration center or otherwise, as agreed upon by the parties. People who are legal entities or natural persons with the legal capacity to make contracts agree to the Arbitration Agreement. This means that any disagreements that have come up or could come up between the Parties in a clear legal relationship, whether that relationship is contractual or not, will be settled by arbitration. The arbitration agreement may be separate or in the form of an arbitration clause within a contract.

Article 1 defines the arbitration tribunal as: "A tribunal consisting of a single arbitrator or an odd number of arbitrators to settle a dispute referred to arbitration." The court with the authority to adjudicate is also called the Civil and Commercial Arbitration Disputes Chamber of the Court of Appeal, or the First Instance Chamber of the Civil and Commercial Court of the Qatar Financial Centre, as decided upon by the parties. "The arbitration center is also defined as any legal entity authorized to administer the arbitration in accordance with the provisions of this law. Based on what has been mentioned above about the Qatar Financial Centre, it is necessary to remember that the law under consideration relies on the Qatar Financial Centre to be the appropriate judge to consider the arbitration legally. The competent judge is either: A. The enforcement judge in the First Instance Circuit, or B. The enforcement judge in the Civil and Commercial Court of the Qatar Financial Hub, under the agreement between the parties.

Article No. 2 states that this law's regulations will apply to all civil and commercial arbitrations between parties, whether they are public law or private law individuals, and it doesn't matter what kind of legal relationship is at the

heart of the conflict. This applies whether the arbitration takes place in or outside the State of Qatar, as long as the parties decide that it shall be subject to the Rulings of this law. This bans administrative matters that require the approval of the Prime Minister or his delegate. It is also essential to mention that the arbitration process cannot resolve public law disputes between two parties. This guides to the conclusion that Article 1 directs any matter involving two parties of private law or a combination of private and public regulation. The topic of arbitration under Article No. 2 of the law includes:

1. Commercial arbitration: This applies when the conflict arises from a legal connection of a financial nature, whether contractual or not. This contains any commercial, investment, economic, banking, industrial, insurance, tourism, or any other marketing of an economic nature.
2. International Arbitration: This relates to conflicts related to international commerce in the following scenarios:

   A. The arbitration agreement shall apply when the principal place of business of the party at the time of its conclusion is in different countries. If either party has multiple places of business, the place of business most closely connected with the subject matter of the arbitration agreement shall prevail. If a party has no location of business, its habitual home shall prevail. B. If all parties to the arbitration agreement have a principal place of business in the same country but one of the following outside that country:

- The place of arbitration as specified in the arbitration agreement or by the method provided for in the said agreement to determine the place of arbitration.
- The place where a substantial part of the obligations arising from the relationship of the parties is to be performed. ·
- The place that has the strongest relationship with the subject matter of the conflict.

A. When the subject matter of the conflict under the arbitration agreement is linked to more than one country. B. If the parties agree to guide a permanent arbitration institution whose headquarters are located either inside or outside the country.

Similarly, in Article No. 4, which discusses electronic notifications from the arbitral tribunal, we observe various methods for notification,

including A. Provide personal service to the addressee. B. Service to the addressee's place of Employment C. The usual residence or electronic address known to the parties or set in the arbitration agreement. D. Written notice or mail sent by facsimile number or e-mail shall be deemed to have been accepted on the date of sending if the sender does not receive an automatic error message. But what if none of the above addresses can be located after a reasonable search? In this case, a registered letter or notice is deemed to have been accepted if it is sent to the addressee's last known place of employment, usual home, known mailing address, e-mail address, or fax number. You can also send it by recorded mail or any other way that provides written evidence of receipt. The same article provides some rules for notification:

a. Written notification or correspondence is considered to have been received if it is accepted or sent before 6:00 p.m. at the place where it is received; otherwise, it is considered to have been received on the following day.
b. We start calculating the span on the day following our receipt of it. If the last day of the time falls on an official holiday or business holiday at the head office or place of business of the recipient, the time is extended to the next business day. However, we count official holidays or business holidays during that time.
c. The provisions of this article do not involve judicial notifications before the courts

This chapter concludes that a party has waived its right to object if it knows of a breach of one of this law's conditions (which the parties may deviate from) or a clause in the arbitration agreement but doesn't object within the agreed-upon time or without undue delay if there isn't an agreement. This is in accordance with the provisions of Article 5 of the same law.

CHAPTER TWO: THE ARBITRATION AGREEMENT (ARTICLES 7-9)

This chapter begins with the definition of the arbitration agreement as follows: Parties agree to go to arbitration to settle any disputes that have come up or could come up in the future relating to a clear legal relationship, whether it is contractual or not. This applies to both legal entities and natural people who can legally make agreements. Analysts have pointed out that this definition fails to specify the legal ability required of the parties involved.

Further, the arbitration agreement may either be a standalone document or a dependent arbitration clause within a written agreement. If the arbitration agreement is not in writing, it will be considered invalid. Below are the cases in which an arbitration agreement will be considered in writing:

A. It appears in a document that the parties have signed.
B. It takes the form of written or digital correspondence.
C. It is communicated by any other means that allows for documented verification of receipt.
D. If one party asserts the existence of such an agreement in the statement of claim or the statement of defense, and the opposing party does not refute this in its defense,
E. A contract that refers to a document with an arbitration clause constitutes an arbitration agreement, provided the reference explicitly states that the clause is part of the contract.

Similarly, Article 8 of the Qatari Arbitration Law clarifies the issue of what happens when there is an arbitration clause in a case pending before the court:1. If someone brings a dispute that is subject to an arbitration agreement to court, the court will not accept the claim if the respondent confirms the existence of the arbitration agreement before making any statements or objections about the claim. Before the court can declare the arbitration agreement invalid or not suitable, this remains the case. 2. Starting a lawsuit mentioned earlier doesn't stop arbitration procedures from being started or continued, or even from getting an arbitration award.

CHAPTER THREE: THE ARBITRAL TRIBUNAL (ARTICLES 10-17)

This chapter addresses the arbitral tribunal from numerous viewpoints, including the number of arbitrators involved, how they are selected, and other related aspects. We will examine the following points:1. Based on the parties' agreement, the arbitral tribunal will consist of one or more arbitrators. If the parties are unable to reach a consensus on the number of arbitrators, they will select three. 2. If there are multiple arbitrators, the number of arbitrators must be odd; otherwise, the arbitration will be deemed null and invalid.

Furthermore, the arbitral tribunal must complete the following requirements: A. Have complete legal capacity. B. Not having been convicted

by a final judgment of a felony or misdemeanor that violates honor or public trust, even if his reputation has been restored. C. Known for her good manners, behaviors, and reputation.

Some factors do not consider conditions for the selection of the arbitration tribunal: 1. Nationality. 2.The process involves accreditation and registration in the Ministry's registry of arbitrators. Although Article No. 11 emphasizes the necessity of registration, it is not made a mandatory condition, as an exception is created for this requirement.

Regarding the selection of arbitrators, the following points must be noted: 1. Acceptance of an arbitrator's appointment must be in writing. 2. When an arbitrator is being considered for appointment, they must put in writing any possible conflicts or issues. If there's no arbitration agreement in place, here is what we can do in this case: A. One side can ask an authority or the appropriate court to appoint one. They have thirty days until the claimant sends a written notice, and if they can't agree, then action is needed. Impartiality, we see, should be beyond question. B. If the arbitrators include three arbitrators, each party shall select an arbitrator, and the two arbitrators will then appoint a third. If one party fails to select an arbitrator within thirty days of receiving the request from the other party, or if the two appointed arbitrators cannot agree on the third within thirty days, the other authority or the competent court will make the appointment upon the request of one party. If the parties have agreed on specific appointment procedures, either party may request the other authority or the competent court to implement the required procedure if: a. One party fails to follow the agreed procedure. b. The parties or two arbitrators cannot reach the necessary agreement by following the agreed-upon procedures. c. The third party fails to complete any task assigned to it within the agreed procedure. 3. The competent court's or other authority's decision on Clauses 5 and 6 of this articles final and unchallengeable.

Now, we will move and examine the cases in which an arbitrator must recuse themselves under the Qatari arbitration law: a. If possibilities arise that give justifiable doubts about their impartiality and independence. b. If the arbitrator does not have the capabilities agreed upon by the parties. c. If the arbitrator is unable to perform their duties or begins but fails to continue their

function, causing an unjustifiable delay in the proceedings, they do not recuse themselves. If the two parties cannot agree to remove the arbitrator, the other authority or competent court, upon application by any party, may terminate the arbitrator's duties. The decision in this regard should be final and not subject to challenge.

Any arbitrator whose time has expired due to removal, dismissal, withdrawal, or any other reason sets a replacement arbitrator. The replacement arbitrator is selected according to the procedures in effect at the time of their appointment. Regarding the removal of an arbitrator, the following points apply:

A. No party to the dispute may dismiss an appointed or assisted in the appointment of an arbitrator, except for reasons that become known to him after the appointment.
B. The parties may agree on the procedure for dismissing an arbitrator. Failing such an agreement, a request accompanied by a report shall be sent to the arbitral tribunal within fifteen days of the discovery of the arbitrator or the reasons for dismissal. The request shall include the reasons for dismissal.
C. The competent court or other authority may, until it decides to dismiss the arbitrator, fix the fees and expenses of the said arbitrator or recover any fees or expenses previously paid to them.
D. A request for dismissal may not be accepted by a party who has previously submitted a request for the dismissal of the same arbitrator in the same arbitration, unless a new reason for dismissal appears or is not known to the party after the first request has been submitted.

CHAPTER FOUR: ARBITRAL PROCEEDINGS (ARTICLES 18-27)

In the beginning, it is necessary to mention that Qatari law places significant emphasis on arbitration procedures, establishing multiple rules to manage the arbitration process between the parties and providing a clear framework for the arbitration method. Below, we will outline these rules in the form of key topics:

1. The arbitral tribunal must treat the parties similarly and impartially, confirming that they are given a fair and complete possibility to present their cases, defenses, and arguments.

2. The arbitral tribunal shall avoid any disproportionate delays or expenses, aiming to provide a fair and efficient method of resolving the issue.
3. The method of choosing the arbitration procedures is the responsibility of the parties, and the parties have the right to subject the arbitration process to the rules and laws of any arbitration institution or center, whether inside or outside Qatar.
4. Regarding the place of arbitration, the parties are free to agree on the location, whether within Qatar or internationally. The arbitral tribunal, however, has the authority to meet at any place it deems appropriate to carry out part of the arbitration procedure, such as for hearing witnesses.
5. Arbitral proceedings begin on the day the respondent receives a request to refer the dispute to arbitration unless the parties agree otherwise.
6. The language(s) to be employed in the arbitral proceedings may be agreed upon by the parties. Should the parties fail to agree, the arbitral tribunal will select the language(s) for the proceedings.
7. The arbitral tribunal has the power to require that all or a part of the documents submitted in the case be translated into the language(s) used in the arbitration proceedings.
8. The claimant must present a written report of the claim within the time frame selected by the arbitral tribunal or agreed upon by the parties. The report must contain the claimant's name, address, a report of the case's facts, a list of disputed issues, and the claimant's requests.
9. In response to the report of the claim, the respondent must provide a reported defense within the period frame specified by the arbitral tribunal or decided upon by the parties. This defense must address the claim.
10. Unless the arbitral tribunal considers written documents and reports sufficient, or unless the parties decide otherwise, hearings will be held to allow each party to present their case, arguments, and supporting proof, or to make oral submissions.
11. The arbitral tribunal will hear experts and witnesses without requiring them to take an oath.
12. Unless the parties have decided on an exact date and time for notices, the arbitral tribunal shall provide the parties with appropriate notice of the date and

time for meetings, hearings, inspections, and study of documents that have been scheduled.

13. The proceedings of the arbitral tribunal's hearings, meetings, and inspections must be documented in minutes, unless the parties agree otherwise. A copy of the minutes shall be provided for each party. In addition to written documentation, these proceedings may be recorded through other appropriate means, in line with the arbitral tribunal's procedures or the parties' agreement. Each party may appoint one or more attorneys to act on their behalf, and they may also hire specialists or interpreters for assistance.

CHAPTER FIVE: ISSUANCE OF ARBITRAL AWARDS AND TERMINATION OF PROCEDURES (ARTICLES 28-32)

The issuance of an arbitral award implicitly terminates the arbitration method. The Qatari Arbitration Law describes this conclusion through the following points:

1. Legal Rules for Conflict Solution: The arbitral tribunal shall resolve the conflict based on the legal rules agreed upon by the parties. If both sides agree to follow the laws or legal system of a certain country, then only the substantive laws of that country will be used. Conflict-of-laws rules will not apply unless both parties explicitly agree otherwise on paper. If the parties cannot decide on the applicable legal rules, the arbitral tribunal will involve the law as determined by the conflict-of-laws rules. Besides, the tribunal may not find its decision on principles of justice and fairness unless expressly authorized by the parties. In all cases, the arbitral tribunal will settle the conflict based on the terms of the contract and consider the customs and commercial procedures generally followed in that type of transaction.
2. Issuance of Arbitral Award: If the parties do not decide otherwise, a multi-member arbitral tribunal will issue decisions, orders, and awards based on the majority view after deliberations that are run in a way that the tribunal decides. Nevertheless, if the parties or all members of the arbitral tribunal permit, the arbitrator chairing the tribunal may issue decisions on procedural issues.
3. Ending of Arbitral Proceedings: The arbitral proceedings are considered completed when an award is issued to resolve the conflict or when the tribunal determines that they should end under one of the following possibilities: a. The

parties mutually agree to end the proceedings. b. The claimant withdraws from the arbitration dispute, unless the arbitral tribunal, upon the respondent's request, determines that the respondent has a legitimate and serious interest in continuing the proceedings until the dispute is resolved. C. The arbitral tribunal concludes that it is no longer necessary or feasible to continue the proceedings for any other reason.

4. Correction or Interpretation of the Award: Within seven days of receipt of the arbitral award, or within a time frame decided by the parties (unless otherwise decided), either party may ask the arbitral tribunal to: A. Correct any significant computational or typographical errors that may have occurred in the award. B. Provide an understanding of a specific issue or portion of the arbitral award, if agreed upon by the parties.

CHAPTER SIX: APPEALING THE ARBITRAL AWARD (ART. 33)

Based on the law, you can only appeal for an arbitral award by applying to set it aside. We will only approve an application to set aside the award if the applicant can substantiate one or more of the following grounds:

A. One of the parties to the arbitration agreement was incompetent or suffered from legal inability at the time of the conclusion of the agreement, or the arbitration agreement was invalid under the law agreed upon by the parties or under the law of the country in which the award was made (if no law was agreed upon).
B. The party against whom enforcement is sought was not properly notified of the selection of the arbitrator or of the arbitration proceedings or was unable to present its defense for reasons beyond its authority.
C. The award has decided on issues outside the scope of the arbitration agreement or has exceeded it. If we can separate the award from non-arbitration parts, we can recognize or enforce it for cases within the arbitration agreement.
D. The composition of the arbitral tribunal, the selection of arbitrators, or the arbitration proceedings were contrary to the law or the agreement of the parties, or in the lack of such agreement, the law of the country in which the arbitration took place.
E. A court of law in the nation that issued the arbitral award has set it aside, frozen it, or stayed it.

CHAPTER SEVEN: RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS (ARTICLES 34-35)

In this section, we will examine the implementation of foreign judgments before and after the issuance of the Qatari Arbitration Law, as summarized below:

A. Prior to the issuance of the Qatari arbitration law:

Qatar is a signatory to both the GCC Convention and the Riyadh Convention, which may recognize foreign judgments. When it comes to recognizing foreign judgments, Article 383 of the Qatar Civil and Commercial Procedure Law (QATCCPL) says that treaties are more important than the QATCCPL's rules. If there isn't a treaty that applies, Articles 379 et seq. of the QATCCPL can be used to ask for recognition, as long as there is practice of reciprocity between Qatar and the country of origin (Article 379(1), QATCCPL). The Qatar High Court must receive the recognition application (Article 379(2) QATCCPL). Upon establishing reciprocity, Article 380 QATCCPL recognizes a foreign judgment, subject to the following conditions[554] : 1. Qatari courts do not have exclusive jurisdiction over the matter, and the foreign court has international jurisdiction under the country of origin's lex for. 2. We duly summoned and represented the parties. 3. The judgment is enforceable in the country of origin. 4. The judgment does not conflict with a prior judgment by a Qatari court on the same subject or violate Qatar's public order.

Qatari courts generally review foreign judgments to ensure they comply with Qatar's public order, considering Islamic law as a central element of the country's public policy[555]. For illustration, Qatar and Germany have established reciprocity[556]. Reciprocity with Switzerland is likely, as both countries' legal frameworks for recognizing foreign judgments are similar.

[554]Bremer, N. (2016). Seeking Recognition and Enforcement of Foreign Court Judgments and Arbitral Awards in the GCC Countries. McGill J. Disp. Resol., 3, 37.
[555]Qatar. (2004, August 30). Constitution of Qatar. Retrieved from https://tinyurl.com/4w83t8ad
[556]Bälz, K., & Klaiber, M. (2015). Qatar. In A. Bülow et al. (Eds.), International legal transactions in civil and commercial matters (41st ed., Vol. 6, pp. 1068a-6). Munich: Beck.

B. Pursuing the Promulgation of the Arbitration Law of Qatar:

The Qatari Arbitration Law addresses this topic in two articles. Here is the analysis based on the following points: 1.Status of Arbitral Awards: Arbitration awards shall have the force of res judicata and shall be enforceable, in accordance with the provisions of the Qatari Arbitration Law, regardless of the country in which the award was issued. 2. Attachments for the Enforcement of a Foreign Arbitral Award: The following documents must be attached to the request for the enforcement of a foreign arbitral award: a. A copy of the arbitration agreement. b. The original award or a certified copy thereof in the language in which it was published, with a certified Arabic translation if the award was issued in a foreign language.

1. Grounds for Refusal of Recognition or Enforcement: Recognition or enforcement of an arbitral award may only be refused in the following two cases: A. The competent judge may, upon the request of the party against whom the award is invoked, refuse recognition or enforcement if one of the following grounds is established: a. That one of the parties to the arbitration agreement was incompetent or incapable at the time of concluding the agreement, or that the arbitration agreement is invalid under the applicable law. b. The party against whom enforcement is sought was not duly notified of the arbitrator’s appointment or the proceedings or could not offer its defense for causes outside its control. c. The award resolved issues outside the scope of the arbitration agreement or overextended it. However, the arbitration agreement may still recognize or enforce the award for the parts that fall within its scope. d. The composition of the arbitral tribunal, the appointment of arbitrators, or the proceedings were in violation of the law or the parties' agreement, or, in the absence of an agreement, violated the law of the country where the arbitration took place. e. The arbitral award is no longer binding, has been set aside, or has been suspended by a court of the country in which the award was made or under the law of that country.

B. The competent judge may, on his own initiative, refuse recognition or execution in the following two cases: If the state's law forbids arbitration from resolving the dispute, If recognition or enforcement would contravene the public policy of the state,

4. Suspension of enforcement is due to the cancellation of the award. A. If the competent judge knows that the arbitration award is subject to cancellation in the country in which it was issued, he may take one of the following measures: Postponing the enforcement order as he deems appropriate. B. The competent judge may, on the recommendation of the party requesting recognition or enforcement, require the other party to provide appropriate guarantees.

CHAPTER EIGHT: ARBITRATION CENTERS AND ARBITRATORS' APPROVAL (ARTICLES 36-38)

The Qatari Arbitration Law outlines the specific procedures for selecting an arbitration hub and approving arbitrators, as described below:

1. Location of Arbitration Centers (Article 36): The law states that the establishment of arbitration centers or branches of foreign arbitration centers in Qatar is subject to a license from the Minister. This license must include details such as the conditions and rules for granting the license, the fees involved, and the costs associated with operating the center.
2. Arbitrators' Registration: The Ministry of Justice will maintain a register listing arbitrators who have been approved by the minister. Ministers can also select requirements, policies, and criteria for adding and removing arbitrators from this register. Also, the minister is responsible for determining the expenses related to the registration and maintenance of this register.

Based on our previous examination of the arbitration laws in the Gulf Cooperation Council countries, including Saudi Arabia, the United Arab Emirates, and Qatar, we can mark some similarities and differences in the regulation of arbitration centers and arbitrators: 1. Both Saudi Arabia and the UAE control the opening of arbitration centers through decisions made by the government or ministers. Often, foreign centers that want to work in those countries need to meet certain requirements and get permission from the right authorities. 2. Qatar's law, equal to its regional counterparts, emphasizes the need for a formal registration method for arbitrators, confirming that only qualified individuals are allowed to serve as arbitrators in the country.

Ending: This chapter has examined the regulation of arbitration centers and the approval of arbitrators within the framework of Qatari law. The Ministry of

Justice plays a main part in managing both the arbitration centers and the register of arbitrators, ensuring that arbitration proceedings in Qatar are conducted in a regulated and transparent method. The legal framework in Qatar shares similarities with its GCC neighbors, although each country may have specific requirements regarding the establishment of foreign centers and the selection of arbitrators.

CONCLUSION

In current law, it is important to promote this intersection of Sharia and modern arbitration in the GCC. The GCC countries play a significant role in international commerce, especially in the oil, commodities, real estate, and banking sectors. Over time, arbitration, which includes elements of Sharia, has increasingly been seen as a faster and cheaper means of settling disputes than taking a case to court, which can be expensive and time-consuming. Understanding the mechanics of these systems in practice also teaches us about how responsibility is apportioned and how disputes are resolved and enables businesses to operate in a parallel universe of the legal regime in the Middle East. The study not only contributes to the literature on legal experimentation in the GCC but also relates more widely to debates about how Islamic law can interact with contemporary legal paradigms as the global market changes quickly.

The relevance of arbitration keeps growing in the GCC countries. At the same time, not much is written on how Islamic law and modern arbitration work together in the context of responsibility claims and dispute settlement. Whereas a fair number of scholars researched either Islamic law or international arbitration, there were few to no studies that addressed both of these in tandem from a Gulf nation perspective. Moreover, little has been written about the views of these systems on the sensitive issues of women's participation in arbitration and the changing application of Islamic law alongside international law. This is particularly worrying because businesses and lawyers in the region need a comprehensive understanding of traditional and contemporary legal frameworks.

With this in mind, my aim as a researcher has been to fill this gap in the legal literature to understand the intricacies of how the GCC countries use

Islamic law in modern forms of arbitration, which will enhance the resolution of disputes and the management of legal responsibility more efficiently, which I have presented in this thesis earlier, and based on that I have reached the following conclusions and recommendations:

MAIN RESULTS:

1. We have reached a definition of responsibility in Islamic law and the studied regulations, where responsibility was divided into legal and moral responsibilities. Islamic law and the laws of the Gulf Cooperation Council countries agreed with the jurisprudential and legal concepts that defined responsibility.
2. Islamic Sharia and the laws of the Gulf Cooperation Council countries are consistent with international regulations in terms of the pillars of contractual liability, its emergence, the elements of its emergence, and the compensation required when contractual liability arises, which falls within the framework of civil liability.
3. We have witnessed that Arab laws in general and Gulf laws, in particular, have approved responsibility for the actions of others (the vicarious responsibility), but with the availability of some conditions, including the existence of a subordination contract between the official and the subordinate, which was supported by Jordanian and Egyptian laws. Which is supported by the researcher.
4. Arab and Western regulations agree that compensation for damages may be either monetary or non-monetary (in kind), but views differ regarding compensation for lost profits according to Islamic law and also according to comparative Arab laws such as Egyptian and Jordanian law, where we find that Islamic law is divided between those who permit compensation for lost profits and those who do not permit it.
5. Views are unified between Islamic Sharia, the laws of the Gulf Cooperation Council, and international laws regarding the arbitration contract, as they all stipulate that the contract must be written.
6. Islamic law has emphasized on more than one occasion the subject of (sulh), meaning reconciliation between parties. It has also emphasized on more than one religious site the permissibility of arbitration in family disputes and

commercial disputes as well. We have also provided some illustrations from the life of the Prophet Muhammad of his practice of arbitration in resolving disputes between people even before Islam, and we have also provided examples from the Islamic Caliphate of the permissibility of arbitration.

7. The arbitration law as an independent law in the Gulf Cooperation Council countries is a recently issued law, unlike Islamic law, in which arbitration was found from the first moment in the Quranic verses that stipulated arbitration between husband and wife. It is also worth noting that Islamic law is the constitution of the Kingdom of Saudi Arabia, unlike Qatar and the Emirates, where Islamic law is considered one of the basic sources of legislation and not the only source.
8. The Kingdom of Saudi Arabia has an old law on arbitration, which has some defects that have been addressed by modern law, including the inadmissibility of arbitration in a language other than Arabic. The new arbitration law issued in the Kingdom of Saudi Arabia addressed this part by allowing arbitration to be conducted in any language chosen by the parties. This is consistent with the law of Qatar and the United Arab Emirates in this regard.
9. The arbitration law in the countries under study is considered to be the closest thing to international arbitration law (UNCITRAL rules), which the researcher sees as a valuable thing for the development of the arbitration sector.
10. The special arbitration law in the Kingdom of Saudi Arabia does not prevent women from being arbitrators, although this is still uncommon in the Kingdom of Saudi Arabia. It is also noted that from an Islamic point of view, there is a difference between the schools of jurisprudence regarding women's arbitration, as some schools permit it and others prohibit it. The researcher sees the need to include an explicit text in the arbitration law regarding the permissibility of women's arbitration in Saudi Arabia.
11. In both Qatar and the United Arab Emirates, the law explicitly states that no specific nationality or gender is required for the arbitrator, which the researcher supports. The researcher also sees the need for the Kingdom of Saudi Arabia to follow this approach.

Recommendations

1. Strengthening Arbitrator Training: It is suggested to implement ongoing training programs for arbitrators, with a focus on Islamic law and international arbitration practices, to ensure more informed and fair decisions.
2. Improving Transparency in Procedures: It is recommended to increase transparency in arbitral processes, including the publication of awards and documentation of proceedings, to foster confidence in the arbitration system.
3. Harmonization of Regulations: It is proposed to work toward harmonizing arbitration regulations among the United Arab Emirates, Qatar, and Saudi Arabia to facilitate the resolution of cross-border disputes and reduce legal uncertainty.
4. Promoting International Collaboration: It is recommended to strengthen collaboration with international arbitration institutions and participate in global forums to exchange best practices and experiences.
5. Development of Supporting Infrastructure: The need to develop a robust supporting infrastructure, including well-equipped and accessible arbitration centers, to facilitate the arbitration process is highlighted.
6. Promoting Awareness and Education: It is recommended that awareness campaigns and educational programs be implemented for businesses and legal professionals on the benefits and procedures of arbitration.

BIBLIOGRAPHY CITED

Authors:

- Abbadi, S. M. B. (2018). Arbitration in Saudi Arabia: The reform of law and practice.
- Abd al-Razzaq al-Sanhouri. (n.d.). Mediator in civil liability (Part 1). Egypt.
- Abdallah, A. K. (2020). Islamic Sharia and arbitration in GCC States: The way ahead. International Review of Law, 318.
- Abdul Aziz, M. (2022). The effectiveness of Sharia economic dispute resolution between religious court and national Sharia arbitration board. JISEL.
- Abdulla, M. I. A. (2017). Assessing the United Arab Emirates decisional law on arbitration.
- Abdullah, M. T. (2013). Role of UAE courts in international commercial arbitration.
- Abul-Enein, M. I. (2000). Liberal trends in Islamic law (Shari'a) on peaceful settlement of disputes. Journal of Arab Arbitration.
- Academy of the Arabic Language in Cairo. (1979). The philosophical lexicon (Prepared and printed by the General Authority for Amiri Press Affairs).
- Adams, C. (1976). Islamic faith. In R. Savory (Ed.), Introduction to Islamic Civilization.
- Adkins, A. W. H. (1960). Merit and responsibility: A study in Greek values. Oxford: Clarendon Press.
- Ahmed, B., Randeniya, C., Bandara, M., & Garg, T. (2014). Litigation and enforcement in the United Arab Emirates: Overview.
- Al Fahim, M. A. J. (2013). From rags to riches: A story of Abu Dhabi. Makarem G Trading and Real Estate LLC.
- Al Ghaydan, M. (1998). The judiciary in Saudi Arabia. Arab Law Quarterly, 13(3).

- Al Hamdani, A. J. T. (2019). Cancellation of the contract by individual will: Comparative study in civil law (1st ed.). Arab Center for Publishing and Distribution.
- Al Muhairi, B. S. A. (1996). The Islamization of laws in the UAE: The case of the Penal Code. Arab Law Quarterly, 11(4).
- Al Naddaf, H. (2015). Qatar. Global Arbitration Review, World Edition.
- Al Qahtani, A. H. (2016). The Dubai experience: Evaluating the effectiveness and efficiency of international commercial arbitration laws in the Gulf Arab Region (Doctoral dissertation, Macquarie University).
- Al Sharqawi, A. F. M. A. E., & Abu Yazid, A. F. M. (2016). Compensation for loss of profits in the Saudi administrative system and its judicial applications: A study compared to positive regulations and Islamic jurisprudence. Journal of the Faculty of Shari'a and Law Tattanta, 31(1).
- Al Tamimi, E. (2009). The Practitioner's Guide to Arbitration in the Middle East and North Africa.
- Alaessa, M. (2014). Saudi arbitration law and potential obstacles. Aleqt. Retrieved from https://www.aleqt.com/2014/12/04/article_911865.html
- Al-Ajouri, S. A. I. (2013). The contract theory of Sheikh Mustafa Al-Zarqa: A comparative jurisprudential study (PhD thesis).
- Al-Ammari, S. (2010). Saudi Arabia and the Onassis arbitration: A commentary. Journal of World Energy Law & Business, 3(3).
- Al-Ammari, S., & Martin, T. (2014). Arbitration in the Kingdom of Saudi Arabia. Arbitration International, 30(2).
- Al-Ammari, S., & Martin, T. A. (2014). Arbitration in the Kingdom of Saudi Arabia. Arbitration International, 30(2), 387-408.
- Al-Arari, A. Q. (2011). Sources of obligations, book two, civil responsibility (3rd ed.). Rabat.
- Al-Baharna, H. M. (1998). British extra-territorial jurisdiction in the Gulf 1913-1971: An analysis of the system of British courts in the territories of the British protected states of the Gulf during the pre-independence era (pp. 8–9). Slough: Archive Editions Ltd.

- Al-Daimi, A. (2013-2014). Provisions for compensation for damage in contractual liability (Supplementary note for a master's degree, Specialization in Contracts and Liability, Faculty of Law, Al-Akhdar University, Algeria).
- Aldajeh, B. M. (2020). The theoretical framework of the theory of civil responsibility. PalArch's Journal of Archaeology of Egypt/Egyptology, 17(6).
- Al-Darwish, T. (2019). Islamic law and ADR in the Arab Middle East. Journal of Law and Conflict Resolution, 11(3).
- Aldhafeeri, A. F. (2020). International commercial arbitration and arbitrators' gender: Saudi's perspective. Multi-Knowledge Electronic Comprehensive Journal for Education and Science Publication, 33.
- Al-Dhonun, H. A., & Al-Rahou, M. S. (2004). Al-Wajeez in the general theory of commitment (2nd ed.). Dar Wael for publication and distribution.
- Al-Emadi, T. (2011). Qatar arbitration law: Some central issues. QNRS Repository, 2011(1).
- Al-Faqah Islamic Complex. (n.d.). Al-Faqah Islamic Complex Magazine (No. 6).
- Alfatta, A. (2019). The impact of the Shari'ah on foreign direct investment and arbitration: The case of Saudi Arabia and its Vision 2030.
- Alghanim, B. (2020). The enforcement of foreign judgments in Kuwait. Journal of Private International Law, 16(3), 493-518.
- Al-Hafiz Zain al-Din Abd al-Rahman bin Ahmad bin Abd al-Rahman, known as Ibn Rajab Al-Hanbali. (n.d.). Jurisprudential rules. Dar Al-Kutub Al-Ilmiya.
- Al-Halibi, A. B. A. (1994). Moral responsibility and part thereof (1st ed.). Al-Rushd Library.
- Al-Hamid, S. b. A. (Ed.). (1418 AH). Encyclopedia of the freshness of bliss in the honorable ethics of the Messenger, may God bless him and grant him peace (1st ed., Vol. 8). Dar Al-Wasila for publication and distribution.
- Al-Hasnawi, H. H. R. (1999). Judicial compensation in contractual liability. House of Culture for Publishing and Distribution.
- Ali, H. (2006). The commentary on the Civil Code (damage). Wael Publishing House.

- Al-Issa, & Masoud, S. A. A. (2016). Law and custom in the United Arab Emirates.
- Aljohar, A. (2016). Finality of arbitral awards: Comparing approaches in Sharia law and international law (Doctoral dissertation, University of Essex).
- Al-Jurjānī, ʻA. I. M. Z. (n.d.). Al-taʻrīfāt. Dār al-Kitāb al-ʻArabī.
- Alkhamees, A. (2011). International arbitration and Sharia law: Context, scope, and intersections. Journal of International Arbitration, 28(3).
- Al-Khathlan, S. B. T. (n.d.). Time in debt and its jurisprudential rulings.
- Al-Matroudi, A. H. (2006). The Hanbali school of law and Ibn Taymiyyah: Conflict or conciliation. Routledge.
- Al-Mersal. (2020). Pillars of contractual liability and examples thereof. Retrieved from https://www.almrsal.com/post/955302
- Al-Naqmari, H. (2015–2016). Provisions for error in civil liability according to the Algerian Civil Code: A comparative study - A note introduction within the requirements for obtaining a master's degree in private basic law, Faculty of Law and Political Science, Abdelhamid Ben Badis University, Mostaganem.
- Al-Obaidli, J. M. A. (2016). Arbitration law in Qatar: The way forward (Doctoral dissertation).
- Al-Qarāfī, Shihāb al-Dīn. (n.d.). Al-furūq. N.p.: ʻĀlam al-Kutub.
- Alqudah, M. A. (2017). The impact of Sharia on the acceptance of international commercial arbitration in the countries of the Gulf Cooperation Council. Academy of Business & Economics Journal, 20(1). Retrieved from https://2u.pw/t2k1bBnF
- Alqudah, M. A. (2017). The impact of Sharia on the acceptance of international commercial arbitration in the countries of the Gulf Cooperation Council. Journal of Legal, Ethical and Regulatory Issues, 1.
- Al-Ramahi, A. (2008). Sulh: A crucial part of Islamic arbitration. Islamic Law and Law of the Muslim World Research Paper Series. Retrieved from http://eprints.lse.ac.uk/24598/1/WPS2008-12_Al-Ramahi.pdf
- Al-Ramahi, A. (2008). Sulh: A crucial part of Islamic arbitration.

- Al-Saadi, M. S. (n.d.). The clear explanation of civil law: The general theory of obligations, sources of obligation. Dar Al-Huda.
- Al-Sanhouri, A. (2000). The mediator in explanation of the new civil law (2): Theory of commitment in general evidence - Athar 1 commitment (3rd ed.). Beirut, Lebanon: Al-Halabi Human Rights Publications.
- Al-Sanhouri, A. R. (n.d.). Mediator in civil liability. Egypt.
- Al-Sanhouri, A. R. A. (2015). Mediator in the commentary of the new civil law: Theory of commitment in general, sources of commitment.
- Alshaali, A., & Alshaali, H. (2017). Mediation in the UAE: Law and Practice. The Journal of Private Equity, 21(3).
- Al-Shaheen, A. S. (1982). Definition, commentary (1402 AH - 1982 AD). Al-Risala Foundation.
- Alsirhani, A. (2019). The Refusal of Foreign Arbitral Awards in Saudi Arabia on the Grounds of Public Policy: An Issue of Fairness and Justice (Doctoral dissertation, Victoria University).
- Al-Tabbakh, S. (2008). Compensation for breach of contract: Practical application of civil liability in light of the judiciary and jurisprudence. House of Thought and Law.
- Altawyan, A. A. (2016, November). Arbitral Awards Under the New Saudi Laws and International Rules, Challenges and Possible Modernization. In 4th Academic International Conference on Interdisciplinary Legal Studies.
- Al-Yousef, A. B. A. (1433H). Debtor's financial procrastination. Journal of Shari'a and Islamic Studies, 27(90), Kuwait University.
- Al-Zarqa, M. (n.d.). Is it legally acceptable to judge the delaying debtor by compensating the creditor?
- American Arbitration Association. (2021). Mediation. Retrieved from https://www.adr.org/Mediation
- Amin, S. H. (1984). Remedies for breach of contract in Islamic & Iranian law.
- Amiri, et al. (2019). Damage in contractual liability (PhD thesis, Mouloud Mamari University, Faculty of Law and Political Science).

- Amnesty International. (n.d.). Strategic litigation. Retrieved from https://www.amnesty.org/en/strategic-litigation/
- Andenæs, M. T., & Fairgrieve, D. (Eds.). (2015). Courts and comparative law. Oxford University Press, USA.
- Anderson, M., & Schachter, V. (2012). Arbitration of international intellectual property disputes. Kluwer Law International.
- Ansary, A.F. (2008). A brief overview of the Saudi Arabian legal system. Hauser Global lex. Retrieved from https://tinyurl.com/32c4hs98
- Arenella, P. (1990). Character, choice, and moral agency. Social Philosophy & Policy, 7.
- Aristotle. (2000). Nicomachean ethics (R. Crisp, Trans.). Cambridge University Press.
- Asaro, P. M. (2007). Robots and responsibility from a legal perspective. Proceedings of the IEEE, 4.14.
- Ashford, P. (2021). The power to join parties or consolidate separate arbitrations in international arbitration. Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, 87(3).
- Baamir, A., & Bantekas, I. (2009). Saudi law as Lex Arbitri: Evaluation of Saudi arbitration law and judicial practice. Arbitration International, 25(2).
- Babar, Z. (2017). The "Enemy within" Citizenship-Stripping in the Post–Arab Spring GCC. Middle East Journal, 71(4).
- Badawy, T. (2012). The general principles of Islamic law as the law governing investment disputes in the Middle East. Journal of International Arbitration, 29(3), 255-261.
- Badir, A. A. (2007). Compensation for damage to tort liability: Comparative study (Master's thesis, Mouta University, Jordan).
- Badr, A. A. (2019). Jurisdictional challenges and enforceability of arbitral awards in the UAE (Doctoral dissertation, Université Paris Cité).
- Bälz, K., & Klaiber, M. (2015). Qatar. In A. Bülow et al. (Eds.), International legal transactions in civil and commercial matters (41st ed., Vol. 6). Munich: Beck.

- Bantekas, I. (2010). The proper law of the arbitration clause: A challenge to the prevailing orthodoxy. Journal of International Arbitration, 27(1), 2-4.
- Bantekas, I. (2020). Language selection in international commercial arbitration. Ohio State Journal on Dispute Resolution.
- Bantekas, I., & Ullah, I. (2021). Remedies against incomplete, erroneous and unclear international arbitral awards. North Carolina Journal of International Law, 46 (forthcoming).
- Bar-Gill, O., & Ben-Shahar, O. (2009). An information theory of willful breach. Michigan Law Review.
- Barnes, J. (1984). The Complete Works of Aristotle: The Revised Oxford Translation (2 vols.). Princeton University Press.
- Barnett, R. E., & Oman, N. B. (2016). Contracts: Cases and doctrine. Wolters Kluwer.
- Bayat, M. (2009). The basics of the Qatari judicial system, past and present. Journal of Economics and Law of University of Damascus.
- Bayles, M. D. (1982). Character, purpose, and criminal responsibility. Law & Philosophy, 1(1).
- Beale, H. G., Bishop, W. D., & Furmston, M. P. (2019). Contract law: Text, cases, and materials (8th ed.). Oxford University Press.
- Behrens, J. (2002). The history of mediation of probate disputes. Arbitration, 68(2).
- Belhaj, A. (n.d.). The General Theory of Obligation in Algerian Civil Law, Part 1.
- Belkhuja, F. N. M. (2022). Error in civil liability (Ph.D. thesis). Al-Masila, Algeria.
- Bělohlavek, A. J. (n.d.). B2C: Consumer protection in arbitration.
- Ben-Shahar, O., & Porat, A. (2009). Foreword: Fault in American contract law. Michigan Law Review.
- Berrmann, G. A., et al. (1989). French law: Constitution and selective legislation.

- Beswetherick, M., & Hutchison, K. (2012). Enforcement of arbitration awards: Moving in the right direction. Clyde and Co. Retrieved from http://www.clydeco.com
- Bin Nasir, M. B., & Belkhuja, F. (2022). Error in civil liability (Ph.D. thesis). Al-Masila, Algeria.
- Binder, P. (2010). International commercial arbitration and conciliation in UNCITRAL Model Law jurisdictions (3rd ed.).
- Binford, G. (2007). AHLA seminar material, long term care and the law. Orlando, FL, February 21, 2007.
- Birmingham, R. L. (1969). Breach of contract, damage measures, and economic efficiency. Rutgers Law Review.
- Blackaby, N., Partasides, C., & others. (2015). Redfern and Hunter on international arbitration: Student version (6th ed.). Oxford University Press.
- Blackaby, N., Partasides, C., & Others. (n.d.). International arbitration.
- Blanke, G. (2018). Free zone arbitration in the United Arab Emirates: DIFC v. ADGM: (Part I). Journal of International Arbitration, 35(5).
- Blanke, G., & Nasif, K. (2011). Arbitration in the UAE. Habib Al Mulla & Company.
- Bohr, N. (2010). An expert is a person who has made all the mistakes that can be made in a very narrow field.
- Born, G. B. (2010). International arbitration and forum selection agreements: Drafting and enforcing (3rd ed.). Kluwer Law International.
- Born, G. B. (2014). International commercial arbitration (2nd ed.). Kluwer Law International.
- Boudi, H. M. M. (2006). Guarantees of the parties before the judiciary in Islamic law. Dar Al-Jami'a Al-Jadida, Alexandria.
- Bowen v. Massachusetts, 487 U.S. 879, 918-19 (1988) (Scalia, J., dissenting).
- BP v. Libya. (1979). 53 International Law Reports.
- Bran, R. B. (1985). A motivational theory of excuses in the criminal law. In J. Pennock & J. Chapman (Eds.), Criminal Justice, Nomos 27. New York University Press.

- Brand, J. L. (1986). Aspects of Saudi Arabian law and practice. BC International & Comparative Law Review, 9(1).
- Brand, R. B. (1985). A motivational theory of excuses in the criminal law. In J. Pennock & J. Chapman (Eds.), Criminal Justice, Nomos 27 (pp. 165-198). New York University Press.
- Brawn, D. (2014). Commercial arbitration in Dubai. Management, 80(2). Retrieved from https://nz.sa/GKQmH
- Bremer, N. (2016). Seeking recognition and enforcement of foreign court judgments and arbitral awards in the GCC countries. McGill Journal of Dispute Resolution, 3, 37.
- BusinessDictionary.com. (n.d.). Online Dictionary. Retrieved from http://www.businessdictionary.com
- Calliess, G. P. (2007). The making of transnational contract law. Indiana Journal of Global Legal Studies, 14(2).
- Cambridge University Press. (n.d.). Cambridge Online Dictionary. Retrieved from http://dictionary.cambridge.org
- Carbonneau, T. E. (2007). Cases and materials on arbitration law and practice.
- Carbonneau, T. E. (2011). Carbonneau on international arbitration: Collected essays. JurisNet.
- Caron, D. D., & Caplan, L. M. (2013). The UNCITRAL arbitration rules: A commentary. Oxford University Press.
- Case, C. (2002). 168/00 Simone Leitner. TUI Deutschland GmbH & Co KG.
- Causal Liability. (2022). Legal Dictionary. The Free Dictionary. Retrieved from https://legal-dictionary.thefreedictionary.com/causal+liability
- Chalmers, J., & Leverick, F. (2008). Fair labelling in criminal law. Modern Law Review, 71.
- Charleston School of Law. (n.d.). Academic programs. Charleston School of Law. Retrieved from https://charlestonlaw.edu/academic-programs/
- Chartier, Y. (1983). La réparation du préjudice dans la responsabilité civile. Dalloz.

- Chen, F. (2001). The new era of Chinese contract law: History, development, and a comparative analysis. Brooklyn Journal of International Law, 27, 153.
- Chen, L. (2018). Damages and specific performance in Chinese contract law. In L. A. Dimatteo & L. Chen (Eds.), Chinese Contract Law: Civil and Common Law Perspectives. Cambridge University Press.
- Choi, D. (2019). Joinder in international commercial arbitration. Arbitration International. https://doi.org/10.1093/arbint/aiz001
- Clark, C. E. (1932). The restatement of the law of contracts. Yale Law Journal, 42.
- CNN. (2013). Meet Arwa Al-Hujaili: Saudi Arabia's first female lawyer. CNN Business. Retrieved from https://edition.cnn.com/2013/05/09/business/saudi-arabia-first-female-lawyer/index.html
- Cohen, G. M. (1994). The fault lines in contracts damages. Virginia Law Review.
- Cohen, G. M. (2009). The fault that lies within our contract law. Michigan Law Review.
- Coleman, J. L. (1987). The structure of tort law.
- Collins English Dictionary: HarperCollins Publishers. (n.d.). Collins English Dictionary (© HarperCollins Publishers). Retrieved from http://www.collinsdictionary.com/dictionary/english
- Collins, H. (1990). Ascription of legal responsibility to groups in complex patterns of economic integration. Modern Law Review.
- Comair-Obeid, N. (2014). Salient issues in arbitration from an Arab Middle Eastern perspective. Arbitration Brief, 4, 52.
- Concise Oxford Dictionary. (1964). Concise Oxford Dictionary (5th ed.). Oxford University Press.
- Construction Specification Institute. (2011). Construction contract administration practice guide. John Wiley & Sons.
- Contract Liability. (n.d.). Retrieved from https://tinyurl.com/2h9p4hkc

- Cook, A. (2014). Kompetenz-kompetenz: Varying approaches and a proposal for a limited form of negative kompetenz-kompetenz. Pepperdine Law Review, 42, 17.
- Cooley, J. W. (2005). The Arbitrator's Handbook (2nd ed.). NIFTA.
- Corbin, A. L. (1916). Offer and acceptance and some of the resulting legal relations. Yale Law Journal.
- Cordeiro, A. (2005). Tratado de direito civil. Coimbra.
- Cornock, M. (2011). Legal definitions of responsibility, accountability and liability. Nursing Children & Young People, 23(3).
- Cressey, J., & McKendrick, E. (2014). Contract Law.
- Daraz, A. (1982). The code of ethics. In A. S. Al-Shaheen (Ed.), Definition, commentary, and commentary (4th ed.). Al-Risala Foundation.
- Daraz, A. (n.d.). The Book of Religion.
- De Rey, S., & Chen, L. (2021). Non-monetary relief for breach of contract: A European perspective on Chinese contract law. Asia Pacific Law Review, 29(2).
- Demasse v. ITT Corp., 984 P.2d 1138, 1148 (Ariz. 1999).
- Dendorfer, R., & Lack, J. (2007). The interaction between arbitration and mediation: Vision vs. reality. Dispute Resolution International, 1, 73.
- Deye, J. R., & Britton, L. L. (1994). Arbitration by the American Arbitration Association. Notre Dame Law Review, 70(2).
- Dictionary.com. (n.d.). Online Dictionary. Retrieved from http://dictionary.reference.com
- Dimatteo, L. A. (1997). An international contract law formula: The informality of international business transactions plus the internationalization of contract law equals unexpected contractual liability. Syracuse Journal of International Law & Commerce, 23(67).
- Dobbs, D. (1993). The handbook on the law of remedies. West Publishing.
- Doi, A. R. I. (1984). Shariah: The Islamic Law.
- Domke, M. (1991). Domke on commercial arbitration (Rev. ed.). West Publishing.

- Dörrbecker, A., & Rothe, O. (2005). Introduction to the US-American legal system for German-speaking lawyers and law students (Vol. 1, 2nd ed.). Alpmann und Schmidt Juristische Lehrgänge.
- Dowers, N. A. (2015). Interface between jurisdiction instruments and arbitration.
- Drahozal, C. R. (2004). A behavioral analysis of private judging. Law & Contemporary Problems, 67(3).
- Drahozal, C. R. (2005). Contracting out of national law: An empirical look at the new law merchant. Notre Dame Law Review, 80(3).
- Dressier, J. (1988). Reflections on excusing wrongdoers: Moral theory, new excuses, and the model penal code. Rutgers Law Journal, 19.
- Dressier, J. (1988). Reflections on excusing wrongdoers: Moral theory, new excuses, and the Model Penal Code. Rutgers Law Journal.
- Dubber, M. D., & Kelman, M. G. (2005). American Criminal Law: Cases, Statutes, and Comments. Foundation Press.
- Duff, A. (2009). Legal and moral responsibility. Philosophy Compass, 4(6).
- Eaton, G. (1985). Islam and the destiny of man. State University of New York Press.
- Eder, B. (2016, April 28). Does arbitration stifle the development of the law: Should Sect. 69 be revitalised? Keynote address at the Chartered Institute of Arbitrators (CIArb) London branch AGM.
- Eisenberg, M. A. (2008). The role of fault in contract law: Unconscionability, unexpected circumstances, interpretation, mistake, and nonperformance. Michigan Law Review.
- Eisenberg, M. A. (2009). The role of fault in contract law: Unconscionability, unexpected circumstances, interpretation, mistake, and nonperformance. Michigan Law Review.
- El Maknouzi, M. E. H., et al. (2023). Islamic commercial arbitration and private international law: Mapping controversies and exploring pathways towards greater coordination. Humanities and Social Sciences Communications, 10(1), 1-8.

- El Maknouzi, M. E. H., Jadalhaq, I. M., Abdulhay, I. E., & Alqodsi, E. M. (2023). Islamic commercial arbitration and private international law: Mapping controversies and exploring pathways towards greater coordination. Humanities and Social Sciences Communications, 10(1), 1-8.
- El Sayed, M. I. N. A. (2022). The Role of Arbitrator in the Arbitration Process (Doctoral dissertation, The British University in Dubai).
- El-Ahdab, A. H. (1999). Arbitration with the Arab countries. The Hague: Kluwer Law International.
- Ellenberger, J. (2011). Introduction to § 145. In Palandt, Bürgerliches Gesetzbuch, Beck'sche Kurz-Kommentare (Vol. 7, 70th ed.). CH Beck.
- Enneking, L. F. H. (2012). Foreign direct liability and beyond: Exploring the role of tort law in promoting international corporate social responsibility and accountability.
- Eshleman, A. (2014). Moral responsibility.
- Esposito, J. L. (1991). Islam: The straight path. Oxford University Press. (Original work published 1988).
- Esposito, J. L. (2003). The Oxford Dictionary of Islam (1st ed.). Oxford University Press.
- European Commission. (2008). European judicial network in civil and commercial matters: Mediation and arbitration.
- Faizullah, M. F. (1981). The theory of guarantee in general Islamic jurisprudence. Kuwait.
- Farah, A. Q., & Hattab, R. M. (2020). The application of Shari'ah finance rules in international commercial arbitration. Utrecht Law Review, 16(1), 117–139. https://utrechtlawreview.org/articles/10.36633/ulr.592
- Farnsworth, E. A. (1985). Causation in contract damages. Cornell Law Review, 71(2).
- Farnsworth, E. A. (1999). Contracts (3rd ed.).
- Farnsworth, E. A. (2004). Contracts (4th ed.).
- Farnsworth, E. A. (2004). Farnsworth on Contracts § 12.18.
- Farttoos, F. K., & Musa, H. F. (2022). Compensation for damages caused by automatic contracts. World Bulletin of Management and Law.

- Ferrari, F. (1992). Comparative ruminations on the foreseeability of damages in contract law. Louisiana Law Review.
- Fischer, J. M. (1999). Recent work on moral responsibility. Ethics, 110.
- Fisher, R., Ury, W., & Patton, B. (2011). Getting to Yes: Negotiating agreement without giving in.
- Flanner, L. (2013). Chapter 11: The English statutory framework. In Arbitration in England, with chapters on Scotland and Ireland.
- Fleischer, L. (2007). Causation in contract law. Journal of Contract Law, 23(2).
- Fletcher, G. (1978). Rethinking criminal law (ch. 10.3). Boston: Little, Brown.
- Fouchard, G., Gaillard, E., & Goldman, J. (1999). On international commercial arbitration. Kluwer Law International.
- Friedmann, W. (2001). A comment on Fuller and Perdue, the reliance interest in contract damages. Issues in Legal Scholarship, Symposium: Fuller and Perdue. Retrieved from http://www.bepress.com/ils/iss1/art3
- Fuller, L. W., & Perdue, W. (1936). The reliance interest in contract damages. Yale Law Journal, 46(1).
- Gaillard, E., & Savage, J. (Eds.). (1999). Fouchard Gaillard Goldman on International Commercial Arbitration. Kluwer Law International.
- Gibran, M. (2003). Lexicon of Al-Raed. Dar Al-Ilm for Millions.
- Gibson Dunn. (n.d.). Litigation and enforcement in the GCC.
- Gilbert-Ash (Northern) Ltd. v. Modern Engineering (Bristol) Ltd., [1974] AC 689.
- Goldberg, J. C. P., & Zipursky, B. C. (n.d.). Tort law and responsibility. Retrieved from https://tinyurl.com/4rrvw5xw
- Goltsman, M., et al. (2009). Mediation, arbitration, and negotiation. Journal of Economic Theory, 144(4).
- Gotanda, J. Y. (2006). Damages in lieu of performance because of breach of contract. Public Policy Research Paper, 2006-8.
- Gottwald, et al. (2015). Katar. In A. Bülow et al. (Eds.), Internationaler Rechtsverkehr in Zivil- und Handelssachen (41st ed., Vol. 6). Munich: Beck.

- Graham, K., & Love, A. (2014). Employment Mediation. Bloomsbury Professional.
- Granier, T. (2015). Compétence et arbitrage. Répertoire de droit des sociétés, C(201), 3.
- Greenberg, S., Kee, C., & Clause, R. (2018). International commercial arbitration. Kluwer Law International.
- Greenwood, L., & Baker, C. M. (2012). Getting a better balance on international arbitration tribunals. Arbitration International, 28(4).
- Guttentag, I. (Ed.). (1897). Minutes of the Commission for the Second Reading of the Draft of the Civil Code (Vol. I). Berlin.
- Haber v. St. Paul Guardian Ins. Co., 137 F.3d 691, 702 (2d Cir. 1998).
- Hacking, L. (1999). Arbitration law reform in Europe. Arbitration, 65(2).
- Hadley v. Baxendale, 9 Exch. 341, 156 Eng. Rep. 145 (1854).
- Haikola, E. (2013). Arbitral tribunals and national courts: Constant battle or efficient cooperation? (Master's thesis, University of Lapland).
- Hall, R. M., & Rothman, R. L. (1999). Arbitration of insurance disputes. The Business Lawyer.
- Hammad, D. (2016). General theory of commitments: Section II, Commitment provisions. Dar Al-Sanhouri Library.
- Hammad, N. (1405H). The legitimate proponents of the debtor's procrastination. Economics Research Journal Islam, 3(1).
- Hanessian, G., & Casey, J. B. (2020). Virtual arbitration hearings when a party objects: Are there enforcement risks? NY Dispute Resolution Lawyer, 13(2), 25.
- Harb, J. P., & Leventhal, A. G. (2013). The new Saudi arbitration law: Modernization to the tune of Sharia. Journal of International Arbitration, 30(2).
- Harper, D. (2017). Online Etymology Dictionary. Lancaster, Pennsylvania. Retrieved from https://www.etymonline.com/
- HarperCollins Publishers. (n.d.). Collins COBUILD Advanced Learner's Dictionary (© HarperCollins Publishers).

- Harpole, S. A. (2016). Language in arbitration procedure: A practical approach for international commercial arbitration. Contemporary Asia Arbitration Journal, 9.
- Hausmaninger, C. (n.d.). ZPO § 594. In Hans W. Fasching (Ed.).
- Hedemann, J. W. (1935). Der Dresdner Entwurf von 1866. Ein Schritt auf dem Weg zur deutschen Rechsteinheit. Berlin: I. Guttentag.
- Hillman, R. A. (1981). Debunking some myths about unconscionability: A new framework for U.C.C. Section 2-302. Cornell Law Review, 67, 1.
- Hillman, R. A. (2014). Principles of contract law (3rd ed.).
- Hillman, R. A. (2014). The future of fault in contract law. Duquesne Law Review.
- Holbrook v. United States, 194 F. Supp. 252, 255 (D. Or. 1961).
- Hosking, R. (2015). The role of the court and experts in international arbitration.
- Hossain, M. S. (2013). Arbitration in Islamic law for the treatment of civil and criminal cases: An analytical overview. Journal of Philosophy, Culture and Religion, 1(5), 1-13.
- Houghton Mifflin Harcourt. (2010). Webster's New World College Dictionary (4th ed.; © 2010).
- HR 20 September 1985, NedJur 1986, no. 211.
- Hussein Amer, Abd al-Rahim Amer. (n.d.). Civil Liability: Tort and Contract (Vol. 0). Dar al-Ma'arif.
- Hussein Zardoumi. (n.d.). Damage in Contractual Liability [Memorandum to Obtain a Master's Degree in Law, Specialization Administrative Law]. Department of Law, Faculty of Law and Political Science, Mohamed Kheidar University, Biskra.
- Ibn Rajab Al-Hanbali, A. Z. (795 AH). Jurisprudential rules. Dar Al-Kutub Al-Ilmiya.
- Ibrahim Ati & Fatima Balfaqeeh. (2023). UAE's arbitration law transformation through Federal Decree Law No. 15 of 2023: Innovations, ethical compliance for arbitrators, and enhanced procedural roles for arbitral institutions. Kluwer Arbitration Blog. Retrieved from https://tinyurl.com/4nh3tauj

- Ilias Bantekas. (2021). Party autonomy and default rules regarding the choice of number of arbitrators. Cardozo J. Conflict Resol., 22(1), 31.
- International Centre for Settlement of Investment Disputes (ICSID). (2013). The ICSID caseload statistics. ICSID.
- International Centre for Settlement of Investment Disputes. (2006). Convention on the settlement of investment disputes between states and nationals of other states. Retrieved from https://goo.su/Wm2l
- International Chamber of Commerce. (2017). ICC dispute resolution bulletin: Confidentiality in arbitration.
- Islam, M. Z. (2012). Provision of alternative dispute resolution process in Islam. Journal of Business and Management, 6(3), 31-36.
- Islamic Fiqh Academy. (1417). Islamic Fiqh Academy journal (Vol. 4, No. 9).
- Islamic Fiqh Council. (1432). Islamic Fiqh Council journal (Vol. 26).
- Islamic Society of Jurisprudence of the Association of the Islamic World. (n.d.). Resolutions of the Islamic Society of Jurisprudence.
- Iyad Muhammad Jad Al-Haq. (2012). The extent of necessity of error as a pillar of negligence in the Palestinian Civil Law Project: An analytical study. Islamic University Journal of Islamic Studies, 20(1).
- Jacobi, O., & Weiss, A. (2013). Allocation of fault in contract law. International Review of Law and Economics.
- Jansen, N., & Zimmermann, R. (2011). Contract formation and mistake in European contract law: A genetic comparison of transnational model rules. Oxford Journal of Legal Studies, 31(4).
- Jeffrey, D. (1952). The Qur'an as Scripture (1st ed.).
- Journal of International Arbitration. (2008). Arbitration in the Arab World, 25(2).
- Journal of Research and Studies. (2022). Offer and acceptance in the electronic contract in the light of the Algerian civil law, 19(2), 307-332. Retrieved from https://tinyurl.com/mpfubjpu
- Juma, A. R. A. (2006). Al-Wajeez in explanation of the Jordanian civil law (Provisions of commitment) (1st ed.). Wael Publishing House.

- Kadish, S. (1987). Excusing crime. In J. Kadish (Ed.), Blame and punishment (pp. 81-106). New York: Macmillan.
- Kamāl al-Dīn, Ibn Muḥammad. (n.d.). Sharḥ fatḥ al-qadīr. Dār al-Fikr.
- Karrer, P. A. (2004). Responsibility of arbitrators and arbitral institutions. In L. W. Newman & R. D. Hill (Eds.), The Leading Arbitrators' Guide to International Arbitration. Juris Publishing.
- Kathrein, R., & Magraw, D. M. (Eds.). (1987). The convention for the international sale of goods: A handbook of basic materials.
- Katz, A. (1990). The strategic structure of offer and acceptance: Game theory and the law of contract formation. Michigan Law Review.
- Khadduri, M. (1984). The Islamic conception of justice. The Johns Hopkins University Press.
- Khoukaz, G. (2017). Sharia law and international commercial arbitration: The need for an intra-Islamic arbitral institution. Journal of Dispute Resolution, 2017.
- Kilian, M., & Dux, B. (2005). La loi sur la médiation. ZKM: Zeitschrift für Konfliktmanagement.
- Kluwer Arbitration Blog. (2015, July 1). The evolution of arbitration in the Arab world. Kluwer Arbitration. Retrieved from https://goo.su/XuXS
- Korba, R. (2013). The Judge's Authority in Estimating Compensation: A Study in the Context of Contractual Liability. Faculty of Law.
- Kornhauser, L. (1982). An economic analysis of the choice between enterprise and personal liability for accidents. California Law Review.
- Kraakman, R. (1984). Corporate liability strategies and the costs of legal controls. Yale Law Journal.
- Kraakman, R. (1986). Gatekeepers: The anatomy of a third-party enforcement strategy. Journal of Law, Economics & Organization.
- Kramer, E. A. (2006). Introduction to § 145. In F. J. Säcker (Ed.), Munich Commentary on the Civil Code (Vol. I, 5th ed.). CH Beck. (beck-online). Retrieved from https://beck-online.beck.de
- Kröll, S. M., Lew, J. D. M., & Mistelis, L. A. (2003). Chapter 6: Arbitration agreements - Autonomy and applicable law. In J. D. M. Lew, L. A.

Mistelis, & S. M. Kröll (Eds.), Comparative international commercial arbitration. Kluwer Law International.

- Kuckenburg, J. (1997). Contractual relationships between ICC, parties, and arbitrators. In DIS Materials Volume 1.
- Kurkela, E. (2015). Competition laws in international arbitration. Kluwer Law.
- Kutty, F. (2006). The Shari'a factor in international commercial arbitration. Loyola of Los Angeles International and Comparative Law Review, 28, 565-588.
- Kutty, F. (2006). The Shari'a factor in international commercial arbitration. Major Research Paper, Part Time LL.M. Program, Osgoode Hall Law School, York University. Retrieved from https://ssrn.com/abstract=898704
- Kuwait v. AMINOIL, 21 International Legal Materials (1982).
- Kuwaiti Legal Dictionary. (2018). Litigation.
- Kwan, J., & Teale, E. (2006). Arbitration in the United Arab Emirates: The traps, the tricks, and tips for the unwary. International Arbitration Law Review.
- Kyprianou, A. L. (2023). The Autonomous Theory of International Commercial Arbitration: An Autopoietic Perspective (Doctoral dissertation, University of Leicester).
- Lacey, N. (1988). State punishment (Ch. 3). Routledge.
- Landes, W. M., & Posner, R. A. (1980). Joint and multiple tortfeasors: An economic analysis. Journal of Legal Studies.
- Law Insider. (n.d.). Legal responsibility. Retrieved from https://tinyurl.com/2wdr3a44
- Law.com Legal Dictionary. (n.d.). Retrieved from https://www.law.com/
- Lawyers Arbitration Letter. (1981). AAA, Vol. 5 No. 2 Supplement.
- Lee, C. E. (2013). More opt for arbitration to settle commercial disputes in the Middle East. Saudi Gazette. Retrieved from: https://goo.su/4uJrXFT
- Legal Information Institute. (n.d.). Cornell Law School. https://www.law.cornell.edu/

- LegalMatch. (n.d.). LegalMatch. Retrieved from https://www.legalmatch.com/
- Lew, J. D. M., Mistelis, L. A., & Kröll, S. M. (2003). Comparative International Commercial Arbitration (1st ed.). Kluwer Law International.
- LIAMCO v. Libya. (1977, April 12). Award. Yearbook VI (1981).
- Libyan American Oil Co. (LIAMCO) v. Libyan Arab Republic (1977). 20 I.L.M., 1 (1981).
- Liebesny, H. (1975). The law of the Near East and Middle East: Readings, cases and materials.
- Lipsky, D. B., & Fincher, R. D. (2009). Alternative Dispute Resolution in Healthcare. Journal of Health Law and Policy.
- Longman Dictionary of Contemporary English Online. (n.d.). Retrieved from https://www.ldoceonline.com/
- Luscombe, S. (2015). British Empire: Middle East: Qatar. Retrieved from http://www.britishempire.co.uk/maproom/qatar.htm
- Maalouf, L. (2003). Al-Munajjid in Language and Information (1st ed.). Dar Al-Mashreq.
- Macaulay, S. (1985). An empirical view of contract. Wisconsin Law Review.
- Macmillan Dictionary. (n.d.). Retrieved from http://www.macmillandictionary.com
- Mahmassani, S. (2nd ed.). (n.d.). The legislative situation in the Arab countries: Its past and present. Dar El-Elm Lil Malain.
- Maita, A. (2013). Development of a commercial arbitration hub in the Middle East: Case study—the state of Qatar. International Journal of Arbitration Studies, 15(3).
- Majali, A. (2000). The extent of compensation for damage in contractual liability: A comparative study in Algerian and Mauritanian civil law.
- Makdisi, G. (1985). Legal history of Islamic law and the English common law: Origins and metamorphoses. Cleveland State Law Review, 34, 3-6.
- Malacka, M. (2013). Evidence in international commercial arbitration. International and Comparative Law Review, 13(1).

- Mamoun, A. A.-R. (1986). Contractual responsibility for the action of others. Cairo: Dar Al-Nahda Al-Arabiya.
- Mansour, A. M. (2001). The general theory of obligations (1st ed.). North Sources. The Scientific House & The House of Culture.
- Manzini, P., & Mariotti, M. (2002). Arbitration and mediation: An economic perspective. IZA Discussion Papers, No. 528. Institute for the Study of Labor (IZA). Retrieved from https://tinyurl.com/y44fjpbf
- Mark, S. (1992). Al-Wafi explanation of civil law (5th ed., M 1 harmful act). Knowledge Facility.
- Mark, S. (1998). In the commentary of civil law: The obligations in harmful acts and civil responsibility.
- Marschall, P. H. (1982). Willfulness: A crucial factor in choosing remedies for breach of contract. Arizona Law Review.
- Martin Domke. (1991). Domke on commercial arbitration (Rev. ed.).
- Matthaei, L. E. (1908). The place of arbitration and mediation in ancient systems of international ethics. The Classical Quarterly, 2(4).
- McCormick, C. T. (1935). Handbook on the law of damages (n.10).
- McGrath, S. K., & Whitty, S. J. (2018). Accountability and responsibility defined. International Journal of Managing Projects in Business.
- McGuire, J. E., & Hinchey, J. W. (2003). Mediation and other non-binding ADR processes in real estate disputes. Journal of Real Estate Research.
- McKinsey & Company. (n.d.). Petrodollars: Fuelling global capital markets. McKinsey & Company.
- Md Zahidul Islam. (2012). Provision of alternative dispute resolution process in Islam. Journal of Business and Management, 6(3).
- Merkin, R., & Flannery, L. (2008). Arbitration Act 1996 (4th ed.). MPG Books.
- Mohammed, N. (1988). Principles of Islamic contract law. Journal of Law and Religion, 6(1).
- Mohtashami, R. (2008). Recent arbitration-related developments in the UAE. Journal of International Arbitration, 25(5).

- Moore, M. S. (1990). Choice, character, and excuse. Social Philosophy & Policy, 7(1).
- Moreau, B., Glucksmann, É., & Feng, P. (2016). Arbitrage international. Répertoire de droit commercial, A(25).
- Mosten, F. S. (2012). Mediation and collaborative law practice. LexisNexis.
- Mousa, R. (2006). Al-Madkl Ela Drast Al-Qanoon (The Introduction to the Study of Law) (2nd ed.).
- Murphy, C. P. (2006). Money as a specific remedy. Alabama Law Review.
- Mustill, M. J., & Boyd, S. C. (2001). Commercial arbitration (2nd ed.). Butterworths.
- National Institute of Justice. (2018). Mediation. Retrieved from https://goo.su/rc0ZgI
- Nesheiwat, F., & Al-Khasawneh, A. (2015). The 2012 Saudi Arbitration Law: A comparative examination of the law and its effect on arbitration in Saudi Arabia. Santa Clara Journal of International Law.
- Nouiri, A.-B. S. W. (2021). Corner error in civil liability (PhD thesis). Al-Masila.
- Nurmohamed, R. (2020). Shari'a law and its impact on the development of Muslim and non-Muslim business relations in the United Arab Emirates. Law and Development Review, 13(2).
- Nuwayri Afaf-Bin Saleh Wissam. (2021). Corner error in civil liability (PhD thesis). Masila.
- Octagon Gas Sys., Inc. v. Rimmer, 995 F.2d 948, 953 (10th Cir. 1993).
- Odeh, A. Q. (n.d.). Criminal legislation compared to positive law (1st ed). Dar Al Orouba.
- Onyema, E. (2017). The jurisdictional tensions between domestic courts and arbitral tribunals. Journal of International Arbitration, 34(3).
- Oqab, T. (2005). The legal basis for compensation: A comparative study (Unpublished PhD thesis). Amman University Arabic for Postgraduate Studies, Oman, Jordan.

- Oxford University Press: Oxford University Press. (n.d.). Oxford Learner's Dictionaries. Retrieved from https://www.oxfordlearnersdictionaries.com/
- Patai, R. (1958). The Kingdom of Jordan. Princeton University Press.
- Penguin Random House LLC. (2019). Definition of arbitration. In Cambridge Academic Content Dictionary (modified entries © 2019). Penguin Random House LLC.
- Pereira, J. C. (2019). The genesis of the revolution in contract law: Smart legal contracts. In Proceedings of the 12th International Conference on Theory and Practice of Electronic Governance.
- Perry, S. R. (2001). Responsibility for outcomes, risk, and the law of torts. In G. Postema (Ed.), Philosophy and the law of torts. Cambridge University Press.
- Philips, A. A. B. (n.d.). The evolution of fiqh (1st ed.). International Islamic Publishing House.
- Pickavance, J. (2018). Construction Arbitration Handbook (1st ed.). Wiley.
- Pierre Tercier & Pascal Pichonnaz. (2012). Le droit des obligations. Schulthess.
- Pillsbury, S. H. (1992). The meaning of deserved punishment: An essay on choice, character, and responsibility. Indiana Law Journal.
- Pincoffs, E. L. (1973). Legal responsibility and moral character. Wayne Law Review, 19.
- Pirsig, M. E. (1956). Some comments on arbitration legislation and the Uniform Act. Vanderbilt Law Review.
- Posner, E. A. (2009). Fault in contract law. Michigan Law Review.
- Posner, R. A. (1977). Economic analysis of law (§ 4.1).
- Posner, R. A. (2009). Let us never blame a contract breaker. Michigan Law Review.
- Poudret, J. F., & Besson, S. (2007). Comparative Law of International Arbitration. Kluwer Law International.

- Protokolle der Kommission für die Zweite Lesung des Entwurfes des Bürgerlichen Gesetzbuchs, Band I. (1897). Berlin.
- Pusceddu, Piergiuseppe. (2019). Book review: The Liability of Arbitral Institutions: Legitimacy Challenges and Functional Responses, by Barbara Alicja Warwas. Asian International Arbitration Journal, 15(1).
- Queen Mary University of London. (n.d.). Queen Mary International Arbitration Survey. Retrieved from https://arbitration.qmul.ac.uk/research/index.html
- Rahman, A. I. (n.d.). Shariah: The Islamic law.
- Rahman, F. (1968). Islam.
- Rahman, M. M. (2018). Islamic perspective of alternative dispute resolution (ADR). Journal of Asian and African Social Science and Humanities, 4(2), 28-44.
- Razeeq, M. (2006). Al-Madkl ila Drast al-Qanoon [The introduction to the study of law] (2nd ed.).
- Redfern, A., & Hunter, M. (2015). Law and practice of international commercial arbitration (6th ed.). Sweet & Maxwell.
- Remón Peñalver, J., & Allan, V. (2010). International arbitration as an analogue to the international civil society. In M. Á. Fernández-Ballesteros & D. Arias (Eds.), Liber Amicorum Bernardo Cremades. The Law.
- Restatement (Second) of Agency, § comment a. (1958). Retrieved from https://tinyurl.com/5yaachb8
- Restatement (Second) of Contracts. (1981). Retrieved from https://tinyurl.com/3ur3wc5u
- Restatement (Second) of Torts. (1965).
- Reuschlein, H., & Gregory, W. (1979). Handbook on the law of agency and partnership.
- Rezvanian, Oveis. (2018). Legal liability of arbitration institutions arising from refusal to administer referred cases. Private Law Research, 7(24).
- Ripstein, A. (2003). The division of responsibility and the law of tort. Fordham Law Review.

- Rizwa, S. U. (2013). Foreseeable issues and hard questions: The implications of U.S. courts recognizing and enforcing foreign arbitral awards applying Islamic law under the New York Convention. Cornell Law Review.
- Robinson, K. (n.d.). Understanding Sharia: The intersection of Islam and law. Council on Foreign Relations. Retrieved from https://www.cfr.org/backgrounder/understanding-sharia-intersection-islam-and-law?utm_source=chatgpt.com
- Rouche, J., & Pointon, G. H. (2009). French arbitration law and practice: A dynamic civil law approach to international arbitration (2nd ed.).
- Roy v. Stephen Pontiac-Cadillac, Inc., 543 A.2d 775, 778 (Conn. App. Ct. 1988).
- Roy, K. T. (1994). New York Convention and Saudi Arabia: Can a country use the public policy defense to refuse enforcement of non-domestic arbitral awards? Fordham International Law Journal.
- Sabri, M. (1352 AH). The position of human beings under the sultan of destiny (1st ed.). The Salafist Press.
- Saleh, H. (2011). Compensation for the debtor's delay in executing his obligation: A comparative study (PhD thesis). An-Najah National University, College of Graduate Studies.
- Saleh, N. (1981). The general principles of Saudi Arabian and Omani company laws.
- Saleh, S. (1984). Commercial arbitration in the Arab Middle East: A study in Sharia and statute law.
- Saleh, S. (1994). Fading vestiges of Shari'a in commercial agency/distributorship (Termination and compensation). Arab Law Quarterly, 9(1).
- Sapphire International Petroleum v. NIOC: Sapphire International Petroleum v. NIOC. (1964). 13 International & Comparative Law Quarterly.
- Sarcevid, S. (2008). Translation in international arbitration. In V. K. Bhatia et al. (Eds.), Legal discourse across cultures and systems.
- Saunders, J. J. (2002). A history of medieval Islam. Routledge.
- Savola, M. (2003). Arbitrator-ordered interim measures of protection in international arbitration.

- Sayen, G. (1987). Arbitration, conciliation, and the Islamic legal tradition in Saudi Arabia. University of Pennsylvania Journal of International Business Law.
- Sayen, G. (2003). Arbitration, conciliation, and the Islamic legal tradition in Saudi Arabia. University of Pennsylvania Journal of International Economic Law.
- Schacht, J. (1964). An introduction to Islamic law. Oxford University Press.
- Schacht, J. (1982). An Introduction to Islamic Law. Oxford University Press.
- Schauer, M. (2007). Commentary on the Civil Procedure Acts, §§ 577 to 618 ZPO (2nd ed.). Manz.
- Schlosser, H. (2003). Comparative international commercial arbitration.
- Schwartz, A., & Scott, R. E. (2003). Contract theory and the limits of contract law. Yale Law Journal.
- Schwarz, F. T., & Konrad, C. W. (2009). The Vienna rules: A commentary on international arbitration in Austria. Kluwer Law International.
- Schwebel, S. M. (2010). The Kingdom of Saudi Arabia and Aramco arbitrate the Onassis agreement. Journal of World Energy Law & Business, 3(3).
- Schwenzer, I. (2016). Swiss Code of Obligations: General part (para. 15.01). Stämpfli.
- Scott, R. E. (2009). In (partial) defense of strict liability in contract. Michigan Law Review.
- Seavey, W. A. (1964). Handbook of the law of agency.
- Seppala, C. R. (1982). French domestic arbitration law. International Law, 16.
- Shaaban, H. S. (1999). Commercial transaction in the Middle East: What law govern. Fall Law and Policy in International Business.
- Shaheer Train. (2015). An analysis of the influence of Islamic law on Saudi Arabia's arbitration and dispute resolution practices, 26(1) Arabian Journal of International Arbitration.

- Sharar, Z. (2011). Does Qatar need to reform its arbitration law and adopt the UNCITRAL Model Law for Arbitration? A comparative analysis. The Legal & Judicial Journal, Ministry of Justice - State of Qatar, 2.
- Shavell, S. (2009). Why breach of contract may not be immoral given the incompleteness of contracts. Michigan Law Review, 107(8), 1569.
- Siig, K. (2007). Multi-party arbitration in international trade: Problems and solutions. International Journal of Liability and Scientific Enquiry. Retrieved from https://www.inderscience.com/offers.php?id=14582
- Siwar, M. W. A. D. (1996). General trends in the Jordanian civil law (1st ed.). Amman, Jordan: Dar Al Thaqafa Library Publishing and Distribution.
- Smolik, A. (2010). The effect of Shari'a on the dispute resolution process set forth in the Washington Convention. Journal of Dispute Resolution.
- Solomon, M. (1992). Al-Wafi explanation of civil law (5th ed.; H. I. Al-Khalili, Rev.). Knowledge Facility.
- Somma, A. (2000). Autonomia privata e struttuta del consenso contrattuale, Aspetti storico-comparativi di una vicenda concettuale. Milano.
- Song, Q. (2021). Effectiveness of corpus in distinguishing two near-synonymous verbs: "Damage" and "Destroy." English Language Teaching, 14(7).
- Souahli, Y. (2015). Application of Sharī‘ah contracts in contemporary Islamic finance: A maqāṣid perspective. Intellectual Discourse.
- Stone, A. (1980). The place of enterprise liability in the control of corporate conduct. Yale Law Journal.
- Sukriya, A., Yasir, J. R., & Kamal, F. (2022). Risk mapping on lending method of Sharia micro financing institution (Indonesia evidence). Journal of Asian and African Social Science and Humanities, 8(1), 1-20.
- Suleiman, A. (1994). Studies in civil liability in Algerian civil law (2nd ed.).
- Sykes, A. O. (1984). The economics of vicarious liability. Yale Law Journal.
- Sykes, A. O. (1988). The boundaries of vicarious liability: An economic analysis of the scope of employment rule and related legal doctrines. Harvard Law Review, 101(3).

- Tarik, R. (2017). Overview of the DIAC Arbitration Rules 2018. International Journal of Arab Arbitration, 2, 41.
- The Free Dictionary Online Dictionary. (n.d.). Retrieved from http://www.thefreedictionary.com
- The Holy Koran.
- The Law Dictionary. (n.d.). Black's Law Dictionary, 2nd ed. Retrieved from https://thelawdictionary.org/
- The Selda. (1999). 1 Lloyd's Rep. 729; New Zealand Act, § 56; Civil Code § 398(1) (S. Korea).
- Thomson, D. (2013, June). Arbitrating in the Middle East. Global Arbitration Review.
- Timár, K. (2013). The legal relationship between the parties and the arbitral institution. ELTE Law Journal.
- Toatit, A., & Allal, I. (2022). Corner damage in civil liability (PhD thesis).
- Toope, S. J. (1990). Mixed international arbitration. Grotius (Reprinted in Yearbook Commercial Arbitration, 13, 156, 160, UK, 1988).
- TOPCO v. Libya, 17 International Legal Materials (1978).
- Train, S. (2015). An analysis of the influence of Islamic law on Saudi Arabia's arbitration and dispute resolution practices. ARIA, 26(1).
- Treitel, G. H. (2011). The Law of Contract (13th ed.). Sweet & Maxwell.
- Turck, N. B. (1988). Dispute resolution in Saudi Arabia. International Law.
- Tweeddale, A. (2002). Delay in commencing an arbitration. Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, 68(3).
- U.S. Department of State. (n.d.). A guide to the United States' history of recognition, diplomatic, and consular relations, by country, since 1776: Qatar. Retrieved from https://history.state.gov/countries/qatar
- UpCounsel. (n.d.). What is contract liability? Retrieved from https://www.upcounsel.com/what-is-contract-liability

- Varady, T., Barceló, J. J., & von Mehren, A. T. (2006). International commercial arbitration. Thomson/West.
- von Bar, C. (2010). The notion of damage. Available at SSRN: https://ssrn.com/abstract=1542517
- Von Bar, C., Clive, E., Schulte-Nölke, H., Beale, H., Herre, M., Huet, S., Schlechtriem, P., Storme, M., Swann, S., Varul, P., Veneziano, G., & Zoll, F. (Eds.). (2008). Principles, definitions and model rules of European private law: Draft common frame of reference, interim outline edition. Munich.
- Von Mehren, A. T. (1982). Contract in general. In International Encyclopedia of Comparative Law (Vol. 7).
- Von Mehren, G. M., & Salomon, C. T. (2003). Submitting evidence in an international arbitration: The common lawyer's guide. Journal of International Arbitration.
- Vuoso, G. (1987). Background, responsibility, and excuse. Yale Law Journal.
- Walied, E.-M. (1993). Mineral investment under the Sharia law.
- Warwas, Barbara Alicja. (2017). The Triad of Modern Functions of Arbitral Institutions—in Search of the Sources and Scope of Institutional Arbitral Liability. In The Liability of Arbitral Institutions: Legitimacy Challenges and Functional Responses. TMC Asser Press, The Hague.
- Whelan, J. (2010). UAE Civil Code and Ministry of Justice Commentary.
- Wiktionary Online Dictionary. (n.d.). Retrieved from http://en.wiktionary.org
- Williams, T. (2015). The Law Handbook. Federation Press.
- Williston, A. (1937). Contracts § 1338 (rev. ed.).
- Wörlen, R. (2007). Introduction to English Civil Law for German-Speaking Lawyers and Law Students (Vol. 1, 4th ed.). Alpmann und Schmidt Juristische Lehrgänge.
- Yaljin, L. (1977). Islamic moral education (1st ed.). Al-Khanji Library.
- Yüksel, E. B. (n.d.). International arbitration.
- Zayn al-Dīn, ʻAbd al-Raḥmān ibn Rajab. (n.d.). Al-Qawāʻid. Dār al-Kutub al-ʻIlmiyyah.

Laws and regulations:

- AAA-ICDR (International Centre for Dispute Resolution). (2010). International dispute resolution procedures including mediation and arbitration rules. Retrieved from https://nz.sa/fZpNq
- American Arbitration Association. (2013). Commercial arbitration rules (Article 32(c), effective October 1, 2014). Retrieved from https://tinyurl.com/4wv3z5z5
- American Arbitration Association. (2022). A guide to the AAA. Retrieved from https://goo.su/TRG9LC
- United Nations. (n.d.). Pacific settlement of disputes (Chapter VI of UN Charter). United Nations Security Council. Retrieved from https://tinyurl.com/ysyhwuhz
- Arbitration Act, 1996. Retrieved from https://goo.su/IzjCoi
- Austria. (2004). Zivilrechts-Mediations-Gesetz. Official Gazette of the Republic of Austria. Retrieved from https://www.ris.bka.gv.at/
- Bahrain Chamber for Dispute Resolution. (2021). Bahrain Chamber for Dispute Resolution rules. Retrieved from https://bcdr.org/ or https://tinyurl.com/u6edrthw
- Bahraini Civil and Commercial Procedure. (1971). Bahraini Civil and Commercial Procedure. Retrieved from https://www.albasmelter.com/uploads/3gmjotwu_23j.pdf
- Basic Law of Governance, Royal Order No. (A/91), 27 Sha'ban 1412H – 1 March 1992, Published in Umm al-Qura Gazette No. 3397, 2 Ramadan 1412H - 5 March 1992. Retrieved from https://tinyurl.com/5xrhewvz
- Belgium. (2005). Law amending the judicial code with regard to mediation. Belgian Monitor. Retrieved from http://www.ejustice.just.fgov.be/
- Beltramo, M., Longo, G. E., & Merryman, J. H. (Trans.). (1969). The Italian Civil Code. Oceana Publications. Retrieved from https://tinyurl.com/37ctf36p
- Boletín Oficial del Estado. (2000, March 30). Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil [Law 1/2000 of January 7, Civil Procedure Law]. Boletín

Oficial del Estado, BOE-A-2000-323. Retrieved from https://www.boe.es/buscar/act.php?id=BOE-A-2000-323&tn=1&p=20220330

- Chartered Institute of Arbitrators. (2007). Protocol for the use of party-appointed expert witnesses in international arbitration. Retrieved December 20, 2024. Retrieved from https://nz.sa/DSZBw
- China International Economic and Trade Arbitration Commission. (2014). CIETAC arbitration rules (Revised and adopted by the China Council for the Promotion of International Trade/China Chamber of International Commerce on November 4, 2014; effective as of January 1, 2015). Retrieved from http://www.cietac.org/Uploads/201902/5c6148b100105.pdf
- Constitute Project. (2004). Constitution of the United Arab Emirates, 1971 (rev. 2004). Retrieved from https://www.constituteproject.org/constitution/United_Arab_Emirates_2004
- Council of the International Islamic Fiqh Academy. (1995, April 1–6). The Council of the International Islamic Fiqh Academy of the Organization of the Islamic Conference, holding its 9th session in Abu Dhabi, United Arab Emirates. Retrieved from https://iifa-aifi.org/en/32526.html
- CPR. (2019). Rules for administered arbitration of international disputes. Retrieved from https://drs.cpradr.org/rules/arbitration/administered-arbitration-rules-2019
- Decree No. 2007-1388 of September 26, 2007, issued for the application of Law No. 2007-297 of March 5, 2007, relating to the prevention of delinquency and amending the Penal Code and the Code of Criminal Procedure. (2007). Retrieved from https://tinyurl.com/3xr8t2v4
- Dubai Government. (2021). Decree No. (34) of 2021 concerning the Dubai International Arbitration Centre. Retrieved from https://tinyurl.com/ynv58vsb
- Dubai International Arbitration Centre Rules. (2011). Retrieved from https://sadr.org/assets/uploads/Enforcement_Law.pdf
- Dubai International Financial Centre (DIFC). (2008). DIFC Law No. 1 of 2008: Arbitration Law. Dubai International Financial Centre. Retrieved from https://tinyurl.com/eah7f2er

- Egypt Law No. 131 of 1948 promulgating the Civil Code. (1948). Retrieved from https://www.fao.org/faolex/results/details/en/c/LEX-FAOC212999/
- Enforcement Law Royal Decree No. M/53. (2012). Dated 13/8/1433H. Retrieved from https://sadr.org/assets/uploads/Enforcement_Law.pdf
- English Arbitration Act 1996. (1996). English Arbitration Act (EAA). Retrieved from https://www.acerislaw.com/wp-content/uploads/2024/03/1996-English-Arbitration-Act.pdf
- European Parliament & Council of the European Union. (2008). Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. Official Journal of the European Union. Retrieved from https://tinyurl.com/2kfp735m
- European Union Code of Conduct for Mediators Agreement. (2004). European Code of Conduct on Mediation. Retrieved from https://tinyurl.com/ybyneh
- Federal Decree-Law No. 15 of 2023. (2023). On amending certain provisions of Federal Law No. 6 of 2018 on arbitration. Retrieved from https://goo.su/RfJSz
- Federal Law No. (10) of 1992. (1992). On Evidence in Civil and Commercial Transactions. Retrieved from https://tinyurl.com/yc84renk
- Federal Law No. (5) of 1985. (1985). Concerning the issuance of the civil transactions law of the United Arab Emirates. Retrieved from https://uaelegislation.gov.ae/en/legislations/1025/download
- Federal Law No. 6 on Arbitration of 2018. (2018). Retrieved from https://uaelegislation.gov.ae/en/legislations/1069/download
- France. (2006, December 23). Decree No. 2006-1709 of December 23, 2006 taken for the application of Law No. 2005-845 of July 26, 2005 relating to the protection of companies and containing various provisions relating to judicial administrators and legal representatives. Légifrance. Retrieved from https://www.legifrance.gouv.fr/codes/id/LEGIARTI000006418983/2022-12-17/
- French Civil Code. (2006). Retrieved from https://tinyurl.com/ybhc2bp4
- German Arbitration Institute. (2018). DIS Arbitration Rules. Retrieved from https://www.disarb.org/en/tools-for-dis-proceedings/dis-rules

- German Code of Civil Procedure. (2007). Zivilprozessordnung (ZPO). Retrieved from https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html
- Government of India. (1996). Arbitration Act, 1996. Retrieved from https://www.indiacode.nic.in/bitstream/123456789/1978/3/a1996-26.pdf
- HKIAC Administered Arbitration Rules. (2018). Retrieved from https://tinyurl.com/3hsvm98w
- Hong Kong International Arbitration Centre Administered Arbitration Rules. (2018). Retrieved from https://tinyurl.com/mwy5fjnu
- IBA Rules on the Taking of Evidence in International Arbitration. (2020). Adopted by a resolution of the IBA Council 17 December 2020. International Bar Association. Retrieved from https://tinyurl.com/ysw4jn55
- ICC Arbitration Rules. (2012). Retrieved from https://tinyurl.com/2nu7kskx
- ICC Rules 2021. (2021). Retrieved from https://tinyurl.com/ymhcnej5
- ICDR Arbitration Rules. (2014). Effective June 1, 2014. Retrieved from https://tinyurl.com/yc3yz2yn
- ICSID Convention, Regulations and Rules. (2006). Retrieved from https://tinyurl.com/3vrmfj2t
- Insolvency Law Academy. (1990). Law No. 13 of 1990: Civil and Commercial Procedure Law. Retrieved from https://n9.cl/xdn40
- International Centre for Dispute Resolution. (2014). International dispute resolution procedures (including mediation and arbitration rules). Rules amended and effective June 1, 2014; fee schedule amended and effective July 1, 2016. American Arbitration Association. Retrieved from https://www.adr.org/sites/default/files/ICDR%20Rules_0.pdf

- International Centre for Dispute Resolution. (2014). International dispute resolution procedures (including mediation and arbitration rules). Rules amended and effective June 1, 2014; fee schedule amended and effective July 1, 2016. American Arbitration Association. Retrieved from https://www.adr.org/sites/default/files/ICDR%20Rules_0.pdf

- International Chamber of Commerce. (2003). The ICC's Rules for Expertise. Retrieved from https://iccwbo.org/wp-content/uploads/sites/3/2013/11/ICC-Expertise-rules-1.pdf
- International Chamber of Commerce. (2021). Arbitration rules (In force as from 1 January 2021). International Chamber of Commerce. Retrieved from https://tinyurl.com/3c5rynjv
- International Chamber of Commerce. (2022). ICC arbitration. International Chamber of Commerce. Retrieved from https://iccwbo.org/dispute-resolution-services/icc-arbitration/
- International Court of Arbitration. (2020). Arbitration rules (in force as from 1 January 2021) & mediation rules (in force as from 1 January 2014). Retrieved from https://goo.su/1nYNP
- International Court of Justice. (n.d.). Statute of the International Court of Justice. Retrieved from https://www.icj-cij.org/index.php/statute
- International Islamic Centre for Reconciliation and Arbitration. (2016). Arbitration rules. Retrieved from https://www.iicra.com/arbitration/
- Islamic Fiqh Academy. (1996). Resolution No. 91 (9/8) on the principle of arbitration in Islamic fiqh, adopted by the International Islamic Fiqh Academy Council in its 9th session in Abu Dhabi, United Arab Emirates on A.H. 1-6 Dhul Qa'dah 1415 (A.D. 1-6 April 1995). Academy Journal, 4(9), 5–6.
- Islamic Fiqh Academy. (2011). Resolution No. 1/20 on the conditions of arbitration or the recourse to arbitration based on positive laws contrary to Islamic Shari'ah law, adopted by the International Islamic Fiqh Academy in its 20th session in Makkah al-Mukarramah on A.H. 19-23 Muharram 1432 (A.D. 25-29 December 2010). Islamic Fiqh Council Journal, 26, 393–394.
- Italian Civil Code. (1942). Retrieved from https://faolex.fao.org/docs/pdf/ita197336.pdf
- Jordan. (1976). Civil Code No. 43 of 1976. Retrieved from https://resourceequity.org/record/756-jordan-civil-code/
- Jordan. (1988). Civil procedure code and its amendments No. 24 of 1988. Retrieved from https://tinyurl.com/ytndvjy

- Kuwait. (1980). Civil code No. 67 of 1980. Retrieved from https://www.lexismiddleeast.com/law/Kuwait/DecreeLaw_67_1980
- Kuwait. (2011). Gulf Cooperation Council consolidated civil code document, edition No. 3, 2011. Retrieved from https://tinyurl.com/wr3trbut
- Law No. 5/2012, of July 6, on Mediation in Civil and Commercial Matters. (2012). Official State Gazette of Spain. Retrieved from https://www.boe.es/buscar/act.php?id=BOE-A-2012-9059
- Lebanon. (1934). The Lebanese Code of Obligations and Contracts promulgated in March 1932 and in force as of October 11, 1934. Retrieved from http://77.42.251.205/LawView.aspx?opt=view&LawID=244226
- Lebanon. (1983). Lebanon Code of Civil Procedure, Decree Law No. 90. Retrieved from https://tinyurl.com/2wkn7m6n
- Legal and Judicial Cooperation. (n.d.). Retrieved from https://gcc-sg.org/en/Pages/default.aspx
- Legifrance. (2007). Code de procédure civile [Code of Civil Procedure]. Retrieved from https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006419415/2019-10-01/
- Legifrance. (2022, December 17). Décret n°2006-1709 du 23 décembre 2006 pris en application de la loi n° 2005-845 du 26 juillet 2005 de sauvegarde des entreprises et portant diverses dispositions relatives aux administrateurs judiciaires et aux mandataires judiciaires. Retrieved from https://www.legifrance.gouv.fr/codes/id/LEGIARTI000006418983/2022-12-17/
- London Court of International Arbitration. (2014). LCIA arbitration rules (Article 19.2, effective October 1, 2014). Retrieved from https://nz.sa/NGbtP
- London Court of International Arbitration. (2020). LCIA Arbitration Rules 2020, effective 1 October 2020. London Court of International Arbitration. Retrieved from https://tinyurl.com/3ujjabew
- National Conference of Commissioners on Uniform State Laws. (2001). Uniform Mediation Act (UMA). Retrieved from http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.htm

- OHADA Common Court of Justice and Arbitration (CCJA). (1999). CCJA Arbitration Rules. Retrieved from https://tinyurl.com/fcddxn74
- Oman. (1996). The Basic Law of the Sultanate of Oman [Constitution], Royal Sultani Decree No. 101/96. Retrieved from https://tinyurl.com/yywwh4px
- Oman. (1996). The Omani Basic Law No. 101-96: Oman's Constitution of 1996 with amendments through 2011. Retrieved from https://faolex.fao.org/docs/pdf/oma128757E.pdf
- Ottoman Judicial Rulings Magazine. (1876). Ottoman Judicial Rulings Magazine. Retrieved from https://maqam.najah.edu/legislation/158/
- Qatar Code of Civil and Commercial Procedure, Law No. 13 of 1990. (1990). Retrieved from https://tinyurl.com/5dva2tav
- Qatar Financial Centre. (2024). Qatar Financial Centre Law: Law No. (7) of 2005, Version No. 5, includes amendments made by Law No. (16) of 2024. Retrieved from https://linksshortcut.com/IDxoV
- Qatar International Centre for Conciliation and Arbitration. (2012). Qatar International Centre for Conciliation and Arbitration Rules. Retrieved from https://tinyurl.com/yzyata7b
- Qatar. (2004, August 30). Constitution of Qatar. Retrieved from https://tinyurl.com/4w83t8ad
- Qatar. (2017). Law No. 2 of 2017 promulgating the civil and commercial arbitration law. Retrieved from https://www.qicdrc.gov.qa/sites/default/files/2021-12/law_02_2017_booklet.pdf
- Saudi Arabia. (1435). Law of Civil Procedures, Royal Decree No. M/1, dated 22/1/1435H. Ministry of Justice. Retrieved from https://www.moj.gov.sa/Documents/Regulations/pdf/En/50.pdf
- Saudi Arabia. (1931). Saudi Arabia Commercial Court Regulation, issued under Royal Decree M/32 of 1/15/1350 A.H. (1931 A.D.).
- Saudi Arabia. (1982). The Grievances Board Law, Royal Decree No. M/51, dated 17 Rajab 1402H, corresponding to 11 May 1982G.
- Saudi Arabia. (1983). Arbitration Law, Royal Decree No. M/46, 12 Rajab 1403 (25 April 1983). Retrieved from https://www.saudiembassy.net/arbitration-law

- Saudi Arabia. (1985). Executive Regulations of the Arbitration System, Supreme Order No. (7 2021/M), issued on 8/9/1405H, approving the Executive Regulations, and published in Um al-Qura Newspaper No. (3069) on 10/10/1405H. Retrieved from https://www.wipo.int/wipolex/en/legislation/details/8503
- Saudi Arabia. (1992). Basic Law of Government No: A/90. Retrieved from https://nz.sa/SMJIG
- Saudi Arabia. (2007). The Grievances Board Law, Royal Decree No. M/78, dated 19 Ramadan 1428H, corresponding to 1 October 2007G.
- Saudi Arabia. (2012). Saudi Law of Arbitration, enacted by the Royal Decree No. M/34, dated 24/5/1433H. Retrieved from https://www.wipo.int/wipolex/en/legislation/details/14759
- Saudi Arabian Monetary Authority. (2013). The law of civil procedure. Retrieved from https://www.moj.gov.sa/Documents/Regulations/pdf/En/50.pdf
- Singapore International Arbitration Centre. (2016). SIAC Arbitration Rules, 6th Edition, 1 August 2016. Retrieved from https://tinyurl.com/t2ew4vfa
- Spain. (2012). Código Civil. Retrieved from https://tinyurl.com/44uaeav4
- Spanish Civil Code. (2016). Retrieved from https://tinyurl.com/yev8xrt8
- Stockholm Chamber of Commerce. (2023). Arbitration Rules of the SCC Arbitration Institute adopted 1 January 2023. Retrieved from https://tinyurl.com/ybsv2vpu
- Swiss Chambers of Commerce and Industry. (n.d.). Swiss rules of international arbitration. Swiss Chambers of Commerce and Industry. Retrieved from https://www.swissarbitration.org/centre/arbitration/arbitration-rules/
- Syrian Arab Republic. (1949). Civil Code (issued by Legislative Decree No. 84/1949). World Intellectual Property Organization. Retrieved from https://www.wipo.int/wipolex/en/legislation/details/10917
- The Egyptian Constitution, Egypt. (2014). The Egyptian Constitution. Retrieved from https://www.constituteproject.org/constitution/Egypt_2014
- U.S. Congress. (1963). The Uniform Commercial Code (UCC). Retrieved from https://www.govinfo.gov/content/pkg/STATUTE-77/pdf/STATUTE-77-Pg630.pdf

- UN Dispute Settlement. (n.d.). UN Dispute Settlement. Retrieved from https://linksshortcut.com/oJWir
- UNCITRAL Secretariat. (2016). Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). United Nations. Retrieved from https://tinyurl.com/3eux24s4
- United Nations. (1958). The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Retrieved from https://www.newyorkconvention.org/english
- United Arab Emirates. (1992). UAE Civil Procedure Code, Federal Law No. 11 of 1992. Retrieved from https://tinyurl.com/yhv6w99x
- United Arab Emirates. (1992). UAE Evidence Law, Federal Law No. 10 of 1992. Retrieved from https://tinyurl.com/yc84renk
- United Arab Emirates. (2018). UAE Arbitration Law, Federal Law No. 6 of 2018 on Arbitration. Retrieved from https://tinyurl.com/te7wbemz
- United Nations Commission on International Trade Law (UNCITRAL). (1998). Arbitration rules. Retrieved from https://tinyurl.com/3vnjycc4
- United Nations Commission on International Trade Law. (2006). UNCITRAL Model Law on International Commercial Arbitration, 1985 with amendments as adopted in 2006. United Nations. Retrieved from https://tinyurl.com/38xcumd8
- United Nations Commission on International Trade Law. (2010). UNCITRAL arbitration rules, as revised in 2010. Retrieved from https://tinyurl.com/yayk9nrr
- United Nations Commission on International Trade Law. (2013). UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013) & UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. United Nations. Retrieved from https://tinyurl.com/yf9skx5m
- United Nations Commission on International Trade Law. (2021). UNCITRAL arbitration rules. Retrieved from https://tinyurl.com/3b6558md
- United Nations Commission on International Trade Law. (2021). UNCITRAL Arbitration Rules (2021). Retrieved from https://tinyurl.com/3b6558md

- United Nations Conference on Trade and Development. (2005). Dispute settlement; International commercial arbitration, The arbitration agreement. Retrieved from https://tinyurl.com/mrx9ss32
- United Nations. (1958). The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Retrieved from https://www.newyorkconvention.org/english
- United Nations. (2012). Guidance for effective mediation. Retrieved from https://dppa.un.org/en/united-nations-guidance-effective-mediation
- Vienna International Arbitral Centre. (2021). Vienna rules. Retrieved from https://tinyurl.com/y4xkkrb9

Court and arbitration decisions

- European Court of Justice. (2002). Simone Leitner v. TUI Deutschland GmbH, Case C-168/00. EUR-Lex.
- Dorset Yacht Co. Ltd v Home Office, [1970] 2 WLR 1146, [1970] AC 1004 (HL). Retrieved from https://tinyurl.com/hpcrz47c
- Dubai Court of Cassation. (1992). Petition No.51/92. In Comair-Obeid, N. (2014). Salient Issues in Arbitration from an Arab Middle Eastern Perspective. Arb. Brief, 4, 52. Retrieved from https://tinyurl.com/4526wz23
- Dubai Court of Cassation. (2004). Petition No.220/2004. In Brawn, D. (2014). Commercial Arbitration in Dubai. Management, 80(2). Retrieved from https://tinyurl.com/y3epznrk
- Ombudsman's Office. (1427 A.H.). Judgement of the Audit Board of the Ombudsman of 26/3/1427 A.H, No. 218/T/1 of 1427 A.H in case No. (209/2/S) of 1426H. Set of Administrative Provisions and Principles, vol. IV, Compensation.
- Ombudsman's Office. (1431H). Judgment No. 250/S/1 in case No. 5605/1/S of 1428H & Preliminary Judgment No. 51/S/5 of 1430H.
- Qatar Court of Cassation. (2010). No. 87/2010 (65). Retrieved from: Comair-Obeid, N. (2014). Salient Issues in Arbitration from an Arab Middle Eastern Perspective. Arb. Brief, 4, 52. Retrieved from https://tinyurl.com/4526wz23
- Saudi Arabia v. Arab Am. Oil Co. (ARAMCO), 27 ILR 117 (1963).

- Ombudsman's Office. (1429 H). Judgement of 4/6/1429 H, No. 279/T/6 of 1429 H, in case No. 1495/1/S. Set of Provisions and Administrative Principles of 1429H, vol. VI, Compensation.
- Ombudsman's Office. (1429 H). Judgement of 4/6/1429 H, No. 279/T/6 of 1429 H, in case No. 1495/1/S. Set of Provisions and Administrative Principles of 1429H, vol. VI, Compensation. Also, Ombudsman's Office. (1431H). Judgment No. 250/S/1 in case No. 5605/1/S of 1428H & Preliminary Judgment No. 51/S/5 of 1430H.
- Ombudsman's Office. (1430 H). Appeal judgement of 14/1/1430H, No. (33/S/8) of 1430H, in case No. (3747/2/S) of 1428H. Set of Provisions and Administrative Principles, vol. VI, Compensation.
- Dubai Court of Cassation. (2004, May 15). Dubai Cassation Petition 503/2003, International Bechtel Co. Ltd. v. Department of Civil Aviation of the Government of Dubai.
- Egyptian Court of Cassation. (2007, January 15). Judgement of the General Assembly of Civil, Commercial and Personal Status Materials, Appeal No. 4797 of 64 R. General Assembly, Body of Laws and Legal Principles, 35 Cassation Provisions, 2007-2008, Part I, 2010.
- Egyptian Court of Cassation. (2008). Judgment of 1 January 2008, Appeal No. 17459 of 767 (Group Laws and Legal Principles, 35, Set of Cassation Provisions, 2007-2008, c1, p. 1).
- Abu Dhabi Court of Cassation. (2008, December 25). Appeal No. 519/2008. In Abdulrahim Abdulla, M. I. (2017). Assessing the United Arab Emirates Decisional Law on Arbitration. Retrieved from https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1008&context=sjd
- Dubai Court of Cassation. (2009, September 13). Decision No.191/2009. Retrieved from Comair-Obeid, N. (2014). Salient Issues in Arbitration from an Arab Middle Eastern Perspective. Arb. Brief, 4, 52. Retrieved from https://tinyurl.com/4526wz23
- Ombudsman's Office. (1427 H, November 28). Judgement of the Ombudsman's Office, No. 481/T/5 of 1427H, in the case No. 425/1/S of 1425H. Set of Administrative Provisions and Principles, vol. III, Administrative Decision.