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### **Arbitrator's Responsibility**

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#### **Abstract**

In this work, A special law regulating the arbitration process, and this law is the Jordanian Arbitration Law No. 31 of 2001 and amended by Law No. 16 of 2018. Because of the importance of the arbitrator's role, I will address the responsibility that entails, and therefore the title of this scientific trip will be the arbitrator's responsibility, and I will divide it into two sections, where the title of the first topic will be the scope of the arbitrator's responsibility. The second topic will be entitled cases of arbitrator responsibility. As a result, the purpose of this study is to clarify the path that must be taken by the person who suffers damage as a result of the arbitrator's breach of his obligation in the arbitration contract, as well as the responsibility that must be adhered to by the contract's parties if they suffer any damage and the path that the third party must take him if he is not considered a party to the contract. Furthermore, the purpose of this research is to demonstrate the sort of compensation that the aggrieved party is entitled to as a result of the arbitrator's breach of duty.

#### **Keywords**

Not given

**JEL Classifications:** J11, F43

#### **1. Introduction**

Arbitration means the resort of the disputing parties to resolve the disputes that arise between them to a party called the arbitrator. The conflicting parties,

therefore, it is the climate created by the legislation to resolve differences away from the pressures and complexities of the ordinary judiciary.

The selection of the arbitrators is made mainly through the agreement of the offer and acceptance between the parties to the contract or by the indirect way if the parties to the contract are subject to the rules that regulate the process of appointing and selecting the arbitrator, and the relationship between the arbitrator and the parties to the contract is a direct one. He may question the arbitrator on the basis of tort liability if he suffers harm if the arbitrator breaches his obligations.

The arbitrator is committed to the task that is placed upon him and ends with his main obligation, which is to issue the arbitral award, as a general rule, and it is known that most of the rules must include exceptions. Its interpretation is not clear or ambiguous, so here comes the session of the arbitral tribunal in order to decide what the arbitrator neglected.

And if the arbitrator breaches his obligation, then his responsibility for this breach arises, and he is obligated to compensate for the damages he causes as a result of his failure to perform his arbitral duty with all accuracy and integrity. A special law regulating the arbitration process, and this law is the Jordanian Arbitration Law No. 31 of 2001 and amended by Law No. 16 of 2018. Because of the importance of the arbitrator's role, I will address the responsibility that entails, and therefore the title of this scientific trip will be the arbitrator's responsibility, and I will divide it into two sections, where the title of the first topic will be the scope of the arbitrator's responsibility. The second topic will be entitled cases of arbitrator responsibility.

## **2. The Significance of Studying**

The significance of this study is that it seeks to clarify the path that must be taken by the person who suffers damage as a result of the arbitrator's breach of his obligation in the arbitration contract and to clarify the responsibility that must be adhered to by the parties to the contract if they suffer any damage and the path that the third party must take him is not considered a party to the contract. Moreover, this study also aims to show the type of compensation that the aggrieved party is entitled to as a result of the arbitrator's breach of his obligation.

## **3. Study Questions**

This study raises a set of questions that we seek to answer in this scientific trip. These questions are:

- 1- What is the arbitrator's responsibility in the event of a breach of his obligation?
- 2- How is compensation estimated for the aggrieved party as a result of the arbitrator's breach of his obligation?
- 3- How is the legal breach of the arbitrator achieved?

4- How is the contractual breach of the arbitrator achieved?

We will seek to provide adequate answers to these questions, and they will be the focus of research and discussion on this scientific trip.

#### **4. Study Methodology**

Our study will be based on a basic method of scientific research, which is the descriptive and analytical approach. We will discuss this study by analyzing the legal texts that regulate our study, whether in the Jordanian Arbitration Law No. 31 of 2001 or amended by Law No. 16 of 2018, or in the Jordanian Civil Law No. 43 for the year 1976. We will show the judicial rulings issued by the courts of excellence and indicate the extent of their conformity with the provisions of the law for the year 1994 with the provisions of the Arbitration Law and the difference and congruence between them.

##### **The first chapter**

##### **Arbitrator's Responsibility**

Liability is generally defined as the condition of a person who puts himself in a certain circumstance and according to which he was required to be held accountable for what he did. He makes mistakes while carrying out his arbitral works, and these mistakes may result in harm to the litigants who have agreed to choose the arbitrator, or they may cause harm to others.

However, when extrapolating the texts of the Jordanian Arbitration Law, which worked to organize the arbitration process, we find that they did not clarify a clear and explicit text that shows the arbitrator's responsibility for what may appear from arbitrary errors issued by him, and this matter requires us to return to the general rules set by the civil law to clarify the responsibility. If the arbitrator breaches his obligation, I will divide this topic into two demands, where I will address in the first requirement the contractual responsibility of the arbitrator, and in the second section, I will discuss the tort responsibility of the arbitrator.

##### **The first section: is the contractual responsibility of the arbitrator**

Contractual liability is the basis on which the aggrieved person has the right to claim compensation in the event that the other party to the contract breaches his obligation. Therefore, we find that the Jordanian Civil Code stated in one of its texts the following: Accordingly, any breach by the arbitrator entails his responsibility for the damage to the litigants who chose him to arbitrate among themselves <sup>(1)</sup>, but in order for the arbitrator's responsibility to be established, the elements of contractual liability must be fulfilled, as follows:

##### **First: the nodal breach**

The breach of the contractual obligation is the failure of the debtor to take the path required by the nature of the obligation; that is, it is a deviation that the

ordinary man does not come to if he is found in the same circumstances in which the ordinary debtor was found unless something happens outside his control <sup>(2)</sup>. One of its provisions follows: "The liability incurred by the parties to a contract binding on both sides in the event that one of the parties causes harm to the other as a result of his failure to implement his obligation is governed by contractual liability, and the party in breach of his obligation is obligated to guarantee the damage actually occurred when it occurred in accordance with the text of Article (363) of the Civil Code." <sup>(3)</sup>.

Therefore, according to the foregoing, the arbitrator's contract requires the arbitrator to settle the disputes that occur between the parties to the contract who have chosen him to decide between them. Meticulously and committed to achieving a result, which is represented in adjudicating and adjudicating the dispute before it <sup>(4)</sup>.

Therefore, if the arbitrator takes the necessary care to resolve the dispute presented to him in a way that guarantees a legal and just solution between the parties, he shall not be questioned about any error that may appear unexpectedly unless the error made by the arbitrator was accompanied by serious fraud or a violation of a good principle Intention in deciding the performance of duty, and in connection with this, we find that the Jordanian Civil Code stated in one of its texts the following: "The contract must be executed in accordance with what it includes and in ways that are consistent with what necessitates good faith" <sup>(5)</sup>.

The contractual responsibility of the arbitrator is realized if any fraud or a serious error was issued on his part, and the Court of Cassation determined fraud in one of its rulings that "fraud is tantamount to bad faith in the contracting party in accordance with the provisions of Article 144 of the Civil Code, which considered intentional silence about his reality or his clothes as deception if proven The conceited person would not have concluded the contract if he had known of that fact or the condition of it." As for the grave error, it is the arbitrator's refusal to do an act that he was required to perform under the arbitrator's contract, provided that it is associated with the arbitrator's knowledge of the damages that may occur in his failure to perform the actions directed at the arbitrator. Shoulder <sup>(6)</sup>.

And after we have completed the first pillar of liability, we will address the second pillar of contractual liability, which is damage.

### **Second: damage**

Damage is considered the second pillar of the establishment of contractual liability, and it is a matter of proof. The basis on which the aggrieved party is able to obtain compensation in proportion to the harm he has suffered <sup>(7)</sup>.

Damage in the arbitrator's contract is defined as the act committed by the arbitrator and resulting in injury to a person, whether from the litigants or from non-litigants. It was not clear to me as a researcher that she knew the harm but rather explained the elements of compensation for harm <sup>(8)</sup>, and the harm either falls on the person's financial liability, which is what is called material damage, or

that the victim suffers in his reputation and dignity, which is what is called moral damage and finally physical damage Which affects the injured in his body <sup>(9)</sup>.

And we must point out that the injured party from the arbitrator's contract in order to be able to claim compensation for the damage he sustains, the damage resulting from the arbitrator must meet a set of conditions, which are that the damage is real, the damage is foreseeable, the damage is direct, and finally, it must be inflicted. Damage is a legitimate interest protected by law and does not violate public order and morals.

### **Third, the causal relationship**

In order for the contractual arbitrator to be held liable for his harmful act to the litigants. The harmful act has a causal relationship between the contractual breach and the damage. The litigants who have suffered damage are obligated to prove that the damage they suffered is due to the arbitrator's mistake, and in turn, the arbitrator can defend against it by proving that the damage was caused by a foreigner that he had no control over <sup>(10)</sup> In this regard, we find that the Jordanian Court of Cassation stated in one of its rulings the following As the relationship between the two parties to the case is the contract regulating between them, which must verify the availability of the elements of contractual responsibility so that the party in breach of what the contract entails is obligated to them, which is the fault on the part of the defendant in terms of his failure to implement the obligation and the damage inflicted by the plaintiff as a result of The defendant's failure to fulfill his obligation and the causal relationship between the error and the damage" <sup>(11)</sup>.

Accordingly, the burden of proof of damage falls on the litigant claiming the arbitrator for compensation and proving that the arbitrator has breached what was agreed upon in the arbitrator's contract. In this regard, we find that the Jordanian Court of Cassation stated in one of its rulings the following: Proving that it has established its pillars and elements from a contractual error represented by a breach of a contractual obligation that can be immediate harm, i.e. actual fact, and that this harm is a natural and direct result of the contractual breach, i.e. the existence of a causal relationship between the contractual error and the actual damage.

The second section: is the tort responsibility of the arbitrator

We talked in the previous requirement about the contractual liability of the arbitrator, and in this requirement, we will address the tort responsibility of the arbitrator, through which a third party, who is not considered a party to the arbitrator's contract, can claim the arbitrator for compensation for any damage he suffers. Damage, damage, and causation, and we will address them as follows:

#### **First: the wrongful act (damages)**

The Jordanian Civil Code stipulates in one of its texts the following: "Every harm to others obligates the doer, even if he is not distinguished, to guarantee the

harm" <sup>(12)</sup>, so it is understood from the previous text that the harm is the harm inflicted in a way that is in violation of the laws or the harm inflicted by a legitimate act <sup>(13)</sup>.

Accordingly, as a researcher, I see that the damage done by the arbitrator and which requires his accountability must have been inflicted by a legitimate act or in a way that is in violation of the law, and accordingly, the arbitrator is not responsible for the damage he caused by a legal or legal permit and the damage in accordance with the provisions of responsibility Tort does not require the perpetrator to have the intent of causing harm, just as the harmful act does not require a distinct and aware of his actions and their consequences. That "every damage to others obliges the doer to guarantee the damage" <sup>(14)</sup>.

### **Second: damage**

The Jordanian Civil Code has come explicitly regarding the damage, especially the illegal acts that fall on the person or the illegal actions that affect money or damage the reputation and dignity of the person <sup>(15)</sup>. In the harm, there are a set of conditions, which are that the harm is real, that it is direct, and that the harm affects the legitimate interest of the injured party in order to be compensable.

### **Third: the causal relationship**

The negligent liability in order to exist is insufficient for the existence of an unlawful act issued by the arbitrator and injuring others. Rather, there must be a causal relationship between them by proving that the act issued by the arbitrator is the main cause of the damage. Accordingly, whoever claims that he sustained damage as a result of the arbitrator must prove the causal relationship, and the arbitrator here has the right to pay compensation for himself by proving that the damage was caused by a foreign cause in which he had no hand <sup>(16)</sup>. And after we have completed the study of contractual and tortious liability, we raise the following question: Is it possible to agree on exempting the arbitrator from his responsibility as a result of the breach of his obligation?

In order to answer the previous question, as a researcher, I differentiate between contractual and tortious liability since contractual liability arises from a contract, and the contract can be agreed upon. I see that it is not possible to agree on the exemption because it is the source of the law, but the injured party can, after the occurrence of the damage, exempt the arbitrator from compensation.

## **The second chapter**

### **Arbitrator Liability Cases**

The arbitrator bears a set of obligations, including those arising from the arbitrator's contract that he concludes with the parties to the arbitral litigation, and

some of them arise due to the nature of the task he performs, and any breach of any obligation, regardless of its source, requires the arbitrator to be held accountable. Accordingly, I will study this topic through two demands where I will discuss in the first section the cases of the arbitrator's responsibility that are due to the contractual breach, and in the second section, I will discuss the cases of breach of the arbitrator whose source is the legal obligation.

The first section: cases of breach of the arbitrator resulting from the contractual obligation.

The arbitrator's contract imposes a set of obligations on the arbitrator, and any breach of these obligations requires the arbitrator to be held accountable. We will address the most common contractual obligations as follows:

**First: The arbitrator's obligation to undertake the arbitral task himself and not to delegate others until its end.**

The arbitrator is chosen by the parties to the dispute to settle the disputes that come in their way during the contract's validity. Of course, if the arbitrator proceeds to settle any dispute, he must not leave the dispute and refer the settlement to another party unknown before opponents<sup>(17)</sup>. Although the Jordanian legislation did not provide for this obligation, the special nature of the arbitrator's contract imposes this obligation on the arbitrator and mitigates the damages that may arise as a result of the arbitrator's withdrawal or refusal to arbitrate in the presented dispute, a set of rules has been established in order to replace the arbitrator in case His withdrawal, dismissal, or refusal to participate in the arbitration litigation<sup>(18)</sup>.

Therefore, we find that the Jordanian legislator has given the parties to the dispute the right to resort to the competent court to replace the arbitrator in refusing to proceed with the arbitral litigation procedures or adjudicate them. Therefore, we find that the Jordanian Arbitration Law stated in one of its texts the following "with due regard to the provisions of paragraphs (a) ( b) From (M5) of this law, if the arbitrator is unable to perform his task, does not perform it, or stops performing it, leading to an unjustified delay in the arbitral proceedings, and he did not step down, and the two parties did not agree to dismiss him, the competent court may order the termination of his task upon a request either of the two parties with a decision that does not accept any way of appeal<sup>(19)</sup>, and we find that the Egyptian legislation proceeded in the manner followed by the Jordanian legislator, as it came in one of its texts as follows: He is justified in the arbitration procedures and he did not step down and the parties did not agree to dismiss him, the court referred to in Article (9) of this law may order the termination of his mission at the request of either party.

**Second: The arbitrator's obligation to implement the law agreed upon between the parties**

The Jordanian legislator has given the parties priority in choosing the applicable law in the arbitration dispute, as it was stated in one of the provisions

of the Jordanian Arbitration Law as follows: "The arbitral tribunal shall apply to the subject matter of the dispute the legal rules agreed upon by the two parties. regarding conflict of laws" <sup>(20)</sup> and in the manner followed by the Jordanian legislator, the Egyptian legislation followed <sup>(21)</sup>. Therefore, we find that both Egyptian and Jordanian law has given the parties the freedom to choose the law applicable to arbitral litigation as long as the law does not violate the public order in The state, and if the parties choose a specific law for application, the arbitrator is obliged to adjudicate based on it.

In this regard, the Jordanian Court of Cassation ruled in one of its rulings as follows: "I do not accept a claim for the nullity of arbitration unless the arbitration ruling excludes the application of the law that the parties agreed to apply to the subject matter of the dispute, in accordance with the provisions of Article (49/a/4) of the Arbitration Law." <sup>(22)</sup> The arbitration law has given the arbitrator the choice of the applicable law but provided that the law is the most relevant to the subject of the dispute <sup>(23)</sup>.

### **Third: The arbitrator's obligation to issue the judgment within the agreed period**

We find that the Jordanian Arbitration Law states in one of its texts the following: "The arbitral tribunal must issue the terminating judgment for all the litigants within the date agreed upon by the two parties. The arbitral tribunal decides, before the expiry of the period, to extend it for one or more periods of extension, provided that the total of them does not exceed twelve months unless the two parties agree on a period exceeding that. During which the arbitral award ending the litigation must be issued, and if the parties did not specify that period, we find that the Jordanian legislation specified it in a period of time not exceeding twelve months, and the litigating parties have the right to agree on an increase in the legal period. Thus, we find that the Jordanian Court of Cassation came in one of its texts as follows "Unless the two parties agree on a period longer than that, which is contained in the text of Article 37 of the Arbitration Law, it is deduced that the legislator has permitted the two parties to agree on a period other than what is stipulated in the text of the aforementioned article, meaning that this period is not related to public order." Hence, the arbitral tribunal's continued extension and consideration of the case until issuing its ruling does not violate the law."

### **Fourth: The arbitrator's obligation to maintain the confidentiality of the arbitral litigation**

In the arbitrator's contract, the arbitrator is obliged to maintain the confidentiality of the litigation, as everything that comes to his knowledge as a result of the consideration of the arbitral litigation between the parties must maintain its confidentiality and not disclose it, and despite the fact that this obligation is not mentioned in the two laws under discussion, which are the



Egyptian and Jordanian, but The moral nature imposes on the arbitrator his obligation to do so. And we find that both the Jordanian and Egyptian laws have prohibited the publication of any arbitral award except with the consent of the parties to the arbitral litigation <sup>(24)</sup>. discussion among themselves <sup>(25)</sup>.

The second section: cases of breach of the arbitrator resulting from a legal obligation.

We mentioned in the previous requirement the cases in which if the arbitrator breaches it, he will be questioned because of his breach of the contract concluded between him and the parties to the arbitral litigation, as well as

There are a number of cases in which the arbitrator breaches his tort liability, and these cases will be dealt with as follows:

### **First: Violation of the basic principles of litigation**

This obligation is represented in the arbitrator's commitment to the basic principles of litigation, which, if he violates them, is considered a violation of the rules related to public order. Jordan stated in one of its texts the following: "The arbitral tribunal must abide by the principles of impartiality and equality between the parties to the arbitration and provide each of them with a full and equal opportunity to present his case and present his defense. It must also avoid any unjustified delay or unnecessary expenses to achieve a fair means and currentness to resolve the dispute" <sup>(26)</sup>. We find that the Egyptian Arbitration Law also stated, "The two parties to the arbitration are treated equally. Each of them is given an equal and complete opportunity to present his case" <sup>(27)</sup>. It is also among the basic principles of litigation that the arbitrator must abide by, which is the principle of confrontation, as the parties to the arbitral litigation have the right to be aware of all that each of them submits requests and pleas, and he has the right to respond to them <sup>(28)</sup>.

### **Second: The arbitrator's commitment to impartiality and independence**

We find that the Jordanian Arbitration Law stated in one of its texts the following: "He must disclose, upon his acceptance, any circumstances that might raise doubts about his impartiality and independence, and this obligation continues on the arbitrator if these circumstances arise during the arbitral proceedings." A declaration by the arbitrator that he accepts to proceed with the arbitral litigation procedures without the existence of what affects his integrity and independence in the case before him so that the parties to the arbitral litigation are reassured about this. The arbitrator must disclose any circumstances that affect his impartiality and independence.

However, the Jordanian legislator did not address the concept of impartiality and independence, but the Jordanian Court of Cassation clarified that in one of its rulings, which stated "that this written acceptance includes the arbitrator's disclosure of circumstances that

may raise doubts about his impartiality and independence, and this acceptance must be It is not suspended on the condition also that disclosure is a necessary issue for the trial to reassure the parties to the arbitration on the independence and impartiality of the arbitrator. It is an objective issue that can be observed and measured, while impartiality is considered a psychological matter related to the arbitrator himself and makes him hold the balance of justice for the two parties in an objective and abstract manner. Accordingly, the elements of independence and impartiality are decisions in the interest of the opponents and are not related to public order." And independence is the two most important qualities that the arbitrator must have in order to settle the presented litigation in a way that ensures that each of the parties to the arbitral litigation obtains its right in a manner consistent with the law applicable to the dispute.

### **Third: The arbitrator's obligation to adjudicate defenses related to lack of jurisdiction**

The Jordanian Arbitration Law stipulates in one of its texts the following: "The arbitral tribunal shall decide defenses related to its lack of jurisdiction, including those based on the absence of an arbitration agreement, its lapse, its nullity, or its non-inclusion of the subject of the dispute." In one of his texts, he stated: "The arbitral tribunal has the right to adjudicate defenses related to its jurisdiction" <sup>(29)</sup>.

And we find that the Jordanian Court of Cassation stated in one of its texts the following: "The pleas that the arbitration agreement does not include the issues raised by the other party during the consideration of the dispute must be adhered to immediately, or else the right to it is forfeited in accordance with the provisions of Article 21/b of the Arbitration Law." As a researcher, I see that the arbitrator's responsibility is fulfilled in all his opponents in which the invalidity of the arbitral award is proven, based on the absence of the arbitration agreement or his inability to dispute it, and the arbitrator must rule the invalidity on his own.

## **5. Results and recommendations**

After we finished this study, we reached a set of results and recommendations as follows:

### **First: the results**

- 1- If damage occurred to one of the parties to the arbitral litigation, and that was due to the arbitrator's mistake, it shall be returned in accordance with the provisions of contractual liability.
- 2- If a third party was harmed, and that was due to the arbitrator's mistake, then it shall return to the arbitrator in accordance with the provisions of contractual liability.
- 3- A set of obligations is imposed on the arbitrator, although they are not expressly stipulated in the arbitrator's contract.

- 4- The arbitrator's obligation in the arbitrator's contract is an obligation of a dual nature. It is an obligation to exercise care when the arbitrator searches and collects information about the litigation and an obligation to achieve a result, which is the issuance of the arbitral award

### **Second: Recommendations**

- 1- We call upon the legislator to clarify the concept of fraud and serious errors in the arbitrator's contract.
- 2- We call upon the Jordanian legislator to explicitly clarify the issue of exemption from the contractual liability of the arbitrator if he breaches his obligations.
- 3- We call upon the Jordanian legislator to expressly stipulate the arbitrator's obligation to maintain the arbitral litigation.
- 4- We call upon legal scholars and jurists to work on forming seminars to clarify the concept of the arbitrator's response and his obligations when considering arbitration disputes.

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