

ملخص رسالة ماجستير

بعنوان

المسؤولية العقدية للمحكم

بحث تكميلي لنيل درجة الماجستير في السياسة الشرعية من

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ملخص باللغة الانجليزية

Name of God the Merciful, the Compassionate  
Praise be to God, prayer and peace Ashraf prophets  
and the messengers of our Prophet Muhammad and his  
family and companions and after:

This research can be summed up as follows:

With regard to boots: it has talked about  
responsibility and about Nodal arbitration and the  
arbitrator sum which is reflected in the following  
points:

1 - Nodal responsibility: the language meant the  
claim, accounting and reward.

In the terminology is twofold:

The first: a doctrinal term for two types:

Type I: the definition of scholars Applicants: A  
defined it as: "to ensure the price the seller to  
the buyer when the claim and reproachable conduct,  
or are: a cold or offset the price."

Type II: the definition of scholars latecomers: A  
defined it as: "the right to take the property of  
the non-financial reparation of the damage caused  
by the failure to implement the contract or breach  
of its terms."

Part II: formal terminology: it is defined as:

"kick breach obligation arising from the  
implementation of the contract regardless of the  
image of this sanction."

2 - Arbitration in a term has two aspects:

The first aspect: the doctrinal aspect: it is  
defined as: "his rival ruler governs them"

The second aspect: the formal: "enabled parties to  
the exclusion of their disputes on juvenile state  
and liabilities of their choice", and arbitration  
is permissible in all the rights that individuals  
have disposed of as special sale, etc, because it  
is right for him and has explained the option to  
create or destroy.

3 - defined as arbitrator: Governor Al\_khasman  
taken by the Governor with their \_khasomathma to

adjudicate on the face and hearing examiner.  
As for the first quarter has shown where the provisions concerning arbitrator came to speak of as follows:

1 - the nature of the relationship arbitrator liabilities

Adaptation to the nature of the relationship likely arbitrator liabilities in terms of jurisprudence are as follows:

A - if the arbitrator has been appointed by the judge, he believes scholars - may Allaah - that the arbitrator in this case is on behalf of the judge in the separation of antagonism, because Judge in his ruling gives the government authority is not acquired soon arbitration, but by birthright forward.

B - If the arbitrator has been appointed by the liabilities Varjeh adjustments jurisprudence is adapted to that he held a prize, because action by the arbitrator foolishness, it is correct to work with obscurantism, is not required  
Determining the duration of known him, obscurantism and necessary incompatible not meet, and that the contract absolute unspecified time is not necessary, and all these provisions in the contract person gets first achieved commensurate with the nature of contract arbitration.

The adaptation of the likely nature of the relationship arbitrator liabilities in the system: it is adapted to a particular type differs from the other contracts, although this relationship is subject to the rules that apply to other contracts but that does not mean that the contract arbitration special features derived from nature It is also subject to special rules established by the governing system in arbitration, there is no need to keep abreast of what is common and join the attempts to adapt the rules belong to another decade or work as a contract agency or so, it is held indefinitely from decades of private law,

benefit from the rules governing contracts stages of composition, and benefit from the rules of litigation during the arbitration process.

2 - commitments arbitrator: abide by the arbitrator inter commitments are as follows:

First: commitments before embarking on the task of arbitration as follows:

A - the obligation to disclose the circumstances that raise doubts in his independence.

B - documented commitment arbitration, which is known to the obligation to accept arbitration in writing.

Second: when commitments to the task of arbitration as follows:

A - commitment to the substantive scope of the arbitration, and stated that the scholars in this issue directions:

The first: the opinion of arbitrability in everything a doctrine of view and some Shaafa'is  
The second trend: the view of arbitrability in funds and in the meaning which may be made by the amnesty and reconciliation, and never anything in penalties, which according to some Hanafis, when Maaliki's doctrine, and the difference between the owners signed this trend Otherwise, Kalnkah, divorce, parentage and Alan, Fmna Maaliki's and some Shaafa'is leave some Hanafis and mentioned some scientists officer in the question of jurisdiction, namely: All right singled out by the Jazz Al\_khasman arbitration and the rule implemented by the arbitrator.

B - commitment to adjudicate in dispute between the parties to the conflict only.

C - commitment to the management issue, according to the regulations of litigation.

D - the obligation not to arbitration or delegated his authority to others, and if the arbitrator authorized without the consent of other rival beginning, and the satisfaction Al\_khasman then Jazz, because subsequent certification by the

Agency is the former.

Third: commitments in the sentencing phase, as follows:

A - the commitment to issue government within the period prescribed.

B - commitment gear governance and issued in accordance with the provisions of Islamic Sharia.

C - the commitment of his government and documented, and correcting what occurred from material misstatement.

Fourth: general obligations are as follows:

A - the commitment to confidentiality.

B - the obligation to preserve the documents under the hand of specific liabilities related to the subject of dispute.

C - excused from the case when the positive.

3 - powers of the arbitrator: enjoy inter arbitrator from the authorities as follows:

First: in the doctrine: Men arbitrator from the authorities, including the most important: the power to hear the whole case has to ask the editor liabilities, and liabilities questioned him about everything uncertain, as a response to testimony from his testimony did not prove true, and it has Elimination Balinkol and approval, scholars have disagreed on certain powers: the power to bring adversaries, but the opinion is likely that public opinion should not be compelled to attend liabilities in order to prevent a breach caring mandate, or the Alaaftiat forward, as they differed also in the authority in the discipline of wrongdoings in the board, and opinion-gathering views are likely: that the rule of discipline in its wrongdoings and blame only reprimand, but what has it is not to avoid matching Judge And they differed in governance through its knowledge, opinion is more likely to say no passport.

Second: the system: enjoy inter arbitrator from the authorities stipulated in the rules, as follows:

A - the authority to determine the date of the meetings, and the authority to request the presence of liabilities.

B - controlling authority meeting and management, and to question defendants or witnesses, and remove from the system without prejudice meeting.

C - of the power to bind tightly to the liabilities under the hands of the documents produced in the case, and this power is not absolute but restricted conditions stipulated by the rules.

D - the arbitrator authority to take appropriate means of investigation and that he believes that it has an impact on the proceedings and has authority in hiring, and it has also the authority to determine the date of judgment, and a reopening of a case after closing as necessary.

4 - the arbitrator's response: An arbitrator for the same reasons, which are of the judge, there may be a charge, including the arbitrator.

5 - control the elimination of the arbitrator: Adoption has been the principle of control of the arbitrator, but disagreed on the jurisprudence system in the application as the Islamic jurisprudence recognizes the principle of the subsequent Oversight, which in terms of governance and substantive procedural hand, either the rules it says the principle of control pre - and post on the arbitrator.

6 - the difference over the responsibility of the arbitrator's report: that the question of likelihood of responsibility arbitrator, saying approval is the responsibility of the arbitrator and not immunity against liability claims, and this view is compatible with the nature of the arbitrator and helped him to carry out his work during the discipline, and therefore the requirement for exemption from liability is a void. With regard to Chapter II: it has talked about the responsibility of the arbitrator corners came talk where as follows:

1 - corner mistake: Benchmark likely in the measurement error arbitrator is objective criterion based on the nature of the act itself is unusual act of others, because it more easily in terms of application of the standard PC. Also that the degree of error is the arbitrator Adoption responsibility for all the mistakes may fall from a normal individual, because it does not replace the requirement for a specific gravity of the mistake arbitrator as long as a deviation from his usual behavior, and this error took pictures of several approved any stage of the arbitration. The burden to prove the defendant, has to prove that all means of proof

2 - Corner damage: The damage arbitrator others, the physical damage that affects the financial interest of the victim and legitimate moral damage which occurs in the case of disclosure of the secrets of the arbitrator liabilities, and is as moral damage, the pain and frustration by the loss of the case because of a mistake arbitrator, and The missed opportunity harm, once proved that the loss of money was due to the loss of opportunity, and make sure that the opportunity was confirmed to earn money for the victim, not for the loss due to error arbitrator, the arbitrator is required to damage the damage personally, and to be the result of prejudice legitimate interest of the injured, and certainly the investigators, and the burden to prove the defendant.

3 - corner causal relationship: there must be a causal relationship between an arbitrator and the damage, if there is a causal link between the arbitrator and the damage caused by it will be responsible and engaged security discharged, but have been stopped if the causation that there will be force majeure, or an error injured, or the fault of others or the reason-product or indirectly, the arbitrator is not liable in such a case. The arbitrator denied the causal relationship based on

the reason foreign force majeure or an accident or sudden fault, and bears the burden of demonstrating why foreign.

With regard to chapter III: it has talked about the responsibility of the effects of the arbitrator and came to the talk as follows:

1 - responsible for the effects of the arbitrator in the doctrine: the consequent responsibility by the arbitrator in the doctrine following sanctions:  
a - enjoined the arbitrator and the laws of such a lute.

B - including disciplinary arbitrator deems Governor.

C - consider the enforcement of the sentence or not.

D - Include an arbitrator because of his mistakes.

2 - effects responsibility arbitrator in the system: implications for the responsibility of the arbitrator in the following sanctions: a - compensation.

B - response of the arbitrator and isolation.

C - ending task arbitration.

D - denial of fees.

3 - controversy over immunity arbitrator: With respect to the immunity of the arbitrator is likely opinion: no arbitrator immunity from liability in the following:

A - that the judge arbitrator measuring measuring with the difference that the judge is subject to civil liability according to special rules, has drawn cases where the judge asks civilians otherwise normal individual, and also set certain procedures for litigation are not subject to all the general rules, called the pretext adversarial, Add to that the responsibility of the judge is a personal responsibility rests with the judge in the face of discount injury damage, and may be as adversarial state judge affiliate in the same adversarial proceeding, and all these rules and safeguards are benefiting arbitrator.



B - is not fair to leave the arbitrator enjoy high amounts Tkda fees in return for arbitration, which imposed de facto attitude keen mind and confidence given by his personal liabilities, thus enhancing not granted immunity from a lawsuit the arbitrator responsibility for the damage caused to the parties, The idea of the responsibility of an arbitrator sanction realistically reflects the need to respect ethical values and responds to the call of justice and ensure the safety route arbitrator.

C - It is well known that the arbitrator has extensive powers rivals in arbitration than those enjoyed by the judge, the parties confidence in the strength and integrity amended, and the granting of immunity should not be a guarantee justice arbitrator or prevent tyranny in particular to enter the judiciary to control the process Arbitration is not only to a limited extent into the consensual nature and respect for confidentiality, which is characterized by a system of arbitration, which promotes the idea of refusing to say the arbitrator immunity, which promotes justice and procedural limits the chaos chaos in the arbitral process.

4 - consideration of the competent court lawsuit arbitrator responsibility: public courts shall consider the lawsuit arbitrator responsibility, because the substance of the lawsuit was to demand the right to a civilian, which supports the jurisdiction of the courts say public consideration of the case.

5 - sanctions are applicable to the arbitrator without liability suit: possible application of certain sanctions on the arbitrator without the need for legal action, so these penalties: restitution arbitrator, and to end the isolation and deprivation of his fees.

The blessings of God and peace upon our Prophet  
Muhammad and his family and companions