CHAPTER - V

CONDUCT OF ARBITRAL PROCEEDINGS

5.1. Law to be Obligatory Applicable within Procedures of Arbitration

5.1.1. Introduction

Arbitration proceedings are distinguished by particular importance, since the success or failure of the arbitration system depends on the range of integrity of the arbitral proceedings. These procedures are considered to be the backbone of the arbitration system, which ensures their legitimacy. It would lead to a judgment that would be away from opposition. Consequently they will be recognizable and implemented.¹

The law applicable to the procedure is the procedural rules to be followed after the formation of the arbitral board and until the award is made. The will of the parties in this area plays an essential role. As the parties through the arbitration agreement can determine the rules governing the procedures followed by the arbitration board.

The definition of the law that applies to the procedures for commercial arbitration can be laid down in two ways:

First: Determining the law to be applied to the commercial arbitration procedures by the will of the parties

Second: Determining the law to be applied to commercial arbitration procedures by the arbitral board

The arbitration board shall determine the law applicable to the arbitral proceedings either by:

1) Application of international law procedures or

2) The application of the procedures of national law which can be divided into three sections.

A) The law of the State of the arbitral board.

B) The law applicable to the subject matter of the dispute.

C) The law of the regulation of a permanent center for international arbitration.

5.1.2. **Determining the law to be applied to the commercial arbitration procedures by the will of the parties**

The Parties may agree to the proceedings in the same agreement or in an independent agreement before or after the commencement of the arbitral proceedings and the parties may agree on certain procedures without others.\(^2\) The parties' will to define the procedures shall be clear and explicit.\(^3\) The procedural law in international commercial arbitration shall be considered to be a choice.\(^4\)

The parties are the basis of the national laws of the States, as well as of the international conventions, which means and the basis of this asset is that arbitration proceedings shall be governed by the law chosen by the parties to the arbitration agreement.

The jurisprudence describes arbitration in which the freedom of the parties to liberate themselves from all national rules depends on the will of the parties to formulate the rules of procedure as free and free arbitration. Since the parties have the task of regulating the rules of procedure without relying on a particular law of the physical organization of procedural rules derived from the personal theory that


the principle of the power of will is widely enshrined. Without subjecting it to certain limitations that national laws may impose.  

In this sense, the proponents of this principle include arbitration in the transactions of individuals based on a contractual source, namely, the arbitration contract. And that the arbitrators are not judges but are private individuals entrusted with the execution of this contract and derive their powers from it of the arbitration contract.  

The principle of the authority of the parties to determine arbitral dispute procedures is widely applied in the international conventions on arbitration, which states that this is to give the parties the freedom to choose the law that governs the arbitration dispute procedure. And the provisions of Article 11 of the old regime of the International Chamber of Commerce. Indeed, the parties' freedom to agree on the procedure does not extend to the basic principles of procedure, such as the principle of equality between adversaries. The principle of confrontation and the rights of defense. It shall be deemed to be of public order, as the parties may not prejudice them by agreement between them.  

It is therefore possible to say that the law applicable to arbitral proceedings has given the convention full freedom to set the rules of procedure to be followed. And the parties to the dispute may choose the arbitration rules established by the International Chamber of Commerce or the Arbitration Rules of the United Nations Commission on International Trade Law, in the case of an organized or institutional arbitration. Arbitration is conducted in accordance with the rules of the institution that have been agreed upon. In private arbitration, if the parties do not agree on the rules of procedure to be followed by the arbitrators. The rules of procedure applicable to the arbitration process and the question of the cause of the arbitral award.  

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The arbitrator may only rule on the subject of the dispute in accordance with the law agreed upon between the parties and cannot apply procedures other than those chosen by the parties. A procedural law of a state may be applied, which may be the state of the place of arbitration or the law of their nationality, or may be subject to the procedures of the rules in force in any organization or arbitral board and may be subject to procedural rules, but the arbitrator has the authority to apply the rules, it is deemed appropriate for the determination of the dispute in the event that the parties do not agree on a particular law or rules.\(^9\)

This means that the arbitral proceedings shall proceed as agreed in the arbitration contract unless otherwise agreed by the parties to the dispute. If an issue is raised that has not been included in the agreement in connection with the proceedings or in any arbitration system, the court shall decide on the matter. The Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, in chapter five of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006), is contained in Article 19 in paragraphs first and second.

1) Subject to the provisions of this Law. The parties shall have the freedom to agree on the procedures to be followed by the arbitral board when conducting arbitration.

2) If there is no such agreement, the arbitral board shall, subject to the provisions of this law, proceed in arbitration in such manner as it deems appropriate. The authority conferred upon the arbitral board

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shall include the authority to accept the validity, relevance, usefulness and importance of the presented evidence.  

It is noted that the text of Article 19, Paragraph 2, of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) states that it was successful in granting the arbitrator greater authority than others who dealt with this matter from international legislation. The arbitrator was even authorized to assess the admissibility of the evidence, its relevance, in clarifying the circumstances of the case and in taking appropriate action to proceed, would benefit the authors of the draft Model Law on International Commercial Arbitration on such expansion.

5.1.3. Determining the law to be applied to commercial arbitration procedures by the arbitral board

This solution was an exception and a precaution in the absence of the role of the parties in choosing the law applicable to the arbitral proceedings, or neglecting some procedural aspects, so as not to lose the effectiveness and seriousness of the arbitration. In order to avoid any legal vacuum that may result from the silence of the parties to define this law, as well as some international conventions, on the role of the arbitral board in establishing the rules of procedure, it deems appropriate, whether by referring to an internal national law that the arbitrator considers more relevant to the subject matter of the arbitration in question or by reference to rules of an arbitral regime that he deems more appropriate. In this case, which is referred to as the non-agreement of the parties to arbitration proceedings, the arbitral board has a positive role in choosing the procedural rules applicable to the arbitration dispute. In this regard, the commission may choose the procedural rules it deems appropriate for the subject of the dispute. It may decide to follow the procedures in the procedural system of a state and may decide to adopt a procedural system approved by an organization or center of permanent arbitration centers. Therefore the will of

the arbitral board replace the will of the parties to the selection of the rules of procedure.\textsuperscript{11}

However, the rules of procedure chosen by the arbitral board must be circumvented by the parties. And not to be contrary to public order, and should take into account the basic principles of litigation guarantees that guarantee the rights of defense and confrontation so that arbitration is capable of achieving its objectives.\textsuperscript{12}

Whether the arbitral board is empowered to determine the procedural law applicable to the arbitration dispute by agreement of the parties involved, or because of their lack of agreement to determine a particular law to be applied. Most domestic legislation and international conventions have assigned the arbitral board the same freedom as the parties to determine the applicable law. The arbitral board shall determine the applicable law based either on the rules of international law or choose one of the national laws which may be either the law of the state of the arbitral board or the law applicable to the subject matter of the dispute or, permanent centers of international arbitration. This is what the researcher will address in the following three demands:

5.1.3.1. Application of international law procedures

A part of the jurisprudence encouraged the application by the arbitral board of international law and the liberalization of arbitral proceedings from the application of any national law. This would widen the arbitrators' freedom to determine which international commercial arbitration procedures should be followed and that arbitration would be beyond the control of a particular national procedural law. The application of this law, particularly the public order, and the loss of each value of the arbitration agreement, may also avoid all the sensitivities of the sovereign immunity that may be invoked in the area of contractual relations to which the state is a party.

\textsuperscript{12} Ibid p 106.
Implementation of the provisions of arbitration which by its nature requires the support of the official organs of the state for which the sentence is to be executed.\textsuperscript{13}

However, part of the jurisprudence does not satisfy the arbitral board's wide freedom in determining the procedural law applicable to arbitration disputes, as it may arbitrarily use this freedom. This group of jurisprudence calls for the need to define this freedom with objective limitations. The first opinion supporting the extension of the arbitral board's freedom to choose the law applicable to arbitral proceedings is that restricting the arbitral board's freedom to regulate arbitral proceedings is inconsistent with the comparative law of leaving the arbitral board to choose the procedures it deems applicable and appropriate to the dispute. An objective framework for organizing this freedom cannot be established on the basis that the circumstances and conditions of conflicts vary from one case to another. The tendency to apply the rules of international law to international commercial arbitration procedures has not received sufficient support from modern jurists who doubt that international law contains procedural rules sufficient to adjudicate international disputes. Therefore, modern jurists favor "that the rules of public international law remain reserved for inter-economic and commercial transactions must remain within the framework of private international law and if one of the parties is a state".\textsuperscript{14}

5.1.3.2. Application of national law procedures

The selection of a national law by the arbitral board, which may be either the application of the law of the state of the arbitral board or the law applicable to the subject matter of the dispute, or is ultimately based on the law of the regulation of a permanent center of international arbitration.

\textsuperscript{13} Kordi, Dr. Jamal Mahmoud. The law applicable in the arbitration case.\textsuperscript{3}rd ed. Cairo: Arab Renaissance House, 2003. P 69.
\textsuperscript{14} Ibid. p.71.
5.1.3.2.1. The law of the State of the Head Office of Arbitration

The place of arbitration is of great importance that the parties to the contract should not overlook because of its effects and consequences in determining the law applicable to international commercial arbitration proceedings. The determination and agreement of the parties to the place of arbitration is of great importance. Since one of the criteria on which the arbitral board depends on determining the law applicable to international commercial arbitration proceedings in the event that the parties do not agree to a particular law of the arbitration agreement or subsequent agreement. If the parties agree that the arbitral board shall determine this law. The arbitral board shall in such case rely on the law of the state in which the arbitration is sometimes conducted. The place of arbitration is of paramount importance in contemporary legal systems. It depends on the determination of many important issues for the parties to the arbitration process, first and foremost the question of the nationality of the arbitration award itself, that is, whether the award is national or foreign. The rule, as some of the international conventions of the standard of place repelled.\textsuperscript{15}

This is useful for determining the place of arbitration sometimes in determining the law applicable to international commercial arbitration proceedings. And in view of the practical importance of the place of arbitration as such the parties are keen to include in their agreement the location of the arbitration. And if this agreement does not determine where the commercial arbitration takes place, the arbitral board shall determine this place. In the latter case, the arbitrators shall choose the place where the arbitration shall be the most appropriate place for them and the litigants. There shall be a link between the place of arbitration and one of the elements of arbitration. The ease of calling witnesses and experts and the availability of communication services others. The reliance on the headquarters of international commercial arbitration to determine the law applicable to international commercial arbitration procedures finds its basis in the international jurisprudence, conventions, legislation and internal laws of the countries, So that it finds its basis in arbitration

\textsuperscript{15} Ibid.p.82.
jurisprudence. A part of the jurisprudence goes that the application of the law of the headquarters of arbitration is based on the implicit will of the parties and the belief in the promotion of the will in general, especially in the field of arbitration because of its character convention. This opinion clashes with the opinion of the most correct in the jurisprudence, which refuses to be the will of the parties in the determination of international commercial arbitration procedures unless such will is express, clear and pure. Another aspect of the doctrine is that the essence of the problem lies not in the will of the adversaries, but in the selection of the most appropriate and objective law to adjudicate procedural matters in arbitration. The law of the seat of arbitration is the most appropriate law or objectivity between the subject matter of the dispute and the law of the state of the arbitral board so that it can be said that the law of the headquarters is the most appropriate law. And that there are many physical and legal obstacles to an attempt to implement this law in many assumptions. Third opinion which is the predominant and most likely view of the jurisprudence is that the law of the arbitral board is of a reserve nature and comes second only to the parties' will. As the French Court of Cassation has approved for many years. Implicitly expressed by individuals in the choice of place of arbitration.16

If the place of arbitration is appointed either by the parties or by the arbitrators. It is not necessary for all meetings to be held unless the agreement contains such information. Some meetings may be held in the state of the plaintiff or the respondent state or in the state in which the goods are founded.17

It is therefore necessary to refer to the legal system prevailing in the state of the arbitral board when the rules of procedure are in place, or to fill the shortcomings that may be encountered during the silence of the parties.

The state judiciary has ruled that the will of law governs the arbitral proceedings and allows the will to choose more than one law to govern the proceedings.18

17 Ibid. p 257-258.
This court also determines that the selection of the arbitral board, the country in which the arbitrators are exercising their mission, may be evidence of the choice of this country's law to govern arbitral proceedings. In case the parties do not agree on the law governing the arbitral proceedings.\(^{19}\)

This trend has been criticized on the grounds that the application of the theory of the arbitral board's law to its release to govern the dispute procedures is very rigid and difficult to apply in practice because there is often a question as to the meaning of the law of the arbitral board. The arbitral board for the first time, or the law of the state in which the decision was made. The law of the arbitral board may also be the national law of one party and thus the weight of the other. The law of the arbitral board should remain an exception to the rule. The role of the will law should be emphasized. In its absence, if the law of the arbitral board has been applied. It should be interpreted as a reserve solution in support of the arbitration procedure as a system without seeking the justification or hidden reasons that led the parties to arbitrate in certain country.\(^{20}\)

In the absence of the agreement of the parties, the application of the law of the arbitral board has been widely accepted in jurisprudence, international conventions and even some national legislation to govern arbitral proceedings in the absence of an agreement by the parties. In the light of the historical development of the trend in favor of the law of the seat of arbitration. We can draw the foundations on which it is based. On the one hand, it is not only by an arbitration agreement that arbitration is paid, but rather by the real birth of the arbitration process, which takes place only in the state in which it is conducted in accordance with the procedures established by its law.\(^{21}\)

It is also the courts of the state of the seat of arbitration that are competent to consider the invalidity of the arbitral award. Finally, subjecting arbitral proceedings to the rules of the state of the seat of arbitration is consistent with the conflict rule

\(^{19}\) Ibid. p 162.


known in all legal systems on procedural matters. Which states that "it shall apply to the rules of jurisdiction and all matters of proceedings". If the law of the state of the arbitral board interferes with the various stages of the arbitral process. It shall be the national law of the arbitral board which shall be agreed between the parties if they agree to choose the law governing the proceedings. The arbitrator shall enforce it if the adversaries leave him the choice of the law governing the arbitral procedure, and if a particular measure of coercion is required in the territory of a State other than the arbitral board. And there is a dispute between the procedural law chosen and the law of that state. The arbitrator shall refer to the national law governing that procedure. The request for assistance and support from the judiciary, if there is a conflict between it and the law that is applicable. And this trend is consistent with what has been decided by some courts to be fixed.22

For example, in electronic arbitration, it is difficult to determine the place of arbitration. And it is also difficult if the parties to the arbitration agreement agree on a particular place, while the meetings of the arbitral board are held, All of which are in another place, And the decision was made in a third country. However, there is no objection to the application of the law of the state of the arbitration headquarters if the arbitral tribunal decides to do so.23

5.1.3.2.2. The law to be applied is the law relating to the subject matter of the dispute

It is not the arbitral board's power to bring the law which the parties have agreed to apply to the subject matter of the dispute to apply another law except in certain cases. The arbitrator has the power to enforce that law, in which the parties agree to enforce its rules in the dispute over the proceedings. The law does not clash with the rules of public order in the chosen law.24

22 Ibid. p.214.
23 Ibid. p 199.
The parties may choose the law of a particular foreign country to govern the arbitration process in its compound away from the jurisdiction of the state. This is considered a waiver of the state in which the arbitration of judicial immunity is in support of the agreement of the parties. And some of the jurisprudence supports the application of procedural law of the state that parties agree to apply its law on the subject of conflict.25

If the subject here is the subject of the dispute, it means claims relating to the right or legal status arising from the contractual or non-contractual relationship between the parties, it is the law governing it that governs the proceedings to apply to both substantive and procedural matters. The law of the subject is the law governing the arbitration agreement itself, so that the law applicable to the arbitration agreement also governs the arbitral proceedings.26

5.1.3.2.3. The Law of the Regulations of a Permanent Center for International Arbitration

If the arbitral board finds that the law of the State of the commercial arbitral board or the law applicable to the subject matter of the dispute is appropriate for the resolution of procedural matters governing arbitral disputes, the arbitral board may choose the rules of procedure set forth in the regulation of a permanent international center for commercial arbitration. Most international legislations have given this possibility to the International Commercial Arbitration board. If there is no such agreement, the arbitral board, subject to the provisions of this law, may choose the arbitral proceedings it deems appropriate.27

Such an option shall be the case if the choice of the parties to the law applicable to the arbitral proceedings fails and the arbitral board does not appreciate the appropriateness of the law of the place of arbitration. The law applicable to the subject matter of the dispute or any other law that may have the capacity to regulate

26 Ibid. p 200.
27 Ibid. p 257.
The application of the rules of procedure set forth in a list of permanent arbitration centers and institutions.\textsuperscript{28}

In institutional arbitration, there are a few permanent arbitration bodies whose rules of procedure are not subject to any arbitration to which they are entrusted, except where the parties to the arbitration have failed to apply a contrary procedural law. The majority of the arbitration bodies and centers apply only the rules governing their procedures as well as the 1961 European Convention on International Commercial Arbitration, as well as the Arbitration Rules of the Cairo Regional Center for International Commercial Arbitration. And the procedural rules of the Amman Convention on International Commercial Arbitration Arabian Commercial Arbitration 1987.\textsuperscript{29}

If we see how the arbitrator has the power to choose the law applicable to arbitral proceedings in the event that the parties do not agree to his choice. He shall apply the procedural law of the state of the arbitral board or a state which has a given arbitral procedure or the law that the parties have agreed to apply to the subject matter of the dispute.

5.2. The Language and Sessions of Hearing

5.2.1. Introduction

Article (24) of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) states as below:

1) The arbitral board shall decide whether to hold oral hearings to present the data or to make oral arguments or to proceed in proceedings on the basis of documents and other material evidence, taking into account any contrary agreement between the parties. However, the arbitral board shall, unless the parties agree not to hold any oral hearings, hold such

\textsuperscript{28} Ibid. p 218.

meetings at an appropriate stage of the proceedings if requested by either party.

Article (22) of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) stipulates as follows:

1) The Parties shall have the freedom to agree on the language or languages used in arbitration proceedings. If they do not agree to that, the arbitral board shall proceed to specify the language or languages to be used in the proceedings. This Agreement shall apply to any written statement submitted by any of the parties, any oral pleadings, any arbitral award, decision or any other communication issued by the arbitral board, unless the agreement provides otherwise.

2) The arbitral board may order that any proof of translation be attached to the language or languages agreed upon by the parties or appointed by the arbitral board. The arbitral board may hold hearing witnesses and experts in accordance with Article 17, paragraph 3 of the UNCITRAL model law in 2010, And in accordance with Article 28, paragraph 3 the latter Act. The hearings shall be closed "confidential" unless otherwise agreed by the parties. The Code of French Civil Procedure does not provide for the confidentiality of hearings and pleadings. And it is up to the parties to decide this. The UNCITRAL Law provides clear texts for the manner in which the hearings and the language used in the hearings are held and the hearing is not only for the parties to the arbitration proceedings but for witnesses and experts. And we talked about the experts led by the court in the first part of this chapter and now cannot help but talk about listening to witnesses and this section was divided into three sections: We will talk on the first of the sessions of the jury, the second witness testimony in the second and third we speak about the language of hearing as following:
5.2.2. The sessions of the arbitral board

We must give a clear and comprehensive definition of the session. We can define the term of the session as a circumstance where and when the arbitral board meets with the parties to the dispute and their representative to examine the subject of the dispute and clarify its various aspects by listening to their oral statements and arguments on their claims, through time and place prepared by the parties to the dispute themselves or determined by the arbitral board.30

When the arbitrator adjudicates in a particular dispute between the parties to the dispute, he must inform the litigants of the attendance of the hearings at the appropriate time and place so that the parties to the dispute can present the evidence and proofs of the case and provide a full explanation of the case. The arbitral board may submit documents and written documents unless otherwise agreed by the parties as if agreeing to oblige the commission to allow them in the oral pleadings to clarify their respective evidence and evidence and to convince the Commission.31

The presence of the parties is not required in the first session, but the hearings may be held in their absence, provided that they are informed of the time and place of the meetings so that they may defend their interests.32

The arbitral board cannot take a decision to prevent the hearing of the pleadings and to be satisfied with the forms and documents unless the parties agree otherwise. If one of them asks for a hearing, the request must be met, otherwise it will be considered a violation of the opponents in the defense.33

It shall be necessary to determine the period for submitting the necessary documents and legal documents. In the event of the failure of one of the parties during that

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33 Prairie, Dr. Mahmoud Mokhtar Ahmed. Lectures in international commercial arbitration for students of international trade and investment diploma. Cairo University, 1994, p 111.
period, the arbitrators shall be entitled to issue their judgment on the basis of "the other party's papers and documents".\textsuperscript{34}

If it is decided to hold meetings or sessions by the arbitral board. The parties to the arbitration shall be notified of the dates of such meetings in sufficient time to be ready to prepare their defenses and complete the remaining documents.\textsuperscript{35}

The summary of the proceedings of the session shall be recorded in a special record and each party shall be given a copy thereof. But the Iraqi law had a different direction where it did not require the presence of a clerk with the arbitrator and only requires the signature of the arbitrator on the judgment, but from the practical side should be a record of the meeting proves the date of the hearing, which depends on the determination of the date of sentencing.\textsuperscript{36}

In accordance with the principle of confrontation between the litigants, the authority shall submit to each party a copy of all documents submitted to the other party. The parties shall also provide the parties with all documents which the authority may obtain directly from the parties, as if they had commissioned an expert. The Commission shall send copies of all such information to the parties so that they may be aware of and know what the authority has under its control and influence its decision.\textsuperscript{37}

The arbitration sessions shall be held in secret to preserve the secrets of the opponents whether they are industrial or commercial secrets or the arbitrators. The names of the parties they deal with or the nationality of a party must be kept as a state which prohibits such transactions, unless the parties agree otherwise.\textsuperscript{38}

It was stated in Article 20 of Paragraph 7 of chamber rules, such as Article 24 of Paragraph 1 (UNCITRAL) model law on international commercial arbitration 1985

\textsuperscript{35} Article 24 of the (UNISTRAL) Act 2006.
(with amendments adopted in 2006), also Article 19 of Paragraph 4 of Rules of the Court of London. But the Iraqi law did not provide for the secrecy of the arbitration sessions. And although there is no provision, this does not prevent the holding of meetings in secret because it is one of the important advantages of arbitration.\(^{39}\)

Article (1/1468) of the French Code of Procedure in its texts regulating internal arbitration, and we see the advantages of this decision as closing the door to the parties. It is not permissible after the date of commencement of the submission of applications, unless the body itself requested it.\(^{40}\)

The rules of (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) in Article 24 provided that the arbitral board should be allowed to hold oral hearings to present the data and arguments at the time. The proceedings shall be based on the documents submitted to them, taking into account any agreement between the parties in this regard.\(^{41}\)

The Commission shall continue to hold meetings until it has completed what it deems necessary for the resolution of the dispute and shall not constitute any obstacle in the event that one of the parties fails to attend as long as it has been notified and shall not impede access to control to the end of the dispute. The board of arbitration shall proceed to issue the ruling on the basis of the evidentiary evidence available to it.\(^{42}\)

The arbitrators shall conduct the investigation of the dispute. And each arbitrator shall sign the minutes unless they agree to the assignment of one of them to do so. Such a rule shall be considered as a public order. Therefore, the dispute may be considered only in the presence of all arbitrators.\(^{43}\)


\(^{40}\) Prairie, Dr. Mahmoud Mokhtar Ahmed. Op.cit.p.113

\(^{41}\) Mustafa Nateq Saleh, International Commercial Arbitrator, (Master Thesis) Faculty of Law, University of Mosul, 2005, p 95.


This is stipulated in Article 267 of the Code of Iraqi pleadings 83 for year 1969. There are cases in which the meetings are suspended and interrupted, with respect to the suspension of the arbitration session in two cases. The first of which is through the agreement of all parties "before the arbitrator provided that " the stay does not exceed three months only from the date of the approval of the court for their agreement, Article 82 of the Iraqi Code of Procedure and the second. It is based on the decision of the arbitrator, which is stipulated in Article 268 of the Code of Iraqi pleadings, Which stand in the process of procedures and exit from the jurisdiction of the arbitrator such as fraud in a paper, for falsification or other incident and therefore the arbitrator requires the parties to go to the competent court if there was no arbitration.

As for the interruption of the hearings, it means the prevention of the consideration of the case and the conduct of it because of the cause of the reasons for the interruption specified by law, "such as the death of one of the adversaries, or loss of eligibility". And what is meant here qualified is the eligibility to litigation, as if the farmer and went bankrupt and did not attend the representative and the state of disappearance of the status of the initiator contradiction to the opponent in other words (legal representation).

Which is stipulated in Article 84 of the Code of Iraqi pleadings. The dispute shall not be interrupted by the death of the agent. The termination of his agency, the death of the arbitrator, the loss of his power, his isolation or his withdrawal.

What we mentioned earlier are the obstacles that may be in the arbitration sessions and make them stop or stop for a while and after the absence of reason to resume the proceedings of the arbitral proceedings until the verdict. When the commission considers and disputes a particular conflict, it must have reliable proof of evidence during the arbitration session. Therefore, the authority shall manage the dispute in

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accordance with the "determination of the parties to the dispute ", If it is agreed that the arbitration shall be subject to a specific law in respect of the evidence, the arbitrator shall take this into account to regulate the manner of proof, what is accepted and what is not accepted. 47

The arbitrators do all the evidentiary procedures. They can use experts, hear witnesses, and the arbitrator may summon and interrogate the litigants. The arbitrator does not have the compulsory power of the judiciary. He cannot issue an order to bring the witness or impose a fine on him when he does not attend or testify. 48

And it should be noted that the Egyptian law to impose a fine on the witness in case of refraining from the certificate and take this procedure by resorting to the competent Egyptian courts that require the witness to attend and testify before the arbitrators. Article (269) states that the arbitrators shall refer to the competent court to hear the dispute to issue the decision on these matters. In other words, the arbitrators do not have the authority and according to the Iraqi law to issue such decisions and the provisions of Article necessary to issue their judgment upon referral to the Court. 49

The Court may request the court to instruct others to highlight a document or paper in its possession that has a significant and necessary effect in resolving the dispute. 50

The Commission may also draw upon the possibility of assigning one or more experts to whom the commission shall determine the issues of the report to be prepared in writing or similar. The Commission shall send a copy of its decision specifying the expert's task to the parties who shall provide all necessary information required by the expert with his mission, including access to documents and forms relating to the dispute. The Commission is also competent to adjudicate any dispute

between the expert and one of the parties. But does the authority have to force a
party to submit documents or information that obscures it? Yes, and it can be
considered to be a failure to make a declaration of "the claims of the other party
regarding the disputed part of the dispute".51

In addition, the French law authorizes the commission to issue an order to one of the
parties to submit the evidence or the request of the other party according to article
(3/1460) of the French code of procedure. And there is no difficulty if the parties
dealt with organizing the matter in their agreement as if they agreed that Article 27
of the Model Law provided for the possibility of parties agreeing with the consent of
the commission to request assistance from the state court in order to obtain
evidence.52

The arbitral board shall have wide powers in the proceedings of the dispute both
during the conduct of oral hearings or in the course of the dispute on the basis of
documents and denunciations. It shall have the power to order parties to the dispute
to submit documents or other evidence at any stage of arbitration if necessary the
conflict.

The arbitral board may investigate, investigate the subject of the dispute, examine
the file, check the documents and the documents submitted by the parties in a
hierarchical manner. The arbitrator may then summon the parties before the court.
The arbitral board may hear the pleadings of the parties at the request of one of the
parties to the dispute, on the record and documents submitted to it if the parties so
request, and if they agree to the procedure. However, if the authority opens the
pleadings on its own or at the request of one of the parties to the dispute, in this case
the authority shall send to each party notice of attendance at the date and place are
appointed to be provided that give him enough period of time.53

If it is ascertained that the parties have been informed of the presence, and if,
however, one of the parties fails without an acceptable excuse, the authority may

continue the arbitration proceedings to complete its mission. A copy of the documents on which the litigants are based and proof of evidence to be submitted shall be attached to the statement of claim or to the defense note. The arbitral board shall certainly exclude registers and documents not exchanged in respect of the rights of defense and shall be exchanged in accordance with the rules to be determined by the arbitral board or provided for by law. The arbitration sessions are conducted orally at a meeting with the litigants, their representatives, witnesses, and the arbitral board. The oral discussion is conducted in the documents submitted by the litigants and the applications are submitted. All of this is discussed without the written form. The parties shall submit to the parties, together with their memoranda, all evidence which they deem useful in the matter, and may refer to the evidence and others. Of the other evidence they intend to provide, the arbitral board shall only regulate the conduct of arbitral proceedings in accordance with the rules agreed upon by the controlling parties. If such agreement does not exist, the arbitral board shall choose the appropriate procedures in accordance with the nature of the dispute.

The first thing that the arbitral board has to deal with, whether it is a problem of one or three arbitrators, is to determine the facts of the dispute in the light of the documents submitted by the parties to the conflict in cooperation with them; The rules, regulations of the institutional arbitration procedure do not contain any text explicitly referring to this procedure. However, it is a necessary regulatory procedure for some international regimes such as the International Commerce Chamber system in Paris. However, the rivalry may not reach this stage until a brief, concise end has ended without a ruling on the subject. And this dispute is confronted by a series of symptoms that affect its progress, progress towards a decisive resolution of the dispute.


On the other hand, there are guarantees of litigation, the arbitral board must respect the basic guarantees of litigation that are consistent with the nature and objectives of arbitration. Therefore, the basic objectives must be respected, such as the realization of equality between the litigants in terms of proceedings or in general law enforcement. The Commission shall be impartial, respect the rights of the defense among the adversaries, respect the right of confrontation between them, respect the fundamental guarantees of independence, act on the principle of procedural secretariat among the adversaries, act on the principle of confidentiality required by the nature of arbitration.\textsuperscript{56} The due process of arbitration is to respect the principle of the rights of the defense. These guarantees must be respected regardless of the type or form of arbitration, whatever the powers of the arbitrator, whether he is bound, free or authorized, or not authorized to settle. And the most important guarantees are as following:

- Respect for the principle of the rights of defense: This principle means the view of adversaries in applications, defense and give them all deadlines and final dates required to provide these issues, give them time to study, to hear and respond to their reply. The arbitral board shall ensure all rights of defense on an equal footing, full transparency and impartiality towards the adversaries.

- Respect for the principle of equality: This is done by creating equal, full opportunities for each opponent to present his case, achieve his defense and does not give any party a right without giving to the other party. Respect for the principle of confrontation: The principle of confrontation is one of the basic principles of the dispute, whether the judiciary, or before the arbitral tribunal, and the reason for the importance of this principle is that it includes respect for the rights of defense, and the application of the principle of confrontation in the field of arbitration is compatible with the judicial nature of the latter. The principle of confrontation is the general principle of the dispute. This principle is applied when the rule raised is a custom that the decision

\textsuperscript{56} Sayed Ahmed Mahmoud. The arbitration system is a comparative study between Islamic law and positive law. (N. edt). (s.l) : Al-Iman for Printing, (n.d).p 257.
considers to be equivalent to a rule of law. The arbitrator respects the principle of confrontation as a goal in itself by the means he deems appropriate to achieve it without taking into account the forms and procedures provided for in the law.  

Each adversary has the right to be heard by arbitrators, the summoning of adversaries can be considered problematic. The arbitrators are not obliged to invite the litigants to attend all the hearings as long as they have attended some of these sessions. And the arbitrators have allowed them to identify some of the sessions that they did not attend. And should know every arbitrator shall, in particular, respect the principle of confrontation if it is based on his personal information. He shall not be required to inform the person of facts related to the dispute to be considered unless he is confronted with the litigants. The defense shall prove this and establish the actual evidence of such violation.

In the arbitration dispute, the meetings may be held in any place agreed upon by the litigants, both inside and outside the state. Some meetings may be held in the place of arbitration and others may be held elsewhere. It may decide to hold meetings in public or in secret, either in official working hours or otherwise. It may also decide not to hold any hearing of the oral hearing to be limited to the notes and documents of the litigants. Unless the parties agree on other rules of procedure binding on the arbitral board.

And the Jury in order to facilitate public hearings to be broadcast to the general public via video links. The Center international pour le reglement des differends relatives aux investissements 1966 (CIRDI) rules have been in operation since 2000 in public hearings, access to records and access to documents

As for the sessions of arbitration, they are not public except by a decision issued by the commission with the consent of the litigants, records of the sessions are recorded

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by the secretaries appointed by the chairman of the commission. These key records shall be signed by the president and one of the Secretaries.\textsuperscript{59}

When the litigants are discharged from presenting their defenses and the evidence on which they are based. The president shall declare the door of the pleading closed and the commission shall be dissolved for deliberation. The deliberation shall be confidential and may not be disclosed.\textsuperscript{60}

\textbf{5.2.3. Hearing Witness Testimony}

The certificate is that a person who is not a party to the dispute - after swearing - to inform the judiciary council of what he knows personally about the reality of a place to prove. The performance of the certificate is the duty of the person who is called upon to appear before the courts at the time and place assigned to him. And then the answer to the questions addressed to him. The witness's request to perform the testimony is only by a court or the arbitral board itself. The witness is invited to attend by the opponent who requests his testimony. The arbitrator has the power to cross-examine witnesses and has the discretion not to take all their testimony, or in the event of disagreement by the arbitrators or in the case of the request of one of them, if he considers that sufficient evidence is available to render the judgment.\textsuperscript{61}

However, the arbitrator has discretion in assessing the importance and necessity of resorting to the certificate to show the truth he is looking for, to apply for it from the jurisdiction of the state in which the arbitration is conducted on its territory or where the witness is desired to hear it. And the arbitrator has the discretion to use witness testimony as proof of whether or not. It is not necessary for him to decide not to use witnesses' testimony for any responsibility. If his or her knowledge has been completed on all the substantive and legal aspects of the case before it. The arbitrator does not have the right to refrain from hearing witnesses whom the parties

\textsuperscript{59} Article 63 of the Hague Convention of 1907.
\textsuperscript{60} Articles 66-72 of the Hague Convention of 1907.
to the dispute agree to use. The arbitrator has the right to refuse to hear witnesses if
the parties to the dispute do not agree on them.\textsuperscript{62}

Therefore, the testimony is to inform the person in the judicial council of a decision
issued by others that entails the right of others. The witness must have personally
realized his or her own sense of what he is witnessing so that he may have seen or
heard it himself.\textsuperscript{63} . The arbitral board may hear witnesses in order to reach the point
of truth in the subject matter of the dispute.\textsuperscript{64} It also has discretion in not taking the
testimony of all or some witnesses in the event of disagreement by the arbitrators or
one of them.\textsuperscript{65}

If it considers that the evidence and sufficient attestation to render the judgment to
show admissible justifications for such refusal, or, in general, it may be said that it
has the power to assess the facts related to the claim or the production thereof, the
facts relating to the subject matter. The dispute and affect the formation of the
conviction of the arbitral board to establish all or some of the claimants' claim. The
witness shall testify at an oral hearing or by presentation in a written testimony.\textsuperscript{66}
However, the arbitrator's powers are limited to the extent to which the witness has
responded, if he refrains from submitting his testimony, the arbitrator may only
request judicial assistance. The judge must respond to the arbitration panel in his or
her request, otherwise he will be considered a denier of justice.\textsuperscript{67} However, the judge
must reject the subject of the request for assistance when the subject of the request is
to hear the testimony of persons who are not allowed to testify in matters that affect
their work, if they are required to adhere to the confidentiality of the profession,
general in the country for which assistance is required.\textsuperscript{68} The role of the judiciary in
the field of testimony is limited to forcing the witness to appear before the arbitrator

\begin{thebibliography}{99}
\item \textsuperscript{63} Saadi, Mohammed Sabri. Evidence in Civil and Commercial Materials.N.edt. Algeria: Dar Al-
\item \textsuperscript{64} Al.kathee, Dr. Khalid Mohammed. Op. cit. p 438.
\item \textsuperscript{65} Al-Sanuri, Muhannad. The Role of the Arbitrator in the Challenge of Private International
\item \textsuperscript{66} Ibid. p 113.
\item \textsuperscript{67} Al-Batayneh, Amer Fathi. Role of Judge in International Commercial Arbitration, Comparative
\item \textsuperscript{68} Mounir Abdel Majeed. Op. cit. p 184.
\end{thebibliography}
or the arbitrators or to sign the penalties prescribed by law for the witness who failed to attend after being duly authorized to attend the arbitration panel or attended but refrained from. Answer the questions addressed to him.⁶⁹

5.2.4. The Language of Arbitration

A questioner may ask the language in which to write the judgment. Does the arbitrator or arbitral board determine the language or be determined by the parties to the dispute?. The parties to the dispute have the right to agree to use a language or languages in the arbitration proceedings. In the absence of agreement between them, the language or languages are agreed upon. The texts and procedural rules of arbitration shall be referred to the purpose of knowing the language to be determined in arbitration.⁷⁰ In the proceedings is the language in which the arbitration decision is written. The Arab Convention for Commercial Arbitration 1987 in Amman stipulates in Article (1/23) that “Arabic is the language of proceedings, pleadings and judgments.” “Paragraph 3 of Article 15 of the Rules of the International Chamber of Commerce provides that, the arbitrator determines the language or Languages being the arbitration taking into account the circumstances, in particular the language of the contract”.⁷¹

In case the parties agree on a particular language in arbitration, in this case the arbitrator shall follow the agreement. The language shall remain the language used in the written statements and notes and the verbal attachments as well as any decision taken by the arbitral board or a letter directing it. Unless the agreement of the parties provides otherwise,⁷² The language of arbitration does not pose any problem when the dispute is national and its parties are of one nationality. This problem arises in particular in international trade law. How is the language of arbitration determined? However, the rule that the arbitration is originally in Arabic

⁷¹ Ibid. p 317.
is not of the general order. As we mentioned, the parties to the dispute can agree that
the arbitration shall take place in any other language. The arbitral board also has the
power to determine the language or languages in which the arbitral proceedings shall
take place and the award shall be rendered unless the parties agree on a particular
language. Any arbitration decision, letter of intent or award shall be made unless the
agreement of the parties or the decision of the arbitral board provides otherwise. If
submitted to the arbitral board, the arbitral board shall be bound by all the written
documents, original or non-original documents written in a language other than the
language of arbitration may request that a sworn translation be attached to the
language or languages used in the arbitration. In the case of multiple languages. It
may limit the translation to some or one of them.\textsuperscript{73} The arbitrator or arbitral board
shall determine the language or languages in which the arbitration takes place, in the
event that the parties do not agree to determine the language of arbitration. If they
agree, the arbitrator shall abide by the language of the parties, which is often their
original language. They agree on a language other than their original language. The
language of arbitration is the language of arbitration procedures, pleadings,
documents, documents and judgments. And the arbitration board often determines a
language or other language, and the rule of agreement, or decision on the language
of the data, shall prevail. Written submissions and verbal pleadings, as well as any
decisions taken by this court.\textsuperscript{74} If the body has determined the language, it also has
the power to amend, if the documents are made available other than the language
used in the arbitration. The arbitral board may order the translation of the language
used in the arbitration. In many languages, the commission limited the translation to
one language, meaning that the arbitrator or arbitral board could choose one of the
languages and the arbitrators had discretion in translating the critical documents of
the dispute.\textsuperscript{75}

\textsuperscript{73} Dr. Omar Fares, "Arbitration Proceedings", 30 January 2012. Khalil Daoudi, (Visited on
10/3/2017). \url{http://khalildaoudi.blogspot.in/2012/01/blog-post_30.html}.
\textsuperscript{74} Al Ahdab. Op. cit. p 1068.
\textsuperscript{75} Shawarbi, Abdel Hamid. Arbitration and reconciliation in the light of jurisprudence and
If we see how the arbitrator has the power to determine the existence and validity of the arbitration agreement and the extent to which the dispute in question is related to public order. His authority to choose the place of arbitration, to meet in the most appropriate place. If the parties do not agree on the language of arbitration. The extent of its procedural powers during the conduct of the arbitration dispute. Since the language has an impact on the time, expenditure element, uniformity of the language of arbitration in the case helps to save time and translation expenses. Although International Chamber of Commerce (ICC) arbitration permits the use of documents from several languages that the parties do not need to translate, as well as notes. If we see that the problem of language is not an obstacle in the arbitration processes. We have come from the time that investors - the parties - and the arbitrators at least to be literate, one of which is the language through which the whole world. And imposed by commercial globalization and economic openness which is English.\textsuperscript{76}

Finally, we note that arbitration language is not required to be the same as the language of the arbitration agreement, the original contract or the law applicable to the proceedings or subject matter of the dispute. However, it is recommended that the language of arbitration and applicable law be consistent so that there is no divergence between language and legal concepts Applicable law.\textsuperscript{77}

5.3. Experts are assigned by the Arbitration Board

5.3.1. Introduction

Article 26 of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) provides for the appointment of an expert by the arbitral board to be:


1) Unless the parties agree on the following disagreement, the arbitral board may:

A) Appoint one or more experts to report to it on specific matters to be determined by the Commission.

B) Apply either party to provide the expert with any relevant information or You can view any relevant documents for inspection or to see any other goods or funds to be identified.

2) If the expert submits a written or oral report, if one of the parties so requests, or the arbitral board deems it necessary, He shall participate in a hearing in which the parties have the opportunity to submit questions and submit expert witnesses to testify in the matters of dispute, otherwise.78

The Indian Arbitration Act of 1996 regarding the Appointment of experts by the arbitral board, in Chapter Five, paragraph 26, states the following:

1) Unless the parties agree otherwise, the arbitral board may:

A) The appoint of one or more experts to report on specific matters identified by the arbitral tribunal.

B) Require the party to give the expert any relevant information, produce, provide access to, any relevant documents, goods or other property for inspection.

2) Unless otherwise agreed by the parties, if the arbitral board deems it necessary. The expert, after delivering his or her written or oral report, shall have an oral hearing where the parties have the opportunity to ask questions and submit an expert Witnesses to testify on the points under consideration.

3) Unless otherwise agreed by the parties, the expert shall, at the request of the party, make available to that party for the examination of all documents, goods or other property held by the expert with whom he was provided for the preparation of his report. 

5.3.2. Defining Experience

Experience is defined as the procedure by which a technician is authorized to express an opinion on an issue relating to his or her jurisdiction, which the arbitrators cannot decide without this opinion unless they have adequate elements. Experience is one of the most important means for the arbitral board to obtain evidence pleas in the arbitral proceedings. In light of this importance, the various national laws and arbitral regulations gave the arbitrator the authority to appoint and delegate experts on his own or at the request of the arbitrators. The expert shall undertake the task of attending the parties and shall respect the principle of equality and the rights of the defense. It is worth noting that the arbitrator is not bound by the opinion of the expert in charge of the case and has the discretionary power to do so in the same manner as the judiciary.

The expert has the specific experience on a specific subject, and is charged with expressing his opinion on the issues presented to him, which may be engineering, medical, commercial or accounting etc. Experience in this sense is not considered a method of adjudicating the dispute, but it differs greatly from arbitration.

In the expert's opinion, the opinion is expressed, and this opinion has no mandatory force. In order to determine whether the agreement of the parties is an agreement to resort to arbitration or experience, the criterion of distinction is the extent of the

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79 Indian Arbitration Act 1996.
80 L'expertise est définie comme la mesure confiée à un technicien pour donner son avis à propos d'une question qui relève de sa propre compétence et dont les arbitres ne peuvent statuer qu'avec cet avis, lorsqu'ils ne possèdent pas d'autres éléments suffisants.
81 altalahunuh, Khalid Ibrahim Ahmad “The Court intervenes with assistance in obtaining evidence” Al-Shariata and Law No. 53 (2013); p 43.
powers granted to the person to whom the dispute is concerned. If the powers vested in him, the determination of the dispute and the issuance of a binding decision by the parties, do not go beyond expressing the opinion on a technical issue to guide, whether the opinion of the oppressors or others. Report the expert only opinion no more.\textsuperscript{85}

As for the authorization of the arbitrator to assign or appoint an expert in international conventions. It was stated in the arbitration and arbitration system of the International Chamber of Commerce in Paris. Article 20 states in its paragraph (5) that “One or more experts shall identify, receive and receive their reports. If one of the parties so requests, all of them shall be provided with the opportunity to hold the expert or experts appointed by the arbitrator to account. And may request the parties to submit additional evidence at any stage of arbitration to the arbitral board”.\textsuperscript{86}

The rules of the (UNCITRAL) model law on international commercial arbitration 1985 (with amendments adopted in 2006) are also provided in Article 26, paragraph (1), which states that "the arbitral board may appoint one or more experts to submit a written report to it on certain matters to be determined. The arbitrator shall not follow the opinion reached by the expert in his report, which he was asked to prepare. The arbitrator is entitled to take this report or reject it.\textsuperscript{87}

The arbitral board, such as the court, shall have the right to take whatever evidence it deems necessary, provided that the facts to be proved are relevant to the claim and that the arbitral board has the right to determine the reasons for that. To remove it from all the means of proof ordered by it, and the file of the arbitration case shall be documents and evidence, without specifying any of the means to which it is committed.


\textsuperscript{86} Reconciliation and Arbitration System of the International Chamber of Commerce in Paris.

\textsuperscript{87} Rules of the United Nations Commission on International Trade Law "UNCITRAL".
One of the means of proof that the arbitral board may also order is the assignment of one or more experts to examine a technical matter. Which may require that the matters assigned to the expert be substantive or material. And that it be clear that the assignment of experts in the arbitral proceedings may be at the will of an independent arbitral board or at the request of either party to the case.

The work of expertise shall be deemed to be conducted without the mediation of the arbitral board by a technical expert specialized in the case to be examined and a report thereon. The practicality of the experience shall confirm the importance of experience as a means of evidence from other means. As well as the conclusion of his report, and this is even more important if other evidence of inexperience is not conclusive or sufficient to prove or deny the truth.

The arbitration system may require that the arbitral board issue a decision on the assignment of the expert, specifying the nature of the task assigned to him, the procedures he may take, the time limit for submitting his report and the urgent measures that he has been authorized to take. And its work in matters that the arbitral board does not wish to consider, which may lead to a prolongation of its term of office and thus lead to a delay in the adjudication of the arbitral proceedings.

The expert shall begin to carry out the task entrusted to him by the arbitral board after completing the necessary procedures, especially the deposit of his fees and the determination of the binding party to pay them and the amount of the secretariat to be paid for the expenses of the expert. If not, there is no obligation on the expert to proceed with his task. And the arbitral board to discuss the report submitted by it. It also has the mandate to submit a supplementary report to rectify any deficiency or lack thereof. The arbitral board shall determine the task and work of the experts if they are different, whether they are alone or together. The arbitral board may instruct the expert to submit a supplementary report to remedy any deficiency or deficiency in his previous report.88

The arbitrators have the full freedom to appoint the expert who assisted them in their mission, whether by agreement with the parties or on their own. The question is whether the national judge is allowed to intervene in this area to answer this question. We distinguish between two cases: If the arbitration board is not yet established, that the national judge may, in case of urgency, order an expert to inspect his goods as perishable, but the solution is uncertain. In the event of notification to the arbitral board, the intervention of the judge will only justify the urgency of scientific impossibility.  

The arbitrator has another advantage, where experienced arbitrators can resolve the dispute without recourse to experts, as opposed to what happens in the judiciary, where the judiciary tends to refer the dispute to an expert to examine the technical aspect of the dispute and the ensuing work of the expert. And sometimes it takes time to report to the expert to complete some of the missing means, and sometimes the court's decision to replace the expert, all of which result in the loss of time, effort and money.

5.3.3. Historical development of experience before the judiciary

The judge did not appear to have the experience at the beginning of Roman law. Where the judge had two experts, a specialist in particular science or art, and a judge in dispute, but with the development of Roman law, and the judge's need for his assistant on thorny issues, medical and other matters, led to the establishment of the system of expertise as part of the Romanian judicial system, and the expert has since been committed to oath. The French law was influenced by the Roman law. Experience emerged as a procedure of proof, which, together with the testimony, was of great importance to the judiciary. Several decrees were issued, most notably the (Plouz) decree in 1729 The last law in France to regulate experience before the courts was the Law of Pleadings New in 1927 In Islamic jurisprudence, however,

89 TERKI (Nour eddine) larbitrage commercial international en Algerie, OPU. Alger, 1999 .p 90.
since its early days, it has allowed the judge to use the expert. Based on that on
verses from the Holy Qur'an: "ask the people of the Remembrance, if you do not
know."\textsuperscript{91}

\textbf{5.3.4. Experience in local and international arbitration}

The purpose of the arbitration is to end the dispute as soon as possible. The issue of
the termination of disputes through arbitration is thus closely linked to the issue of
proof of the Latin orientation (including most Arab States) based on the principle of
impartiality of the judge from the process of proof.

And the Anglo-Saxon trend, which gives the judge broad discretion in accepting or
rejecting any evidence submitted to him. The jurisprudence of these States has also
granted a broad authority to the arbitrators to investigate evidence to prove the facts
of the dispute. It is therefore necessary to distinguish between the issue of
experience in domestic and international arbitration cases. The principle of internal
arbitration is that the arbitrator shall comply with the rules of internal law in
adjudicating the dispute before him and shall abide by the principle of impartiality in
evidence.

However, this principle does not apply to its release because the parties can delegate
the arbitrator to the conciliator and he is free to form his conviction from any
evidence that he believes is sufficient to form this conviction. Such evidence is the
means of expertise. In this regard, he may nominate experts who trust him. The
roster of experts with a determination of their task in the form it deems conducive to
the resolution of the dispute. The experience in international arbitration is similar to
the experience in internal arbitration in some of its procedures and differs from it in
other matters. The experience in international arbitration is left in principle to the
will of the litigants, where the arbitrators must respect this will, whether to accept an
investigation through technical expertise or refusal to resort to technical
investigation by experience. The arbitrators may nominate experts either by

\textsuperscript{91} Ahmed Sayed Mahmoud. Legal System of Judicial Expertise in Civil and Commercial Law.
agreement of the adversaries and in the case of non-agreement. The name shall be taken without the arbitrators being bound by a particular schedule unless the will of the parties is directed to the necessity of naming from specific experts in a particular table or residing with a certain party.  

5.3.5. Value of experience in proof

The expert's report is an evidence of proof, but it is subject to the discretion of the arbitrator and may be made by the arbitrator as the basis for the judgment. Some Jurists holds that the judge or arbitrator may divide the opinion of the expert and take it to the extent that he is convinced that it is justified. The researcher believes that the most likely is that the judge takes the report completely without dividing, or not to take it, as the report is a summary of the expert's conviction, and this conviction cannot be fragmented.

In order to ensure the arbitration system in the realization of the right and justice, the system allowed the adversaries to submit advisory reports to the arbitral board, whether supporting or opposing the report of the expert. The general rule remains in force and prevailing in the opinion of the expert is an advisory opinion to the arbitral board to take it fully or to put it in full. The arbitral board has to take part not all from experience Decision.

5.3.6. Extent of the arbitrator's commitment to experience

The expert's opinion is not binding and it is up to the discretionary authority of the arbitrator. However, some regulations may require the use of experts in certain cases, such as medical or technical matters that are not known to the competent authorities, and if they decide to use the expertise either at the request of the

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concerned parties or on their own initiative. The judge must determine the task of the expert in a precise manner and the measures that he is authorized to take and the time limit for filing his report and the expenses of the expert and the method of payment. And after the end of the task of the expert to prepare a report of the outcome of his work briefly and accurately with statement of most appropriate opinion. Which was based upon, and that the multiplicity of experts can each submit a separate report unless otherwise agreed to provide one report comprised the signatures and the opinion of each of them and its causes.  

Whatever the position of experience and its power of proof, the arbitral board may take one of the following decisions:

1) The adoption of experience entirely: The principle requires that the adoption of the report of experience is the special authority of the arbitrator in matters that need art and not have to separate them on their own.

2) The adoption of the experience of the penalty: Where the arbitrator can take the opinion of the expert in whole or in part convinced of him and if the opinion of the expert completely or partially to the arbitrator to explain the reasons for negligence and explain this enough explanation.

3) Neglect of experience: Here the arbitrator has the right to rule contrary to the opinion of the expert and in this case it must indicate the reasons on which the current experience was not taken, otherwise it was a defective decision.

5.3.7. Discuss the experience report

The arbitral board may order that the expert be summoned in a special session to be discussed in his report if it deems it necessary and shall, on its own initiative or at the request of the litigants, request such questions as it deems useful in the proceedings. It may also return the report to the expert to rectify the error or lack

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thereof or to entrust the work to another expert. In all cases, the court shall not neglect or contravene expert reports without giving reasons.\textsuperscript{98}

The expert's report is considered to be a proof of evidence in the case, but it is not conclusive evidence, but can be debated and challenged by one of the parties to the dispute. The party to whom the report was issued is based on the report and considers it to be one of the evidence on which to substantiate its claim. The other party to the case has the right to discuss the content of the report and its errors, and may also challenge the expert's practical or technical ability report of the lapses. The judge may summon the expert on his own behalf.\textsuperscript{99} Or at the request of the litigants if he deems it necessary, such as clarifying certain information or incomplete or vague information, and may ask him to expand his task or ask him to answer new questions.\textsuperscript{100} Or to return the report to rectify the error or deficiency, or to entrust the work to another expert.\textsuperscript{101} The arbitrator may also report new procedures of experience for reasons that he estimates.\textsuperscript{102} For example, the report of the expertise is nullified due to lack of data, required for what is requested of it and the opponents may challenge the scientific qualifications of the expert.\textsuperscript{103}

The arbitral board shall therefore take the following measures:

1) The arbitral board shall send a copy of the expert's report to each party, with the opportunity to discuss the expert before the arbitral board at a hearing to be determined for this purpose.

2) Each Party may submit one or more experts to express an opinion on the matters dealt with in a report.

\textsuperscript{101} Al-Kilani, jamal "proof of inspection and experience in jurisprudence and law” Journal of an Najah University for Research (Humanities), Issue 1. 2002: p 279.
\textsuperscript{103} Keshbour, Mohamed. Op. cit. p 112.
The expert appointed by the arbitration board:

3) If the Court of Arbitration is challenged in a substantial document related to the subject matter of the dispute, the party shall be liable

The applicant must prove his appeal before the competent authorities.

4) Suspension of the arbitration proceedings until the dismissal of the appeal against the declaration if the applicant proves that he has submitted his claim.

To the competent authorities within one week from the date of his appointment.\textsuperscript{104}

The litigants may request the return of the expert appointed by the arbitral board if he makes any of the reasons for the arbitrator's reply. So that his report is not defective in one of the defects affecting the arbitral board's judgment, such as favoritism or courtesy.\textsuperscript{105}

5.3.8. Appeal Decision of Experience

Human being who can be sometimes wrong, forgetful, and sometimes biased.\textsuperscript{106} But the expert's report does not Appeal by independently way because it is considered part from the arbitral award, unless otherwise provided by the legislator for appeal it by independently way.\textsuperscript{107} Provided by the legislator to a new experience, in the event of useless first experience, subject to the discretion of the court subject.\textsuperscript{108}

The arbitral award issued by the arbitrator during the course of the case does not accept the appeal except with the decision that ends the dispute. The decision of the court to conduct the technical expertise is considered a preparatory decision that does not end the dispute and is not considered a temporary provision and therefore cannot be challenged in the face of independence. Because it does not raise the hands of the arbitral board to see the case as well as all decisions concerning proof.

After duly assigned to the expert to carry out his mission in the place designated for

\textsuperscript{104} Abdelmagheyat murad, the subject of "arbitration procedures" 6/10/2016. Our world. (Visited on 29/3/2017). \url{http://www.3lmnanews.tk/2016/10/blog-post_6.html}.

\textsuperscript{105} Al-Nuwaiser, Dr. Khalid. Op. cit.


that and in the presence of the opponents who reported the date of implementation and does not affect the non-presence of the most informed assets of the liabilities.

If the expert begins his work without informing the litigants attending the trial sessions and without enabling them to defend their rights and interests while working on their case, the current experience is nullified. However, the invitation of the adversaries is not necessary if the task is limited to certain actions such as drawing a document or checking a document or conducting a medical examination or chemical analysis or the determination of the price of a commodity at a certain date. In order for the expert to carry out his task well, it is necessary. For him to take into account all the files and documents that the parties highlight in the file until the moment the task is completed. He has the right to request from the parties or persons thirty other documents that appear to be useful.

During the course of his/her mission, the expert shall be fully independent at the technical level and shall carry out all investigations or surveys which he deems necessary, provided they are legitimate. He is obliged to personally perform the task entrusted to him by the arbitral board under the penalty of invalidity of experience. However, this does not prevent him from assigning his assistants or associates to some secondary or supplementary tasks provided that he verifies their work and fulfills his responsibility. Upon completion of his or her assignment, the expert shall draw up a detailed written report before him and after approval, he may be oral during the hearing. In all cases, his report shall include his work, opinion and the aspects on which he is based. If the experts are different and their task is one and they disagree, they must submit one report with the opinion of each of them and its reasons.

If the expert is unable to accomplish the task entrusted to him within the time limit specified in the decision to appoint him for good reasons, which prevented his completion of his mission. The delay is justified by submitting a memorandum to
the court, which may give him time to complete the task if there is justification for his delay.  

In this case, any of the litigants of the arbitration case shall have the right to challenge the decision reached by the arbitral board regarding the contents of the expert's report subject to appeal, if the final judgment of the arbitral board is challenged. And the arbitral board may move to any other means of proof provided by law or thus making it clear the importance and effectiveness of the work of experience before the arbitral board and its clear impact on the judgments rendered in the proceedings. Therefore, the arbitral board should not be guided by the requests of the parties to the arbitral proceedings involving the assignment of experts, unless it deems it important in the case, and that it must assign competent experts according to their specialization to delineate the dispute before it in what it considers right and just.

5.3.9. Invalidation of Experience

The law does not explicitly and directly state the invalidity of experience. It is subject to jurisprudence between fundamental and non-substantive defects. The fundamental defects that lead to nullity of experience are null and void and may be invoked at any stage of the proceedings, even for the first time before a court, In particular to raise it on its own as if the report of the expert is not organized by writing when required or non-location of the expert or does not include the reasons on which it was built, or other similar cases.

The non-essential defects that lead to the invalidity of experience, and the stakeholder not to hold the void. This is called the relative invalidity as if the experience directly without inviting opponents etc.

The rules of experience were not of the general order but were in the interest of the parties. Consequently, the silence of the parties on a procedure contrary to those

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110 Al-Nuwaiser, Dr. Khalid. Op cit.
rules referred to tacit consent and did not lead to invalidity of experience unless the parties held it before the arbitral tribunal that decided the experience.

If you decide to invalidate the experience, you have two options: either to dismiss the decision of the experience and to adjudicate the case in the light of the documents in which it is justified if it is sufficient to rule, or to decide to re-conduct a new technical investigation by new experts or by the same former experts unless revocation of experience is due to a reason for the response.¹¹¹

5.3.10. Some Kinds of Civil Experience

It is difficult to draw up a specific list of the types of issues that need to be investigated by technical experts because they are left in light of the provisions and conditions of each case on the one hand and the development of the means of technical progress on the other hand.

The tables of experts in most Arab legislations have defined the terms of reference of the technical expertise in a number of areas, including,

1) Civil, architectural and health engineering, which is used in the field of real estate valuation claims.

2) Space and topography: It is necessary in the eyes of the judiciary in order to determine the distances, borders, spaces and mapping and separation.

3) Agricultural engineering, which plays an important role in guiding the judiciary in cases related to trees and fruits, agricultural crops, soil, agricultural medicines and...

4) Engineering of mechanics and electricity, all of which reflect the advanced technological progress that the judge cannot judge without the use of technical expertise.

5) Traffic accidents and their damage: Traffic accidents are a wide field of experience in practice and constitute the largest part of the cases before the courts in many Arab countries, whether to determine the proportion of the parties involved in the accident that led to the damage or to determine the value of damages caused by the accident.

6) Legal and commercial accounting: This position occupies an important position in the world of expertise, especially in accounting cases in business or in companies of all kinds.

7) Decoration and fine arts: where the judge finds himself obliged to use the experience of specialization in this area to indicate the applicability of the implementation of the terms of the contract. And a statement of defects and shortcomings, what is the value of the work done, etc.\textsuperscript{112}

\textsuperscript{112} Joseph Rahma. op. cit.