

## The Civilian and Judicial Immunity Arbitrator Responsibilities

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### Abstract

The researchers provided in this study, an overview brief about the Civilian and Judicial Immunity Arbitrator Responsibilities that will deserves, and they discussed the similarities and differences between the perspective of Jordanian law and Saudi law in this range, Depending on several different aspects: the scope of civilian responsibility to the arbitrator that given by the obligations incumbent upon himself, And the responsibility of the arbitral Authority cases arising from the breach of contractual obligations, and then the responsibility of the arbitral Authority cases arising from the breach of obligations imposed the nature of the judicial function.

Then the researchers drew their study towards to the principle of judicial immunity from civilian responsibility and justifications behind or against judicial immunity, and judicial immunity that the arbitrator obtained in litigation arbitration and content of judicial immunity to the arbitrator of civilian responsibility and, finally, the rationale behind or against judicial immunity for the arbitrator.

This study found there is a variation in jurisprudence around the nature of function the arbitrator in the dispute, and that the nature of function the arbitrator has directs impact on determining the scope of civilian responsibility for an arbitrator to the parties of litigation arbitration, and the Jordanian law arbitration is truly poor from any Text decide which civilian responsibility on the arbitrator for its mistakes that perpetrated while he carrying out his function in the arbitration dispute. So the researchers recommend to finding a detailed regulation law to specify the responsibility of the arbitrator that based on the privacy which imposed by his mission.

**Key words:** The Judicial immunity, the civilian responsibility, the Jordanian law, the Saudi law, the arbitrator, Arbitral Authority, Contractual obligations.

### 1. Introduction:

With the development of international relations originated conflicting interests and objectives of the contradictory, so there were many requirements and intertwined relationships international community resorted as companies, institutions and individuals to arbitration to bring the dispute to an arbitrator or arbitrators for adjudication without resorting to the judiciary, countries have allowed arbitration and enacted a regulatory legislation including Jordan under Arbitration Law No.(31) for the year 2001 and the Kingdom of Saudi Arabia under the Saudi arbitration system.

In view of the arbitrator shall be integrity, honesty and knowledge systems and expertise in his field, a major cause of chosen, and therefore what the penalty levied on the arbitrator chosen by the parties to the conflict that is not being honest in the performance of work, which favors one of the parties to meet an advantage or benefit and how much responsibility for that?

And undoubtedly the arbitrator performs the function and the nature of this function affect in determining the scope of responsibility, that is, they affect the scope of the obligations that fall on his shoulder, which entail violating the responsibility of civil, it must describe the nature and function of the arbitrator as, as these distinct nature of the work of the arbitrator raises some sort of ambiguity about the legal adaptation of his mission is a lawyer for opponents or judge them? The contractual nature of the governs task arbitrator and consensual determination of the scope of his powers to justify the contractual nature of the work arbitrator.

Hence the strong trend in jurisprudence is like contractual nature of the work of arbitrator and the proponents of this trend that the arbitration agreement and the judge from the arbitrator one and the arbitration process gathering in shape of a pyramid the base is the agreement and the peak is the power, which seems just a collateral in this process; because it is nothing more than simply identifying the content of the arbitration contract and is not judgment<sup>1</sup>.

#### 1.1. overview

Is based to the fact that the arbitration agreement just hold are before starting procedures adversarial arbitration and to that subject contracts of general provisions, and therefore the arbitrator's decision complies with the will

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<sup>1</sup> Ahmad Abu al-Wafa, optional and mandatory arbitration, facility knowledge, Alexandria, fifth edition, p 16

of the adversaries and influenced by defects which marred by, and that the arbitrator is not judges of country but is a layman may be a foreigner owns the refusal to accept the job without being denier of justice ; where he derives his powers from the agreement of the parties who choose to accept his rule, he also does not have sanctions against parties or witnesses as well as the necessity to order the implementation of the judgment from the judiciary and the possibility of making original suit with struck down and then have his contractual nature<sup>2</sup>. The Jordanian Court of Cassation ruled in its resolution No. (1783/2010) Date 6/10/2010 justice publications that "arbitration is a contract pursuant thereto one or more persons agree to refer the dispute that has arisen or arise between them in the execution of the contract on the arbitrators for decision instead of resorting to justice, if such a condition exists in which the parties committed themselves and not have to ask the court in the contract dispute to be referred disputes arising from the agreement to arbitration"

Although logical that direction, but we cannot deny the judicial nature of the work of the arbitrator where the later performs the function of a judge between the parties by virtue settle the dispute and has authoritative command it's appropriate and this authentic derived from the legislator in terms of Article 52 of the arbitration system in Saudi Arabia and the Jordanian Arbitration Act "holds the arbitrators issued in accordance with provisions of this law / Authentic system command it's appropriate.

And therefore the arbitration award may be appealed in it, which leads to the work of the arbitrator pursuant to judicially binding on the parties like the judge and this is what ruled in the Jordanian Court of Cassation in its resolution No. 786/2007 date 22/5/2007 publications justice that "Scheduled legally under Article (41) of the Evidence Act, the provisions which have earned the force of issue that earned definite legal presumption degree does not accept any evidence to reverse because the provision is the title of the truth and because the judicial truth is presumption conclusive to the fact realism is not permissible for considerations relating to the public interest to renew the conflict... with regard in the in the provisions of the arbitrators have the force in the issue thing in the presented case "<sup>2</sup>

So the nature and function of the arbitrator in the dispute arbitration of a mixed nature that the arbitration is only justice but agreements, opponents will have an important role in the effectiveness and confirmed by article (3) of the Jordanian Arbitration Act, which states, "The provisions of this law shall apply to all arbitration agreements being in the Kingdom and respect of civil or commercial dispute between the parties to the person in public law or private law, whatever the nature of the legal relationship around which the dispute contractual or non-contractual". Which corresponds to Article (1) of the Arbitration Saudi Arabia, which stipulates that "the arbitration agreement is an agreement between two or more parties to submit to arbitration all or certain disputes which arise or may arise concerning the systematic relationship specific contractual or non-contractual "

As a result of the above is based on many from the obligations incumbent on the arbitrator at their contract and arbitration and between the parties to the adversarial arbitration , and the most important is: Commitment to disclosure of the circumstances and facts that would raise doubts about the impartiality and independence of the commitment not to step down only on reasonable grounds and commitment to the issuance of judgment within the time limit agreed between the parties in addition to his commitment to enforce the law agreed between the parties and finally maintaining the secrets of liabilities and The breaches of these obligations binding on the civil liability decadal for arbitrator trend for litigants.

In addition to a range of other commitments rests with the arbitrator with imposed by the nature of the judicial function performed is the obligation of the arbitrator with basic principles of litigation and commitment to adjudicate in arguments relating to its competence and commitment to walk with arbitration in accordance with the rules of justice and fairness and finally his commitment to his rule and raise the violation of each of these the commitments responsibility of the arbitration tort according to the general rules.

The breach of arbitral tribunal in any of commitments placed on it in adversarial arbitration consequent incurred liability from civil liability in accordance with the general rules, but it is worth mentioning that the issue of civil liability of the arbitral tribunal raises the question of judicial immunity as a lead function similar to those performed by the judge of the state and of in resolving disputes raised by opponents, but what is the extent of judicial immunity to the arbitrator compared with the immunity of a judge?

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<sup>2</sup> Sahar Abdel Sattar Yousef, the Law Center for study and compare the arbitrator, the Arab Renaissance House, Cairo, 2006, pp. 18-20

And will address the issue of civil liability to the arbitrator about mistakes committed during the performance for his mission in the arbitration dispute against the parties to such adversarial following the analytic approach to the relevant legal texts supported by various judicial interpretations.

Accordingly, the issue of the civil arbitrator responsibility will be discussed in three demands:

**First demand:** the scope of civil liability to the arbitrator given the obligations incumbent upon himself

- **Section I:** the responsibility of the arbitral tribunal cases arising from a breach of contractual obligations
- **Section II:** the responsibility of the arbitral tribunal cases arising from the breach of obligations imposed by the nature of the judicial function.

**Second demand:** judicial immunity from civil liability.

- **Section I:** The principle of judicial immunity from civil liability
- **Section II:** the justifications behind or against judicial immunity

**Third demand:** judicial immunity to the arbitrator in the arbitration adversarial.

- **Section I:** the content of the judicial immunity for arbitrator from civil liability
- **Section II:** the justifications behind or against judicial immunity to the arbitrator

## **2. First demand: The scope of civil liability to the arbitrator given the obligations incumbent upon himself**

The parties do not offer the choice of arbitration as a means to resolve their dispute, but in order to conviction above all by the arbitrator himself, and predicted differential treatment of it, and a fair result, and the availability of high moral and specialty profound artistic and this throws a burden on the arbitrator's commitment to what was threw on his shoulder from his responsible for errors that may be committed during the dispute arbitration, which vary according to the nature of the arbitrator function and that may be the nodal obligations in the first section and may be obligation imposed by the nature of his jurisdiction in the second demand.

### **2.1. First section: The responsibility of the arbitral tribunal cases arising from a breach of contractual obligations<sup>3</sup>**

Many of the obligations incumbent on the arbitrator based on the contract between them and the litigation arbitration parties according to arbitration system in Saudi and Jordan Arbitration Law and most important is : his commitment to disclose the circumstances and facts that would raise doubts about the impartiality and independence of the commitment not to step down except reasonable grounds and commitment to the issuance of government in the date which agreed on between the parties in addition to its commitment to apply the law which agreed between parties , finally maintaining the secrets of liabilities and the breaching of these obligations binding the nodal civil liability to the arbitrator against liabilities:

#### **2.1.1. First: his lack of disclosure of the facts and circumstances that would raise doubts about the impartiality and independence.**

According to article (16) of the Arbitration of Saudi Arabia, that "should not be the arbitrator interest in the species. Accordingly, since he was appointed and the length of the arbitration proceedings he has to declare in writing to arbitration parties in all circumstances that would give rise to doubts as justified on the impartiality and independence, except if it has already told them about it ". As stipulated in Article (15 / C) of the Jordan Arbitration Act that "the acceptance of the arbitrator to carry out his task will be in writing and it must disclose when the acceptance of any circumstances that would raise doubts about the impartiality and independence" Through the previous text was imposing an obligation directly on the shoulders of each arbitrator that detects when accepted to carry out his arbitration task of any circumstances which would raise doubts about the impartiality and independence, and the arbitrator must tell the parties of adversarial arbitration of any circumstance may occur after the appointed and that would impact on impartiality and independence ,because the impartiality of the arbitrator must be clear from the acceptance of the task assigned to him until he issuing his rule, and that's what settled in jurisprudence of the Jordanian courts of regular appeal No. 249/2011 (a tripartite body) Date 21/7/2011 Justice Center publications "taken advantage of Article 15 / C arbitration Act that the Court invited the arbitrator to indicate whether there is nothing to prevent for being an arbitrator in this case, and he has been sent a letter stating that there was no objection affect impartiality or converts to be an arbitrator in this case.

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<sup>3</sup> Hamad Hamoud manufacturer, the civil liability of an arbitrator (Master), University of the Middle East, Oman, 2012, p 46

This court decides upon request and pursuant to the provisions of Article 16 of the Arbitration Act Jordanian No. 31 for the year 2010 set Engineer Nizar Wasef Al-Masri an arbitrator for the against summoned, and the named arbitrator and designated by Summoner lawyer Mr. Ibrahim Abdul Hafeez Joseph and the arbitrator appointed by the Court of Appeal to make an agreement to nominate the third arbitrator who shall be the president of the arbitral tribunal and for the purposes of resolving the dispute between the parties of this request and Report this to the arbitrators for this decision. "

However, it may hide these circumstances intentional as a relationship for example, or interests one of the parties which would result reply this for arbitrator if was discovered before the judgment in accordance with Article (16/3) of the Saudi Arbitration and Article 17 of the Arbitration Act of Jordan, but what is the case when it is detected after the judgment which the consequent demand repeal of this provision, and thus return to the state was in the parties before deciding the case and loss the expenses of the arbitration and expenses incurred by the parties waste, and it will be revoked judgment because reason issued by the arbitrator, so it is not worth the fees on the basis that it has not implemented commitment objective to issue judgment and judgment was revoked for that reason<sup>4</sup>.

### **2.1.2. Second: Pulling out from the arbitration process before completion without a legitimate excuse.**

According to article (20) of the Jordanian Arbitration Act and Article (19) of the Saudi arbitration system "If the task of the arbitrator ended by issuing the rule by replying or isolating or stepping down or death or disability or any other reason shall appoint a replacement in accordance with the procedures to be followed in the selection of the arbitrator, who ended his mission"According to the decision of the Jordanian Court of Cassation human rights as No. 3689/2005 (Fifth authority) Date 03/19/2006 publications justice Center

"If arbitrators stepped down for further consideration of the arbitration proceedings, Court of Appeal should decide to appoint arbitrators substitutions for those who stepped down on the basis of what came in Article 20 of the Arbitration Act No. 31 of 2001 otherwise the dispute will remain without separating in their subject and this is unacceptable and is not permissible by law."

The arbitrator's pulling out from the arbitration process without legislated justification requires responsibility, although the former texts created a suitable solution to relieve damage to the parties as a result of the pulling out of the arbitrator at the beginning of the arbitration process, but this text loses effectiveness if a large way in the arbitration proceedings were done, where the new arbitrator have to re-binding arbitration proceedings from the beginning as well as it needs to be not a little time to absorb and understand all of the arbitral process data, so pulling out non justified by the arbitrator indicates misconduct which constitutes a breach of the nodal commitment and it requires civilians accountability for the damage which happened to one of the parties, or both, as a result, and what deprived of fees that do not deserve until completion of his mission, which did not address it by Jordanian or Saudi lawmakers

### **2.1.3. Third: The non-issuance rule from the authority arbitration by the arbitration deadline.**

Article (37) of the Arbitration Act, the text of Article (40) of the Saudi arbitration "A - The arbitral tribunal sentencing terminator for all disputes through the date which agreed upon by the parties, the absence of an agreement shall issue a ruling within twelve months from the date of the arbitral proceedings commencement, and in all cases may decide by the arbitral tribunal to extend this period should not more than six months unless the parties agree on the duration of exceeding that

B \_ If the arbitration not issue any judgment through the time limit referred to in paragraph (a) of this Article may any parties to the arbitration request from the President of the competent court to issue an order to set a date extra or more, or an end to the arbitral proceedings if the decision was made to end those actions have me the parties appealed to the court originally competent to its consideration. "

And therefore the arbitrator shall implement his commitment in the issuing arbitration judgment within the time limit specified in the agreement or by law in the absence of agreement, and thus upon the expiry of the deadline arbitration expires and the jurisdiction courts regain and the contract award lost all traces of, and the arbitration

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<sup>4</sup> Ahmad Abu al-Wafa, optional and mandatory arbitration, facility knowledge, Alexandria, without the year of publication, the fifth edition, p 320

judgment issued after the expiry of time limit capable of being revoked, if arbitration judgment not issued during that time limit will be under penalty of perjury for the breach of a contractual obligation, and that's what the regular courts of appeal of Jordan took No. 302/2009 (a tripartite authority) Date 22/05/2011 publications Justice Center "If the arbitration award requested to revoke has been codified in writing and signed by the jury and included judgment the names of opponents and the names of the arbitrators and their attributes, and a summary of the facts of the case and liabilities requests and their documents and text of the judgment and the date of issue and its causes and signed by the offending Member and came in accordance with the provisions of Article (41) of the Arbitration Act . Regard to what raised by the appellant that the judgment is contrary to the provisions of Article (37 / A) of the Act, the agreement did not include the legal rules applied by the arbitral tribunal and to ensure that the jury has applied the provisions of Article 116 of the Civil essential and Article (70) of the Evidence Act and ordered the defendant in the light of the facts established which reached of evidence as well as the agreement did not contained the duration and where the arbitration hearings began on (8/3/2009) and the decision was made on (6/10/2009) it is in this case came within the legal time period and in accordance with the provisions of Article (37 /a) of the Arbitration Act note that the arbitrator exceeded the time limit with excuse, and among the violations provided for in Article (9) and in accordance with the provisions of Article (37 / A) of the Arbitration Act, contrary to raised by the appellant stabbed him. "

#### **2.1.4. Fourth: lack of commitment by the arbitrator to apply the law wick agreed between the parties.**

Obligations incumbent on the arbitrator is to apply the law wick agreed between the parties, where Article issued (36) of the Jordanian Arbitration Act and Article (38) Saudi Arabia arbitration system that "A - The arbitral tribunal apply the issue on conflict through legal rules which are agreed upon by the parties and if they agreed to the application of the law of a particular state substantive rules followed it without conflict-of-laws rules.

B - If the parties do not agree on the legal rules that applicable to subject of the dispute, the tribunal applied the substantive rules in the law that it considers most relevant to the conflict. "

As required by the Jordanian regular courts of appeals decision No. 207/2010 (a tripartite body) Date 31/5/2011 publications Justice Center "dedicated Jordanian legislator in Article (36) from the Arbitration Law No. (31) for the year 2001, the principle of authority willed to choose law that governs the subject of the dispute and therefore the arbitral tribunal is committed in chapter on the subject of the dispute to apply the legal rules which chosen by the parties or left to the jury selected. And that the consensus in the jurisprudence and jurisprudence has been that suit the invalidity of the arbitration award is not an appeal to appeal and this case can accommodate to reconsider the subject of the dispute and flaws the issue of the judgment , as he does not the judge for suit nullity review arbitrator tribunal to assess the suitability or control the discretion of the arbitrators and the either true or false diligence to understand the reality and adapt or interpret the law and apply it to the control provided for in Article (49) and it has a formality character so as not to be implemented to the origin of the conflict and domination court supervision on how to interpret the arbitral tribunal of the law and how to apply it and this is under conditions that there is no breach of the rules public order, and therefore, the failure to implement the terms of the contract by the arbitral tribunal or excluded separation in partial conflict is before it pursuant to the terms of the contract signed between the parties or it is applied the law but violated a rule of law where or wrong in choosing the correct base applicable or they chose legal rule applicable but wrong in its application or in the construed or interpretation, so the reason for invalidity provided for in paragraph ((a / 4) of Article (49)) of the Arbitration Act as long as it is not available to the arbitral tribunal in its resolution of appeal has not ruled out the law, which was agreed to apply it. "

Here, when choosing opponents to the law wick applicable is committed by the arbitral tribunal in this choice and it is not permissible to ruled out because they are exposed by excluding judgment of invalidity where the terms of article (49 / A / 4) of the Jordanian Arbitration Act revoked the arbitration award ,if it excluded the arbitral tribunal law chosen by the parties to rule the subject of the dispute, and therefore it follows invalidate the judgment to exclude the arbitral tribunal law chosen by the parties to govern the subject matter of the dispute wick achieved the responsibility of the arbitral tribunal to prejudice this commitment and wasted time and effort in opponents not pointless.

#### **2.1.5. Fifth: The prejudice commitment arbitrator in maintaining the secrets of liabilities.**

As known that the secret in the area of arbitration means not to allow non-opponents and their agents in to attend the arbitration hearings and the prohibition of disclosure of what is and what measures to take decisions and all that is put at the meetings, accordingly the basic principle in the field of arbitration is confidential not publicity

where the view of the conflict and the separation it by the arbitral tribunal in secret and therefore maintaining the confidentiality of all matters of the relationship between the jury and the opponents are in the rule requirement implicit in the contract between the jury and liabilities, there is no doubt in the disclosure of secrets opponents and raises the responsibility of the arbitral tribunal to the involve upon this act of wasting the advantage of secrecy that characterizes the dispute arbitration and wasting confidence of opponents in it and if the breach of this obligation exposure arbitral tribunal of responsibility they do not affect the health of judgment arbitration and due to revocation.

## **2.2. Second Section: The responsibility of the arbitral tribunal cases arising from the breach of obligations imposed by the nature of the judicial function.<sup>5</sup>**

Obligations rests with the arbitrator which imposed by the nature of the judicial function that performed and represented in obligation of the arbitrator basic principles of litigation and commitment to adjudicate in arguments relating to its competence and commitment to walk to arbitration in accordance with the rules of justice and fairness, and finally his commitment to cause his rule and raise violation of each of the obligations is the responsibility of the arbitration tort according to the general rules.

### **2.2.1. First: the breach of the fundamental principles of the arbitrator litigation**

Terms of Article (24) of the Jordanian Arbitration Act that "the parties of arbitration may make an agreement on the procedures followed by the arbitral tribunal, including their right to subdue these measures to the rules adopted in the any institution or arbitration center in the Kingdom or abroad, if there is no such agreement was the arbitral tribunal can choose arbitration proceedings as it deems appropriate, taking into account the provisions of this law, "corresponds to Article (25) of the arbitration system of Saudi Arabia as" 1. the parties of arbitration may make an agreement on the procedures followed by the arbitral tribunal, including their right to subdue these measures to the rules adopted in the any institution or arbitration center in the Kingdom or abroad, provided they do not violate the provisions of Islamic law 2. If there is no such agreement was the arbitral tribunal - subject to the provisions of Islamic law and the provisions of this order - can choose arbitration proceedings as it deems appropriate. "<sup>6</sup>

Accordingly, if the advantages achieved by the arbitration system to avoid the ordinary courts and procedures, so it must not be at the expense of the basic guarantees in litigation and that guarantees justice, whether this is justice of the State or private justice established by the parties

According to article (25) of the Arbitration Act Jordanian and Article (27) of the arbitration system Saudi Arabia that "The parties of the arbitration treat equally and have to create for each full opportunity and equal to display his claim or defense" and therefore must be that the arbitration system provide basic guarantees for litigation right defense represented to be available for each deduction equal opportunity to display his claim and requests and to provide documents and to look at and respond to the defense and documents his opponent and treatment of the parties equally whether with respect to appoint a lawyer or attend in front of court or to contact with them therefore the arbitral tribunal would be breach of the principle of equality if authorized for one of the litigants lawyer and the other one prevented from this right, or if one of them were allowed to attend to them in the absence of the other. This is contrary to the fundamental principles of litigation cause of the invalidity of the arbitration award in accordance with the provisions of Article (49 / A / 3) of the Arbitration Act "does not accept the claim invalidity of the arbitration award except if not on any of the parties to the arbitration present his defense because of the lack of notification and true notification of appointment of an arbitrator or arbitral proceedings or any other cause beyond its control "In that breach of the fundamental guarantees for litigation and the waste of the basic guarantees of litigation is contrary to public order, according to what ruled by the Courts of Appeal regular Jordanian No. 38/2010 (a tripartite body) Date 29/9/2010 publications law" limited function Court of Appeal which address the case of invalidity filed against the decision of the arbitral tribunal to monitor the implementation of the instrument arbitration, law enforcement and secure the rights of litigation claim and defense and the proof and verification of the availability of the grounds for nullity prescribed exclusively in Article (49) of the Arbitration Act and that it is not their function replacement conviction over convinced the jury of dataset and the evidence and report of fact from this dataset, which becomes with that what came in this

<sup>5</sup> Hamad Hamoud manufacturer, the civil liability of an arbitrator (Master), University of the Middle East, Oman, 2012, p 54

<sup>6</sup> Ahmad Abu al-Wafa, optional and mandatory arbitration, facility knowledge, Alexandria, without the year of publication, the fifth edition, p 227

regard does not respond to the arbitration decision and worthy of a response. "

### **2.2.2. Second: Prejudicing from arbitrator commitment in chapter defenses relating to its jurisdiction:**<sup>7</sup>

In accordance to the provisions of Article (22) of Jordan the Arbitration Act and Article (20) of Saudi Arabia the arbitration system, which provides that the arbitral tribunal power to adjudicate in defenses relating to its jurisdiction as settled by the decision of the Court of Cassation Jordan (Human) No. 1783/2010 (the five authority) date 6/10/2010 justice Center publications "Arbitration is a contract whereby one or more person agree to refer the dispute that has arisen or arise between them in the execution of the contract on the arbitrators for decision instead of resorting to the judiciary. If there is such a condition in which the parties committed and they can't put it forward to the court which agreed in the contract dispute to be referred disputes arising from the agreement to arbitration. Book explains arbitration legislation for Dr. Counselor. Abdel Fattah Murad. The parties have agreed to refer the disputes which rose from the Convention which arise between them for the execution of the contract by resorting to arbitration. Since the Contract is the Law for Contractors. As the featured against them stick to the arbitration clause contained in the agreement and their adherence to this does not violate the rule of law. As the text contained in the Convention does not prevent the parties of the contract from resorting to arbitration as long as the arbitration is in fact a judicial optional liabilities created by voluntarily to resolve the dispute and that the arbitrators doing the functions of judges and issue their judgment and shall be binding for both parties.

Where the side of the jurisprudence sees that the granting of the arbitrator authority to address discuss the issue of jurisdiction to hear the dispute is the effect of the nature of the judicial task, as long as that the arbitrator has the power to check the limits of its competence and be competent to examine all submissions related to his competence because should arbitral tribunal verify the existence of the arbitration agreement and validity the focus of the jurisdiction.

### **2.2.3. Third: Arbitrator prejudicing of obligation in arbitration of justice and fairness**

Contrary to integrity and fairness of the arbitrator committed cheating against one of the parties and means of cheating arbitrator in his work is deflection bad faith with a view to damage one of the litigants or to achieve a particular interest to him or to one of the parties is no doubt that the breach of this obligation arbitrator raises his civil responsibility.

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### **2.2.4. Fourth: Lack of commitment for judgment by the arbitrator**

Terms of Article (41 / b) of the Arbitration Act of Jordan that "the rule must be causing arbitral tribunal unless the parties to arbitral tribunal agree otherwise or the law applicable to the arbitration proceedings are not required mentioned reasons for judgment" corresponds to Article (24/1) from the Saudi arbitration system, which provides that "the arbitration award shall be in writing and be justified "

Therefore, the principle of causation Conditions base essential for the health of judicial rulings were devoted to this principle in Article 160 of the Code of Civil Procedure of Jordan<sup>7</sup>. And according to the decision of the Court of Appeal regular Jordanian No. 207/2010 (a tripartite body) Date 31/5/2011 Justice Center publications learned from paragraph ((a / 7)) from the provisions of Article (49) of the Arbitration Act that includes two reasons: -

#### **2.2.4.1. First: Contraindicated in the same provision effect in its guaranteed.**

#### **2.2.4.2. Second: Contraindicated of the arbitration procedures impact in the judgment.**<sup>8</sup>

With regard to the first reason of these two reasons, it should be available in the arbitrators' award and to be true objective conditions and another formalities and thus achieved invalidity if not such conditions are, but the failure of the condition of those conditions does not lead inevitably to invalidity the arbitration award, but must affect retardation this condition is the substance of the judgment pursuant to rule invalidity without damage. And it consequent that is based on invalidity prosecutor in the request of the arbitral award invalidity of based on the reason referred to prove two things: -

1. That there is a invalidity occurred in the rule by the failure of one substantive or formal conditions in the

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<sup>7</sup> Ahmad Abu al-Wafa, optional and mandatory arbitration, faculty knowledge, Alexandria, without the year of publication, the fifth edition, p 264

<sup>8</sup> Awad Al Zoubi, brief in the Civil Procedure Code of Jordan, the university library - Sharjah, enriching for publication and distribution - Jordan i 2, 2010, p 381.

judgment.

2. Invalidity which occurred in the rule may impact on its content.

Based on the foregoing, the arbitration award will be presented to invalidity if released without deliberation or without the availability of the majority or without the signature of the majority or without the provision causing or not included provision to operative or the provision absence of the data set by paragraph (c) of Article ((41)) as the impact in its content.

As for the second reason of the reasons referred to with regard to the invalidity of procedures in a manner after the judge so the invalidity prosecutor have to prove in this case that this procedure falsehood has changed and the referee said the ruling will not be the case otherwise the wrong procedure, And arrange falsehood procedure this impact on governance in mostly when it leads to prejudice the rights of the defense as if one of the parties is notified for a conduct of the arbitration proceedings notification void and the consequent inability of the party to attend and respond to what measures it has taken.

And where did not provide Summoner to prove or to suggest there is a void occurred in the judgment by the failure of a single objective conditions or formalities in governance and this invalidity has affected in its content, but that the decision slander has fulfilled all the conditions of objectivity and formalities that must be met in order to have this provision true as referred to. "

### **3. Second Demand: Judicial immunity from civil liability:**

There is no doubt that the legal status of a judge equal with the center of any other individual members of the community have transactions and actions that have nothing to do his work justice, if concluded a contract of sale or rent or commits a foul consequent harm to others, so he is responsible civilians for damage caused by the non-mistake and that do not justice has to be done but that the judge may commit a foul for his judicial to what extent is responsible for this miscarriage of justice??

#### **3.1. First section: Principle of judicial immunity from civil liability**

The principle of judicial immunity is to exempt the judge from liability or identified regarding the mistakes committed during or because of the exercise of his judicial function.

Wisdom lies of judicial immunity from civil liability to provide reassurance to the judges in the performance of their duties and inform them adequate protection fence makes them immune from abusers Cade who are trying to undermine the dignity and prestige by suing malicious for just defamation them.<sup>9</sup>

Islamic law has been known principle of judicial immunity to enable the judges to carry out their duties in the separation between two disputing parties without effect rule that the judge does not ask for his mistake because the judge hard-working, if injured he may two rewards and If he misplace the reward is one, and judicial immunity for judges in Islamic law is not absolute but conditional that the error committed by Judge unintentional.<sup>10</sup>

If the judge had deliberately wrong, it would be committed to security in wealth and in accordance with the provisions of Article (256) of the Civil Law of Jordan, which states that "all damage to third parties is required perpetrator if uncharacteristically ensuring Damage" here has to be noted that the Jordanian legislator has minted statement of how contentious law judges about the absence of especially provisions quarreling procedures are theoretically they are subject to the general rules in tort liability under article mentioned earlier.

#### **3.2. Second section: Justifications behind or against judicial immunity**

Of the most important justifications which supporting the immunity of jurisdiction of the judges from civil liability arising from the conduct of judicial to achieve independence of the judges, and guarantee their freedom in adjudicating cases submitted to them independently, because the liability of the judge would prejudice its independence and prevent between him and the performance his duties. In addition to the consequences of wasting the time of the judges to defend themselves instead of separation in the cases submitted to them, in addition to protect judges from the threat of rival claims of civil liability, forcing judges to hesitate in the

<sup>9</sup> Abbas bonded, to explain the provisions of the Civil Procedure Code, the House of Culture for Nscherwaltosea, edition 1, 2009, Amman, p 55

<sup>10</sup> Abdulaziz Amer, ta'zeer in Islamic law, the Arab Thought Dar fourth edition without the year of publication, p 268



separation of cases for fear of responsibility.<sup>11</sup>

In addition to Jordanian legislator has surrounded the judicial work of the same guarantees variety and sets of procedures to ensure that no rush to judgments and avoid the mistakes and regulates ways to appeal the verdicts and such safeguards and procedures controlled effectively of misconduct judiciary and protect the rights of individuals and reduce the need for the prosecution judges.

Despite the importance of judicial immunity of a judge and the protection of the judicial process as a whole, but it deprives the victims of the verdicts wrong issued by the judges of the seek compensation for damages diagnosed as a result of these wrong judgments, it may commit by the judge during his job an error and eliminates non-owner monarchy and become a judgment holds the force matter for what support of the High Court or absence the appeal dates ruling, and therefore judicial immunity inconsistent with the victim's right to sue the judge and claim compensation for the damage suffered as a result of error or omission, which occurred from the judge during the resurrection of his job<sup>12</sup>.

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#### **4. Third demand: Judicial immunity to the arbitrator in the arbitration adversarial<sup>13</sup>**

It is recognized that the arbitrator performs a function similar to those performed by the judge in the state and which represented in resolving disputes posed by the opponents and the similarity of the task entrusted to them and align with public policy that support the arbitration is prompting some to call for extension of judicial immunity to the arbitrator of civil liability.

##### **4.1. Section one: Content of judicial immunity from civil liability to arbitrator**

The idea of judicial immunity from civil liability to arbitrator on the basis of identifying civic responsibility, so that is not permissible held accountable the arbitrator accountable for any error committed during direct for his work, but just asking for certain mistakes like the a state judge, and thus extension of the arbitrator judicial immunity depends on the nature of the job performed by a judicial function so content of judicial immunity is that the arbitrator exercising a judicial function shall not be liable for mistakes he committed due to or as a result of the exercise of this function.

##### **4.2. Section two: Justifications behind or against judicial immunity to the arbitrator**

These justifications are summarized in that the arbitrator performs the same function performed by the judge and the necessity to align with the public policy of the State in support of arbitration eliminate focusing idea of comparison between the arbitrator and the judge that the first and functions similar to those exercised by the judge, thus, the arbitrator, such as a judge should be had the ability to resolve the dispute independently without awe of the potential prosecution of one of the parties is not satisfied with the judgment arbitration issued by, in addition to arbitration at the present time is an alternative way to resolve disputes, including easing the burden on the courts due to the accumulation of many of the issues which submitted, including the state achieved by arbitration of economic benefits when you become a safe haven for arbitration, there is no doubt that the held accountable arbitral tribunals for any fault located them during conducted its function would lead to a reluctance to arbitral tribunals to accept participation in resolving conflicts instead of encouraging them to such participation in addition to undermining the authoritative judgment arbitration by reconsidering the case.

However there are who refuse to the fact that the judicial process is different from the arbitration process, where the arbitration process is not under the the same safeguards governing the judicial process and which they can reduce malpractice judiciary by correcting the error in the appeal and with guarantees the independence of the judge on the other hand we find practical arbitral lacking to these things that surround the judicial process, which justifies the judicial immunity of judges from liability for their mistakes, Since the arbitrator surely is under the affect more than judge where they are chosen by the parties to the conflict and for a period of time and the fact that his reign is not permissible to appeal by the resumption as it is in Jordan law of arbitration, where Article (48) of it "does not accept the provisions of the arbitration issued in accordance with the provisions of this law challenged by any remedies provided for in the law of civilian judgment procedure but may file a claim invalidity the arbitration award in accordance with the provisions set forth in articles (49, 50 and 51) of this law,

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<sup>11</sup> Abbas bonded, to explain the provisions of the Civil Procedure Code, the House of Culture for Nscherwaltosea, edition one, 2009, Amman, p 56

<sup>12</sup> Hamad Hamoud manufacturer, the civil liability of an arbitrator (Master), University of the Middle East, Oman, 2012, p 65

<sup>13</sup> Hamad Hamoud manufacturer, the civil liability of an arbitrator (Master), University of the Middle East, Oman, 2012, p 67

these things confirms that the process arbitral weaker than the judicial process and that the arbitrator has a higher chance to make mistakes and therefore you should not has immunity, or at least has a restrictive immunity.

### **5. Conclusion:**

I took in this study subject civil liability to the arbitrator and judicial immunity for his mistakes which may commit while carrying out his mission in an arbitration dispute to the parties to this hostility in the light of the law of Jordan arbitration shed light on the obligations incumbent upon the arbitration given the nature of the relationship between the opponents and the arbitral tribunal, whether it is a contractual relationship or the nature of the job performed by the arbitrator similar to the judicial function and the consequent prejudice, which made us search in the judicial immunity from civil liability and its extension to the arbitrator and justifications for accept it or reject the extension.

### **6. Results and recommendations:**

- Jurisprudence differed about the nature and function of the arbitrator in the arbitration dispute There are those who agree the contractual nature and there are who support the opinion that the arbitrator function Related to a judicial nature and these are mostly recent trend is that we support.
- The nature of arbitrator function directly affects to determine the scope of civil liability to the arbitrator against arbitral rivalry parties.
- Jordanian law arbitration devoid of any text which decides civil liability to the arbitrator for mistakes which may commit while carrying out his function in the arbitration dispute, which we recommend to find a legal regulation law detailed which can determine the responsibility of the arbitrator on the basis of privacy imposed by the mission.
- Jordanian law devoid of any text shows how to held accountable the judges and arbitrators for their mistakes, which we recommend to report the special system for accountability of judges and civilians arbitrators for their actions.

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