

## **The Consideration of Arbitration Decisions and awards as Official Documents**

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### **Abstract**

Arbitration is one of the important laws prevalent in ancient and modern times because of its effective role in resolving disputes at the local and international levels. Official documentation is considered a legal process, the document can be authenticated by a legal authority or a recognized legal certification. This work aims to study and understand the concept of arbitration, how it is organized, and the considerations of its decisions as official documents. The researchers used the descriptive and analytical approach to the provisions and laws of Jordanian evidence. Researchers have concluded that arbitration decisions are considered official documents if they follow the necessary legal and administrative rules and procedures for documenting them. Accordingly, arbitration decisions are considered official documents and their rulings are implemented as stated in the Jordanian Arbitration Law. Researchers recommend enhancing legal awareness of the importance of arbitration as an effective means of resolving local and international disputes.

**Keywords:** Arbitration, Provisions, Judicial System, Legal, Official Documents.

### **Introduction**

The judiciary is considered to have the court powers through which the dispute between the disputants is settled. When the disputants resort to the judges, there are a series of procedures and sessions that the disputants go through. Therefore, what is called arbitration sometimes appears, which is characterized by flexibility and speed in deciding its cases. The group conducting arbitration is distinguished by experience, wisdom, and the ability to resolve disputes. The conflicting parties must listen to this group and agree to its decisions. If the arbitration decision is not implemented, penalties will be applied to those who refrain from investigating the award (Al Suwaidi, 2022; Aljaber, et al, 2020).

According to WIPO, arbitration is a conventional method of resolving disputes between parties privately. Parties agree to submit their dispute to one or more arbitrators. The arbitrators render a final and binding decision, bypassing the

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need for court litigation. Arbitrators are commonly chosen based on the relevant expertise of the involved parties (World Intellectual Property Organization). Arbitration is an efficient alternative to the traditional court system for resolving disputes. It involves presenting the case to a committee of legal experts specializing in the relevant field. This process offers parties high autonomy and procedural adaptability, ensuring a conclusive and enforceable resolution (Blanke, 2008).

Therefore, the significance of this research lies in determining the extent to which arbitration rulings are considered official documents and clarifying the concept and provisions of official documentation. The study seeks to achieve the following objectives: clarifying the idea of arbitration rulings, and how they are organized. It also aims to know the extent of the validity of these rulings, considering their decisions as official documents to be relied upon. This work also highlights their evidentiary strength. Based on this, the problem of the study is to determine the extent to which arbitration rulings are considered official documents that can only be challenged through forgery. This includes indicating the possibility of challenging arbitration rulings as official documents, clarifying the validity of arbitration rulings, and determining their evidentiary strength. From the problem of the study, the researcher formulated a set of questions: What is the concept of official documentation and what are its provisions? what is meant by an arbitration ruling and how is it regulated? what does the validity of an arbitration ruling possess? and what is the evidentiary strength of an arbitration ruling?

### **Literature Review**

Ancient civilizations practiced arbitration, laying the groundwork for a comprehensive system. We can shed light on understanding arbitration by examining ancient cultures like the Babylonians, Egyptians, Greeks, and Romans. They regarded law as a reflection of societal norms and conditions rather than an isolated concept (Hammouda, 2011). In the case of a refused arbitration award, the ancient Egyptians had a law that stipulated this, if either party refused to abide by the arbitrator's decision, a penalty would be imposed. This text indicates that judicial review of the arbitration award is restricted to its obligation alone, excluding any other formal or substantive conditions (Hassan, 2010). Salar (2023) pointed out that arbitration inherently seeks to resolve disputes. But its development in different countries involves more than that. In many Asian nations, arbitration, like many legal concepts, is viewed as a contribution from Western culture. This differs from Western countries have a more personal

connection to arbitration. Over time, the importance of arbitration has become clearer, leading to the adoption of more adaptable formats (Salar, 2023).

Al-Zaatari (2014), entitled "*The Application of Arbitration Law in Palestine*" published by Open Al-Quds University, examined this subject. The study is considered an analytical study that examines the application of arbitration law in Palestine and identifies the successes and challenges it faces. As well, the extent to which arbitration rulings are considered official documents in Palestinian law. Our study is similar to the previous study in addressing conceptual and theoretical aspects related to arbitration law and identifying the challenges it faces. However, it differs in terms of scope, as the previous study was limited to Palestine, while my study discusses arbitration rulings in a general sense.

The research conducted by Khalifa, (2023) explains the concept of arbitration and its types. He also points out the ruling on the invalidity of the arbitration award. The researcher defined arbitration in its legal form as the method by which disputants resort to resolving the dispute between them. By selecting arbitrators for themselves without resorting to the judge. The researcher also stated that the Egyptian legislators emphasized the importance of arbitration. The arbitration issuance of its decisions is an official decision and ruling that are not subject to appeal as long as they are according to laws, legislation, and controls. At the end of his research, he concluded that arbitration is characterized by characteristics and qualities that distinguish it from the ordinary judiciary. This is through its speed in resolving disputes between the parties. He recommends that an investigation be done when submitting a request to appeal the arbitration award. Also, it is necessary to establish comprehensive laws and rules for ruling arbitration from the beginning of the appointment of arbitrators until the issuance of the decision (Khalifa, 2023).

In Hashoud's (2017) study, the authenticity of documents, both official and customary, was also demonstrated in Algerian Civil Law, due to the authenticity and importance of these documents in proving ownership. The Algerian legislator stated in his civil law the importance of official documents in proof. In her research, the researcher concluded that official documents are issued by an employee or person charged with making these documents. Their validity is not questioned unless it's proven that they were forged (Hashoud, 2017).

### **Research Methodology**

In his research, the researchers relied to use the descriptive analytical approach, which includes analyzing the legal terms and concepts related to arbitration in the Jordanian Evidence Law. Also, studying the judicial and arbitration rulings related to the subject of the research. As well as comparing it

with what was mentioned in some legislation and laws of some Arab and foreign countries.

### **Results and Discussion**

**Concept of Official Documentation:** Documentation or writing is one of the most important methods of proof and evidence. For proof in most legislation related to evidence, the Jordanian Evidence Law No. (30) of 1952 and its amendments considered written and documentation evidence as one of the important means of proof presented by one of the parties to the dispute (Article 5 of the Jordanian Evidence Law). The Jordanian legislator has given full attention to the topic of documentation. In general, this is due to its clear importance among individuals. As well as its economic and commercial significance, which is evident in daily transactions. In light of this importance and the need to regulate legal transactions in the country. The Jordanian legislator addressed these points and regulated them, including their provisions, in the Jordanian Evidence Law and the Enforcement Law

**Definition of Official Documentation:** These documents are organized by employees who are responsible for arranging and authenticating them in compliance with legal requirements. Alternatively, owners may organize them and have employees certify them according to the law. Also, it comprises papers created by authorized public officials according to established legal requirements. These documents can take the form of judicial rulings, official papers, decisions, laws, and treaties (Khan, 2010). They are generated by a public official or a designated individual involved in public service, They are carried out in compliance with specific legal provisions (Saleh, 2020).

Many jurists have defined official documentation. Dr. Al-Sanhouri defined it as "official papers prepared by a competent public official according to established regulations. These papers include various types, such as general official documents like administrative decisions, laws, and treaties. As well, as judicial official documents like lawsuit applications, records of clerks, and court session minutes" (Al-Sanhouri, N. D, p. 55)

According to "Article 6 (1952), "Official documents are documents regulated by officials who are competent to regulate them according to legal regulations. These documents are enforceable without requiring their presenter to prove their authenticity unless forgery is proven. Or it is documented that are regulated by their owners and authenticated by officials who are competent to authenticate them according to the law. These documents are valid only in terms of the date and signature"(Jordanian Evidence Law Article 6, No 30, (1952).

Also, according to Article 10 of the Egyptian Law of Evidence No. 25 of 1968, official documents are those that demonstrate actions taken or information received by a public official. Or an authorized individual within the scope of their legal authority and expertise. If these documents lack official recognition, they are considered customary documents only if signed, sealed, or fingerprinted by the relevant parties (Egyptians Evidence Law). It was also stated in the Iraqi Evidence Law and the Algerian and Egyptian Civil Laws in Articles (21/First), 324, and 390, respectively (Hashoud, 2017).

This means that according to the legislation of Jordanian, Iraqi, Algerian, and other countries that have enacted the law regarding evidence and official contracts, these contracts can be regulated directly by the responsible specialist with the authority to do so. Or it can be written and organized by the person himself, and then the competent employee audits, reviews, and approves it. Hence, this document is considered official

**Provisions of Official Documentation:** Any document, paper, or written description cannot be considered an official document unless a set of legal conditions are available and met. Similarly, any document issued by an official cannot be considered an official document unless specific conditions related to that official are met.

In the Jordanian Evidence Law, the legislator has clearly outlined the conditions for official documentation and provided detailed provisions in alignment with the law.

The legislator specified the conditions as follows:

**Firstly**, the Jordanian legislator restricted the issuance of official documents to competent public officials who regulate them within their jurisdiction.

Public officials are individuals appointed by the state in an official capacity to perform specific duties or tasks, and different public official issues of official documents (Khan, 2010). This condition is mentioned in Article 6(b) of the Evidence Law, which states that "documents are regulated by their owners and authenticated by officials who are competent to authenticate them according to the law. These documents are valid only in terms of the date and signature."

For a document to be valid, it must not only be issued by a competent official or public officer within their authority but also comply with specific legal requirements. These requirements include: The document must be issued while the official is in office to be considered valid. The document is invalid if the official is not in office during issuance. And, the official must be legally eligible to issue all contracts and documents within their jurisdiction.

The Algerian legislator also has stated the criteria that must be met by an official document, including that this document be issued by a specialist or employee assigned to that work. This employee also has the legal capacity and authority to issue this document (Algerian Civil Code Law, Article 324).

**Secondly**, adherence to the required form according to the law is necessary. The legislator has clarified and defined the required form of the law based on regulations and provisions that govern the form of the document.

Article 7 of the Jordanian Evidence Law specifies that official documents issued by public officials within their jurisdiction are admissible as evidence for actions carried out by the public official within his authority. Or by relevant parties in their presence unless proven to be forged using legally prescribed methods (Jordanian Evidence Law).

In this article, the Jordanian legislator grants evidentiary status to official documents that meet all the required conditions and provisions according to the law. Such documents can only be challenged based on forgery as the law states.

The Algerian legislator has stated that failing to meet any condition in an official document can result in the document losing its legal validity and being subject to invalidation (Hashoud, 2017).

The researcher believes that the Jordanian legislator's restriction of official documents to public officials is a legislative limitation. The legislator should expand the concept beyond public officials to avoid such limitations as it affects transactions. Especially considering that documents can be issued by individuals providing public services, such as notaries and arbitrators.

It is worth noting that the current era has seen significant advancements in the methods of evidence, thanks to technological progress in communication means. This progress has introduced new forms of evidence, such as electronic documents like bonds that can be shared through fax, telex, email, or computer outputs. Scientific research has validated the effectiveness and accuracy of these methods in proving legal actions (Dodin, B. M. (2006). The Jordanian legislator has granted electronically extracted bonds the same evidential value as traditional written bonds (Jordanian Data Law, Article (3/113)).

**Concept of Arbitration and Its Regulation:** Arbitration has become one of the prominent and preferred methods for resolving commercial, national, international, and other disputes. Many people now turn to arbitration as an alternative to the official judiciary to reduce the delays experienced in courts, currently. Arbitration provisions, including procedural and final awards, constitute the rules and procedures followed in the arbitration process. Arbitration is considered a way to resolve disputes outside the traditional judicial system. Where

an independent and specialized third party known as an arbitrator is used to make a final and binding decision for the disputing parties.

Arbitration is defined as the decision that is issued by a party legally authorized to have this jurisdiction. It is considered an authority to decide on the lawsuit submitted to it. It is authorized to resolve these lawsuits in whole or in part according to the provisions of the law and legislation (Salam, 2000).

Arbitration is an alternative mechanism for resolving disputes outside the traditional judicial system, where the dispute is referred to an independent and neutral arbitration panel known as an arbitral tribunal. The arbitration panel usually consists of one person or a group of specialists qualified in the disputed field (El-Qaliboubi, 2010).

Jordanian Arbitration Law (2001b) defines arbitration in the Jordanian Arbitration Law as "the agreement of the parties, whether legal entities or natural persons with legal capacity to contract. This capacity refers to all or some of the disputes arising or that may arise between them regarding a specific legal relationship, whether contractual or non-contractual, to arbitration" (Jordanian Arbitration Law Article 9).

Jurists defined arbitration as: "an agreement to refer the dispute that arises between individuals over a certain issue and to refer the dispute that arises between them to one or more individuals called arbitrators to settle the existing dispute instead of resorting to the judiciary" (Al-Douri, 2002; Al Suleiman, 2023).

Arbitration and its provisions enjoy international recognition under international arbitration conventions. Such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Under these conventions, countries commit to implementing arbitration awards across borders.

However, it is important to note that certain circumstances can affect the enforceability of arbitration awards, such as specific local legal or procedural aspects that must be taken into account.

In general, we can say that arbitration plays an important role in resolving commercial, legal, and social disputes as well. It serves as a remedy for disputing individuals and is also considered an effective and reliable means for parties to settle their disputes independently and impartially. That helps in enhancing confidence in the legal system and achieving justice between individuals in general and disputing individuals in particular.

**Legitimacy of Arbitration Awards:** To determine the legitimacy of decisions issued by an arbitration tribunal. It is necessary to clarify the position of jurisprudence regarding the legal nature of arbitration. Jurisprudence and the

judiciary have not agreed on a single opinion in defining the legal nature of arbitration. Some argue that arbitration decisions have a contractual nature, considering arbitrators as individuals bound by a contractual relationship with their appointers to perform a specific task. The parties agree to resort to arbitration, and this perspective has been adopted by the French Court of Cassation. (Hazzaboun, 2006). This theory is endorsed by legal experts in Egypt, Italy, and France (Shihab & Al-Rawe, 2020).

Another perspective from jurisprudence leans towards the judicial character of arbitration. This theory is widely accepted in current Egyptian jurisprudence. As well as in French and comparative jurisprudence (Hassan, 2010). It views arbitration as a judicial matter as long as there is an agreement to resort to it, which is binding and cannot be evaded. It considers the arbitrator as a judge, considering arbitration a partner to the judiciary in the traditional sense (Radwan, 1981). This concept of dispute and how this dispute is resolved determine the nature of the arbitrator's role as a judge chosen by the disputing parties to establish justice between them. The arbitrator's ruling, like judicial rulings, acquires its legitimacy and is compulsorily implemented after it is formulated in a final manner (Manani, 2010).

There is a legal problem in this approach, as the judiciary is independent and has no partner in its function. The judge has a public and stable function, unlike the arbitrator. As a result of the difference between these two perspectives, a third approach emerged, which is the mixed approach. Suggests that arbitration has a unique nature that combines both contractual and judicial elements. Which starts with an agreement, progresses through a procedure, and concludes with a judgment. Each of these stages influences the others, making arbitration a hybrid system. It is not purely contractual or judicial, but rather a blend of both, involving agreement, procedure, and judgment (Hassan, 2010).

For example, a decision from the Jordanian Court of Cassation was issued in this direction in ruling number 6302/2022, issued on October 18, 2022. Since it is established under Article (52) of the Arbitration Law and as the arbitration awards issued according to this law have the force of judicial. The provision of Article (41) of the Evidence Law for final judgments has the force of evidence in the rights determined therein. The Jordanian court has concluded that the plaintiff's claims in the present lawsuit are nothing but a repetition of her claims in the arbitration case. That arose between the same parties and regarding the same subject matter. Therefore, it is not permissible to reconsider these claims before the competent court out of respect for the principle of the binding force of judgments. In the same way, the Egyptian Court of Cassation adopted a civil cassation on 2/15/1978 AD by Appeal No. 521 of 44 A.D., stating that courts have



the primary authority to settle disputes. Court rulings inherently hold the authority of the matter resolved upon issuance (Al-Qassas, 2007).

The Algerian legislator also stated that the judiciary should not interfere in disputes submitted to arbitration which was agreed upon, such as the New York Convention. Article 1045 of the Algerian Civil Procedure Code also stipulates that the judge is not competent to decide the dispute that was presented to an arbitration committee. A group of international legislation has also agreed in this regard, such as the German Law Article 1027, and the German Procedure Law Article 1022 (Shaaran, 2016).

The mixed theory is initially applied when there is a contractual and consensual agreement, where the two parties agree to resort to arbitration. Then the arbitrator issues his decision judicially. Here the judicial nature appears, as explained and agreed upon by previous legislation in various countries.

**Evidentiary Force of Arbitration Awards:** One of the current controversial issues in jurisprudence and judicial rulings is the nature of arbitration awards. The development of economic, local, and international relations has contributed to the emergence of this debate and the flourishing of arbitration at this time.

The Jordanian legislator has specified the legal conditions for official documents in the Jordanian Law of Evidence, Article 6b, which states, "official documents regulated by their owners and authenticated by employees authorized to do so according to the law. Their validity is limited to the date and signature only."

The Algerian legislator also stated in Article 1047 that the arbitration award's legitimacy is proven by the place and date of its issuance and its signature by the parties and the arbitration committee. Article 1472 of the French Code of Procedure also showed the same thing (Lazhar, & Karam, 2010).

Based on the above, the Jordanian Arbitration Law, various aspects are outlined by the legislator regarding the arbitration rulings. These rulings are considered official documents for evidential purposes. But only if endorsed by an authorized individual within their jurisdiction. Therefore, I have clarified the jurisprudential and theoretical orientations regarding the evidentiary force of arbitration rulings.

The legislator in Jordan has adopted two main approaches regarding arbitration awards: a mixed approach and the recognition of their judicial character. According to the Jordanian Arbitration Law (2001a), arbitration awards now hold the same legal weight as court judgments, being granted the force of *res judicata*. This means that under the Jordanian Law of Evidence (1952), arbitration

awards are considered official documents with the same evidentiary power as court judgments.

### **Conclusion**

Arbitration is currently receiving great attention, as evidenced by the establishment of national laws and global treaties to supervise it. These laws and regulations cover the selection of arbitrators, the requirements for committee membership, and judicial supervision thereof to ensure fair and impartial arbitration results. This oversight aims to maintain the integrity of the arbitration process, prevent bias, and ensure accurate and unbiased decisions. In Jordan, the state legislated Arbitration Law No 31 of 2001 to encourage arbitration as an effective and acceptable method locally and internationally to resolve commercial and investment disputes. It must be emphasized that arbitration awards are considered official and reliable documents through the existence of a valid arbitration agreement that fulfills the conditions. This includes specifying the arbitration procedures and quality, selecting qualified arbitrators, and determining its time and place. After the arbitration award is issued, this award is considered final and binding on all parties, and they are obligated to implement it according to applicable laws. It is expected that the Jordanian judiciary will increasingly support arbitration. That may allow the implementation of innovative practices in international commercial arbitration within Jordanian courts

### **Recommendations**

As stated in conclusion, the authors may recommend the following:

- The Jordanian legislator must look at what the Egyptian legislator adopted in defining official documents, as it expanded the scope of public officials' jurisdiction to include those who provide specific public services based on legal provisions.
- The study recommends enhancing legal awareness of the importance of arbitration as an effective means of resolving local and international disputes. Encouraging parties to adopt this approach to resolve those disputes.
- Individuals and organizations should rely on official documents to document important records and arbitration awards. Thus avoiding potential problems in the future.

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