

---

## Arbitration Clause in Individual Labour Disputes: Between the Provisions of the Law and the View of Jurisprudence

**Dr. Mansour Massad**

*Assistant Professor of Civil Law, College of Graduate Studies,  
Arab American University  
Email: Mansour.massad@aaup.edu*

---

### Abstract

This study aimed to raise a fundamental, basic and legal issue related to the arbitration clause in individual labor disputes in terms of the validity of this condition, as it would achieve more additional guarantees for the rights of the laborer without compromising the minimum rights that may not be negotiated to reduce. Therefore, this condition becomes void by the force of law if it is a reason for violating the rights of the laborer or public order, which necessitated this study to follow the method of analysis and investigation with a careful and insightful review of the relevant Palestinian legislation and comparative legislation and the view of judicial rulings on this condition in the interest of the laborer and its invalidation also in the interest of the laborer if there are reasons for invalidation. This study concluded that the jurisprudential rooting of adopting this condition in work contracts is the realization of the employer's interest and the laborer's rights. Thus, it is a complement to the peremptory provisions of the law that represents a guard in order not to deviate from the minimum limits in rights, which requires the harmony of the legislative system with the obligations of legal force to establish it as a condition that does not disturb the public order in individual labor disputes. The arbitration clause is therefore an addition that requires the speed required to resolve disputes in an amicable and easy manner without prejudice to the rights of the laborer as specified by law.

**Keywords:** Arbitration clause, individual disputes, nullity, jurisprudential rooting.

### Introduction

Laws and legislations are considered the main incubator of labor rights despite their variety. In this context, the Palestinian legislator drew the limits of the rights and duties of laborers in accordance with the provisions of the Palestinian Labor Law No. 7 of 2000 (Al-Waqa'T, 2001), considering that the law guarantees rights to the minimum level for the benefit of the laborer and may not be relinquished even if the work is organized under a special work contract. The law has obligated the application of the best provisions for the laborer. In this regard, Article 6 states that "the provisions included in this law represent the minimum rights of laborers that may not be waived. Wherever there is a special regulation of labor relations, the provisions of this law or the provisions of the special regulation shall apply to laborers, whichever is better for the laborer" (Al-Waqa'T, 2001). This also stems from international charters and agreements that have influenced Arab laws and legislation in the true sense of these rights, as they are one of the axes of economic rights by which values and social justice are regulated, and at the same time, ensuring the continuity of social and economic development as a whole. This indicates that the Palestinian legislator enacted special laws according to which the rules and conditions of arbitration are regulated in order to provide legal means to protect the rights of individuals, especially in settling disputes, in accordance with the provisions of Article (2) of the Arbitration Law No. (3) of 2000, which takes place "...between natural or legal persons enjoying the legal capacity to dispose of rights, whatever the nature of the legal relationship around which the dispute revolves..." (Al-Waqa'T, 2000). Since arbitration is a legal means used by the laborer to determine his rights or protect them towards securing the highest level of labor rights, related to work and improving working conditions, it has become necessary to look at the arbitration clause in individual labor disputes to determine the legal direction and the jurisprudential rooting of this condition, as having additional legal value grants it a new role as a legal tool to establish and form a protection umbrella in which all labor rights are preserved. Comparative legislation and judicial applications whose provisions included legal attribution of their provisions from this system will also be reviewed, thus making the arbitration clause in individual labor disputes seem acceptable

## Problem Statement

In order to prove the validity of using the arbitration clause in individual labor disputes without conflicting with the rules and principles of arbitration in resolving such disputes in accordance with the law, the problem of the study emerges in what issues are permitted by law to use arbitration in individual labor contracts and its relationship to public order in Palestine and issues in which reconciliation is not legally permissible.

## Study questions

Based on the newness of this study, to the researcher's knowledge, and the new terminology included in the study that will be used as a legal means to address the problem of the study, the current study seeks to answer the following questions:

- How can the arbitration clause be rooted in labor contracts by force of law?
- How is the productivity of the arbitration clause in work contracts achieved in matters that the law permits the laborer to reconcile with?
- What are the legal conditions that invalidate the arbitration clause in the employment contract?

## Objectives of the study

The general objective of this study includes, under the framework, a description of the case of rooting the legal rules that make the arbitration clause in the settlement of individual labor disputes one of the issues that may – by force of law – be subject to arbitration. Based on our belief in the necessity of empowering the laborer with his rights, directly or indirectly, the following objectives emerge: - Deducting the theoretical framework for all issues that may not be arbitrated and showing how the arbitration clause was not included in work contracts.

- Establishing a preliminary conception of the rights that the law allows the laborer to negotiate, and therefore subject to the arbitration clause in the contract.

## Previous studies

Through our review of the previous literature, especially the studies related to the topic of the current study, the Palestinian studies that are directly related to the topic and axes of this study are few. On the other hand, we found that there are many studies that relate to topics related to arbitration in individual labor disputes in comparative legislation. This will contribute to enriching the topics of the present study throughout the stages of discussion and citation. Below is a review of the most important studies of the previous literature that deal with the idea of rooting the arbitration clause in individual labor disputes by including in the contract a condition to resort to arbitration in disputes in which the law permitted the laborer to gain additional privileges related to improving working conditions and other conditions.

- **Diab, Ali and Al-Shwaish, Abdullah 2019, A Study Entitled "Highlighting Arbitration in Individual Labor Disputes in Islamic Jurisprudence and Saudi And Egyptian Labor Law"**

Published by Journal of the College of Sharia and Law, Egypt, (p. 34), (C1), pp. 10-115. In this study, the authors touched on what characterizes "...arbitration of particular importance, as it helps to resolve disputes in an amicable and easy way that maintains the relationship and its strength between the two parties to arbitration. Arbitration is the fastest way to resolve disputes in general as it is considered the private judiciary that the parties to the dispute resort to, of their own free will, in order to resolve disputes in an amicable manner, and it is divided into voluntary and compulsory arbitration. It has two forms: the arbitration clause and the arbitration agreement. Arbitration in labor cases is of great importance, as the nature of the rules of the labor law is characterized by a peremptory nature that individuals may not agree on violating them due to their relevance to public order. But it is not an absolute commandment, as it may be violated if it is in the best interest of the laborer. The research discusses the possibility of resorting to arbitration by employers and laborers despite the peremptory nature of laws. The results showed that it is possible to resort to arbitration in labor cases and recommended the establishment of special centers for arbitration of labor disputes. It also recommended that a group of skilled people be selected in several fields. Moreover, resorting to arbitration speeds up the laborer's access to his rights, shortens his time and saves him from falling into economic problems, and helps him continue working for the employer, as it is an amicable means to resolve the dispute. In addition, resorting to arbitration is needed by the employer. It also leads to an increase of investment and trade exchange, which reflects positively on the national production in an indirect way and increases job opportunities." These points will contribute to enriching the study population and supplying it with jurisprudential and legal opinions from comparative legislation to enhance the tools to address the study problem and answer its questions.

- **Abu Zeid, Mohamed 2018, a study entitled “The Possibility of Recourse to Arbitration in Individual Labor Contract Disputes”**

The Egyptian Journal of Legal and Economic Studies, Ain Shams University, (p. 10). Pp. 330-408. The researcher highlighted that “...the recent period witnessed a great boom in the field of arbitration, whether at the international level or at the national level. Since arbitration finds its way in the field of contracts, it is logical and natural that the question arises whether there are contracts that do not permit arbitration. We note in this context that the Egyptian legislator organized arbitration in collective labor contracts as a means of settling disputes that arise between the parties to those contracts, but it neglected to regulate the methods of settling disputes in individual labor contracts. Hence, we had to ask whether the legislator intended to completely exclude this method in resolving individual labor contract disputes, or if it left the matter as regulated by the general rules in the arbitration law. By examining the views of jurisprudence, it becomes clear that it is divided into two directions, one that believes in the invalidity of the arbitration clause or the arbitration agreement contained in individual work contracts, while the other opinion views that it is permissible to resort to this agreement without restriction or condition. And we concluded with an opinion that it is possible to resort to arbitration as a means of resolving individual labor contract disputes, but with adherence to specific controls imposed by the nature of the work contract at times, and imposed by the Egyptian Arbitration Law at other times...” Through the findings and recommendations of this study and its included analysis of legal texts in Egyptian legislation, we found multiple jurisprudential opinions, both supporters and opponents of the authorization of the arbitration clause, which will strengthen the position of our current study with regard to the productivity of the arbitration clause and the legal authority it provides in contracts. On the other hand, this study will contribute to enriching the study population with view of comparative legislation in this regard.

- **Farakhneh, Samah 2015, A Book Entitled "Strengthening Arbitration Mechanisms in Labor Disputes", Publications of the Center for Democracy And Laborers' Rights, Palestine**

In this book, the author touched on many axes that meet the content of our current study, especially what is related to the analysis of the how the Palestinian judiciary and jurisprudence deal with the issue of the arbitration clause in individual labor contracts. She partially addressed the subject of the arbitration clause by saying, "...Arbitration is one of the means of resolving disputes alternative to the judiciary and depends mainly on the will of the contracting parties, based on the legal basis that the contract is the law of the contracting parties." This is because arbitration, unlike the judiciary, gives the contracting parties the right to agree to settle the dispute arising and/or that may arise between them through arbitration beyond the jurisdiction of the regular court. This leads to shortening of time and effort and cost savings as much as possible. For these reasons and the occurrence of cases related to labor disputes in Palestinian courts in the absence of competent labor courts, we support in our current study resorting to arbitration as an effective and valid means in resolving labor disputes, reducing the level of the burdens on the judiciary and accelerating the process of resolution, due to the fact that these disputes are attached to a large and wide segment of the society who are sometimes described as weak..." The writer divided the topics of the book into two sections. In the first section, it dealt with the nature of arbitration, its conditions and arbitration procedures, while the second topic was devoted to the nature of labor disputes, the role of arbitration in their settlement and resolution, and the impact of arbitration on the judicial reality in Palestine. From this book, the population of the current study will be enriched and we will benefit from the opinions of Palestinian jurists, both supporters and opponents, and the writer's reading of judicial rulings that are directly related to the axes of this study, especially what the writer raised from legal and jurisprudential issues related to the role of arbitration as an alternative to the judiciary in labor disputes, and the impact of this on the judicial reality in Palestine. This will constitute a frame of reference that will be used by the researcher to create a legal framework related to individual labor disputes, which helps in answering the study problem and its questions.

- **Al-Ateen, Omar Falah 2009, A Study Entitled “Arbitration in Labor Cases”, Published by Journal for Research and Studies, Al Al-Bayt University, Vol. (15), (P) 2, 181-206.**

The researcher touched on multiple issues that are directly related to the concepts and terminology of arbitration, as he pointed out that "...Arbitration is the fastest way to resolve disputes in general, as it is defined as the private judiciary that the parties to the dispute resort to by their free will in order to resolve disputes in an amicable manner". Arbitration is divided into optional arbitration and compulsory arbitration, and it has two forms: the arbitration clause and the arbitration agreement. Arbitration in labor cases is of great importance, as the nature of the rules of the labor law is characterized by a peremptory nature that individuals may not agree on violating them due to their relevance to public order. But it is not an absolute commandment, as it may be violated if it is in the best interest of the laborer. Therefore, the findings of the research showed

that despite the lack of provision for arbitration as one of the means of settling labor disputes, and despite the fact that this method is confined to the ordinary judiciary, specifically in the Magistrate's Court, as it has qualitative competence or the authority of wages to settle labor disputes, whatever their value. However, there is nothing to prevent resorting to arbitration in settling labor disputes as long as this is in the interest of the laborer, who is the weakest party in the work contract. The problem lies in knowing the extent to which employers and laborers can resort to arbitration despite the peremptory nature of the rules of the labor law. Therefore, the study sheds light on many jurisprudential rules in the Journal of Judicial Judgments and the view of the Jordanian legislation, particularly its civil law, in order to look at the legal nature of the arbitration clause in work contracts. This will enrich the population of our current study, especially with regard to the legal nature of the arbitration clause, and what is permissible for arbitration and what is not, according to the axes of this study.

## **Methodology**

The issue of including the arbitration clause in work contracts requires research into the validity of the arbitration clause in the interest of the laborer as an additional right that guarantees the achievement of additional gains for the laborer and in a manner that does not expose the condition to invalidity if it violates the public order. This requires studying the topic from all its aspects through the following:

The first topic: The legal framework for the arbitration clause in the Palestinian and comparative legislation.

Section one: The legal value of the arbitration clause in work contracts.

Section two: The arbitration clause in accordance with legal theories in comparative legislation.

The second topic: The arbitration clause in work contracts between validity and invalidity.

Section one: Legal obligations of the arbitration clause in work contracts (judicial applications). Section two:

The validity of the arbitration clause in the work contract.

## **Findings and Recommendations: The first topic: The legal framework for the Arbitration clause in the Palestinian and comparative legislation:**

Determining the legal nature of arbitration is initially linked to the evaluation of its contractual nature when it is expressed in a consensual contract that includes a clause obligating the parties to the contract to resolve any disputed issue arising from the implementation of the contract, meaning "...to refer disputes that arise between individuals regarding the implementation of a particular contract to arbitration." (Al-Douri, 2002). This coincides with the definition of arbitration in Article 1 of the Palestinian Arbitration Law No. (3) of 2000 as: (a means of settling an existing dispute between the contract's parties, by submitting the subject matter of the dispute to the arbitral tribunal for adjudication). Article 1790 of the Journal of Judicial Judgments also defined it as: "The two opponents take a judgment with their consent to settle their dispute and claim". The first section of Article 4 of the Arbitration Law stipulates that (the provisions of this law shall not be subject to matters related to public order in Palestine). At the same time, Article Two of the Executive Regulations of the Arbitration Law No. 3 of 2000, issued pursuant to Cabinet Resolution No. 39 of 2004, stipulated that (it is not permissible to arbitrate in matters related to public order, and issues in which conciliation is not legally permissible, such as penalties and disputes related to nationality, and everything related to personal status...) (Al-Waqa'I, 2004). In line with the provisions of these texts that prohibit resorting to arbitration in matters considered to be of public order, the researcher reviews the legal value of the arbitration clause in work contracts in (section one). This is in order to elicit legal issues about the validity of the arbitration clause in the employment contract in a manner that does not contradict with public order. Since the rules of labor law are considered peremptory rules that may not be violated, we will review the arbitration clause in accordance with legal theories in comparative legislation in (section two).

## **Section One: The Legal Value of The Arbitration Clause in Work Contracts**

The concept of labor rights was and still is derived from international charters and conventions, as they fall within the framework of economic rights, which collectively constitute the values on which any society is based. These rights in our modern age are no longer confined to the right to work in its abstract sense, but extend to the issue of protecting the individual right to improve working conditions and terms, to the extent that it constitutes a guarantee of social justice, and of all social and economic development. These values give law and legislation a new role, which is the role of the legal tool for establishing and forming legal rules "...not absolutely peremptory, as they may be violated if it is in the best interest of the laborer..." (Al-Ateen, 2009). The researcher believes that among the issues that are considered non-peremptory in nature are those related to unsafe work procedures, for example, or unhealthy work in the workplace, or increasing wages and reducing working hours, which makes arbitration in individual work contracts here linked to the process of strengthening or establishing or revitalizing individual labor dispute settlement mechanisms." (Ed'Onovan and Omaru, 2013). In other words, it is a strategic extrapolation for the settlement of any future disputes arising from or related to the employment contract to arbitration, and its procedures for settling disputes is

characterized by simplicity, ease and speed, with the contractual relationship remaining in place without affecting the essence of the laborer's basic rights. Therefore, the arbitration clause is "the first step towards taking the path of arbitration to reach a solution to the dispute..." (Abu Zeid, 2018). And since the Palestinian Labor Law has been categorically determined in Article (6) by the text "...and wherever there is a special regulation of labor relations, the provisions of this law or the provisions of the special regulation shall apply to laborers, whichever is better for the laborer..." (Al-Waqa'I, 2001), it becomes obvious that the value root of the arbitration clause in the work contract stems from achieving justice and comprehensiveness for the laborer. It also allows him to improve the level of work terms and conditions in line with the requirements of implementing jurisprudential rules for the majority of jurists, given that "the principle in contracts and conditions is permissibility and only what is indicated by the text..." (Ibhis, 2016). This is consistent with the jurisprudence rule which states that "...the absolute continues to be absolute if there is no evidence for the restriction by text or evidence..." (The Journal, 1876). This means that the arbitration clause in labor contracts is not an adversarial path, but rather an extension of conciliation and mediation between the two parties to the dispute and is based on accepting the interests of the two parties as legitimate interests and giving priority to resolving them jointly instead of considering them to be disputes that are won or lost (Adonovan, 2013), taking into account the varying opinions of jurists on this issue, around which a clear difference emerged between "arbitration and mediation in conciliation, in which the role of the arbitrator or mediator is limited to expressing points of view..." (Al-Nuaimi, 2009), that is, without having any authority to issue a ruling. The researcher believes that as long as the arbitration clause in the work contract revolves around an issue in which the best interest of the laborer is achieved according to the text of the law, there is no doubt that the arbitration clause is a valuable extension of the issue of conciliation and mediation, the result of which will lead to a satisfactory agreement for both parties to resolve the issue of the labor dispute in which the will of the two parties agreed to resolving it by resorting to arbitration or mediation or on any controversial issue that is not related to the essence of the basic rights imposed by law for the laborer. Any attempt by the laborer to waive such rights is considered null and invalid and voids the invalid condition in the interest of the laborer. On the other hand, the Egyptian Court of Cassation has authorized arbitration and mediation in resolving disputes that arise between the laborer and the employer by settling any demands that do not refer to basic rights in the law, based on custom and principles of justice required by the economic and social situation in the region (Abu Zeid, 2018). Thus, the researcher believes that what establishes the arbitration clause in the work contract is that it is a work that has its roots and legal value because it is based on the implementation of the rules of justice and equity for the best interest of the laborer.

## **Section Two: The Arbitration Clause According to the Legal Theories in The Comparative Legislation:**

The arbitration clause is one of the provisions of the regulation of the legal relationship, and it is the condition under which the parties to the contractual relationship agree – before any dispute arises between them – that any dispute that may arise between them is resolved through arbitration. This condition must include the terms of the contract. Thus, according to an aspect of jurisprudence, this condition is agreed upon between the two parties to the contractual relationship before the occurrence of any dispute, to be a condition dependent on the occurrence of the dispute, which may or may not happen. In this sense, this condition is classified as optional for the two parties to the contractual relationship, before it is included in the texts of the contract, since after it is included, it is an obligatory condition for resolving any dispute that may arise over an issue that may be reconciled and does not violate public order. Therefore, this condition may not be violated by either party to the contractual relationship. In individual work relations, the French legislation permitted arbitration, provided that it was after the outbreak of a dispute between the employer and the worker. This is the same approach adopted by the Lebanese legislator, and their justification for this is that according to the accepted jurisprudence, it is not permissible to pre-agree on derogating or negotiating any rights acquired under labor laws by subjecting them to arbitration before a dispute arises over them, while according to these two legislations it can be "disposed of after the dispute arose." Whereas, according to these two legislations, it can be "disposed of after the emergence of a dispute, reconciliation and arbitration over its legal and financial consequences..." (Jreissati, 2011). In this context, the Jordanian Court of Cassation decided, in several legal principles, its view on the arbitration clause in work contracts, as it ruled that arbitration is invalid because it is related to public order (Al-Daboubi, 2020, p. 44). By reviewing most of the texts of Arab legislation, especially the Jordanian, Egyptian, Saudi and Lebanese legislations, regarding the legal nature of the arbitration clause in work contracts, we find that it does not specify the nature of the conflict that may arise between individuals and employers, unlike collective labor disputes. In this regard, most Arab legislations defined the legal framework governing the resolution of these disputes and ways to address them within the framework of collective negotiations by the competent authorities. Following the guidance of these legislations, the Palestinian legislator proceeded in the text of Article (49) of Law No. (7) of 2000 "...with the aim of resolving collective conflict, improving work terms and conditions, or raising production efficiency." (AlWaqa'I, 2001). But no such provision has a similar case for determining individual

disputes that can be settled through negotiation, arbitration, or the like. Likewise, most legal scholars did not think to develop a definition that describes the nature of individual disputes that may arise between the laborer and the employer, and this made the issue of addressing Arab legislation to establish a legal regulation regulating the arbitration clause in individual labor disputes very difficult, considering that the laborer is the weak party in the work relationship. The legislative concern about entering into this issue was that this condition would be subject to the laborer by the employer. In the context of the jurisprudence of some Western jurisprudence to determine the nature of individual disputes, the jurist Riger defined it as “the dispute that arises between the laborer and the employer on the occasion of the implementation of the work relationship due to one's breach of his obligations written in a legislative, regulatory, interactive or contractual text, which results in harm to the other party” (Abu Diab and Al-Shweish, 2019). On the other hand, the opinions of the jurists varied about the idea of “the legal nature of arbitration between an opinion that considers the arbitration to be of a voluntary contractual nature and an opinion that considers it to be of a judicial nature and a third opinion consisting of combining the two aforementioned opinions, seeing it as having a mixed or double nature” (Al-Nuaimi, 2009). From the reality of this legal regulation of the arbitration clause in Arab legislation and the varying opinions of jurists regarding the legal nature of the arbitration clause, the researcher believes that the arbitration clause varies according to the field subject to arbitration, as it is general in some cases, and specific in others. When the parties agree to refer all disputes or disagreements that may arise in the future from the employment contract to arbitration for a decision, the matter here entails doubts to undermine the acquired rights of the laborer, which leads to the invalidity of this condition and its consequences, but the matter is different in the case of an agreement. In this case, the parties may refer any disputes that arise in the future to arbitration on a particular issue, or specific issues exclusively, which are not related to wages and rights granted by law for the laborer. One of the evidences of this is that “when there is a dispute with a laborer whose role is small in the facility, but who is technically influential in the production process, the settlement of his dispute with the employer requires expertise and a specialized party. Presenting such a dispute to the traditional judiciary may cause losses and reveal the secrets of the profession to all people, including the competitors..” (Abu Diab, 2019). After reviewing the arbitration clause in accordance with legal theories in Arab legislation, we find that this clause is characterized by many legal characteristics in the field of individual labor disputes, as it has a nature that establishes a legal status independent of the basic rights of the laborer that are not affected. In addition to being a procedural work that aims at facilitating overcoming disputes between the employee and the employer easily, it is also governed by the will of the parties under the provisions of the basic contract in a special, mandatory manner, as it obliges its parties to resort to arbitration to resolve disputes arising from the transactions covered by the arbitration clause. It also has a special legislative character because it achieves the best interest of the laborer, which makes him the originator of a unique case linked to the purpose of the legislative text by providing all means of protection for the worker.

## **The second topic: The arbitration clause in work contracts between validity and invalidity**

In the contracts, the contracting parties' express their acceptance of the legal effects that result from the free and sound unification of their wills, in accordance with the terms of the contract, without going into the details of the conditions for the validity of the contract in terms of the terms and the conditions for its validity. The contract cannot be arranged for its effects apart from the availability of the eligibility condition, the place and the reason for the contract, so as to have its legal effects without any defect in it that affects the principle of will power or violates one of its terms that makes it impossible to implement. If the contract is complete with all its elements and terms, it is a valid contract in its origin in terms of the eligibility, the place and the reason, and also correct in its description when it is free from any defect of the will represented by mistake, coercion or fraud and other defects of the will. On the other hand, the law included a case of invalidity of the contract as a result of the absence of any of the terms of its contract (Swaillem, 2021). Accordingly, it is superfluous to say that the work contract, like other contracts, is not valid unless it is agreed upon by the will of the contracting parties. This means that the offer is coupled with acceptance and that it was concluded by persons with a legal capacity, and that the will of the two parties should not be tainted by any defect of consent such as error, coercion and fraud...” (Othman, 2010). This contract “contains the special and essential conditions that both parties agree upon.” The provisions of the Labor Law are applied in what is not mentioned in a special agreement, as it is a written document between two parties that contains mutual rights and obligations. Therefore, the work contract expresses the will of the contracting parties, and each party has the right to agree on what achieves its goal. In the interest of the legislator to protect both parties, it has set terms and conditions in the law that it is not permissible to agree on anything that contradicts them” (Khalil, 2015). According to it, the Palestinian Labor Law No. 7/2000 regulates the relationship between the laborer and the employer in a non-governmental sector. We have previously mentioned that this law represents the general rules that cannot be agreed upon, and does not invalidate the contract even if it is not in writing. The meaning of the text is clear to prove the work relationship by any means of proof in accordance with the provisions of Article

(24), meaning that the provisions of this law are considered mandatory clauses especially with regard to wages, working hours and other rights that cannot be infringed upon in the interest of the laborer.

Here, we address the arbitration clause in the work contract as an unfamiliar condition in employment contracts, to learn about the legal obligations to consider the validity of the arbitration clause in work contracts (in section one), and then we address the argument that is adhered to for the invalidity of the arbitration clause in the employment contract (in section two).

### **Section One: Doctrinal and legal obligations to consider the validity of the Arbitration clause in work contracts:**

When the will of the two parties to the work contract resorts to settling a dispute issue that is not related to the basic rights of the laborer in accordance with the provisions of the law, or it is possible for the laborer and the employer to agree to include in the contract a condition to refer the difference between them to an arbitration body to decide on the issue of increasing wages or reducing working hours, then it is permissible to reconcile between the laborer and the employer. This is evidenced by the text of the law in terms of the application of the special regulation according to which this regulation grants additional rights over those prescribed by law. Here, "satisfaction with the arbitration does not mean that the laborer waives his rights, because arbitration does not mean reconciliation..." (Abu Diab, 2019). This dispute is related to a right that the laborer claims, which the employer denies or recognizes, but refuses to implement (Awad 2017). This in itself is not related to any issue imposed by public order and it is not permissible to reconcile in it. Rather, among the reasons and obligations of the arbitration requirement are those issues related to improving working conditions and everything related to the workplace and the safety of the laborer and leave no reason for doubt in the interest of the laborer. This is evidenced by the Palestinian Labor Law, which stipulates in Article (110) that "the labor inspector must follow up on the implementation of labor legislation, especially with regard to work terms and conditions by all legitimate means, including receiving complaints and reports..." (AlWaqat', 2001). This text is a legal indicator that demonstrates the validity of the arbitration clause as a general principle in work issues, since the legal principle considers that it is not permissible to detract from the rights of the laborer and/or waive them, and everything below that is considered permissible and valid and has what it requires from a legal point of view. Since there is no provision in the Palestinian Labor Law that prohibits arbitration in individual disputes, the resolution of an issue related to work conditions, wage increases, or an increase in the number of vacation days will be produced through an arbitration clause between the two parties and accepted by each of them.

The researcher believes that one of the most important jurisprudential obligations for the approval of the arbitration clause in the work contract is what Muslim jurists unanimously agreed upon. The Malikis, Hanbalis, and the Islamic Fiqh Academy agree with that by saying that "Subjecting individual work contracts to arbitration is absolutely permissible in Islamic jurisprudence because they are financial contracts in terms of origin..." (Abu Diab, 2019). In the same context, comparative jurisprudence found a way to authorize the arbitration clause in individual labor disputes, given that the lack of provision for arbitration in labor legislation does not preclude the implementation of arbitration legislation on individual labor disputes, as they are texts that include all disputes that fall within the borders of the state (Abu Zeid, 2018). This indicates the national jurisdiction of the state, for which we find an example in the Palestinian legislation in the Arbitration Law No. 3/2000, which stipulates in the first paragraph of Article (5) that "The arbitration agreement is an agreement between two or more parties to refer all or some of the disputes that have arisen or may arise in connection with a specific legal relationship, whether contractual or not, and the arbitration agreement may be in the form of an arbitration clause contained in a separate contract or agreement..." (Al-Waqat', 2000). We also find other examples in Arab legislation. In this context, the Saudi Labor Law, in the text of Article 224, allows the parties to the labor relationship to resolve any dispute that may arise between them to arbitration without any of them being restricted in the time of resorting to arbitration – during the work relationship or after the end of the work relationship – and it allows the inclusion of the arbitration clause in the contract according to the Saudi law. This is in contrast to the French law, which permitted the resort to arbitration in settling individual labor disputes, provided that it is under an arbitration agreement subsequent to the emergence of the dispute. (Abu Diab 2019). This is the same view adopted by a part of the Palestinian jurisprudence regarding the arbitration clause in work contracts, justifying this by saying: "But if the separate agreement to resort to arbitration was signed between the laborer and the employer after the termination of the work contract, then the agreement is valid and productive of its legal effects due to the end of the state of weakness on the part of the laborer after the end of the work, which makes him able to dispose of his rights without weakness or fear of the employer..." (Amr, 2016). On the other hand, another aspect of the Palestinian jurisprudence referred to the permissibility of arbitration in all labor disputes, whether they resulted from an individual labor contract or a collective contract. This argument is based on the decision of the Palestinian Court of Cassation and the decision of the Jordanian Court of Cassation in particular. (Salama, 2014). In the same context, the judgment of the Court of Appeal in Ramallah came in line with the legal obligations of the arbitration clause as long as it is related to a dispute that does not affect the basic rights of

the laborer, as the court confirmed the permissibility and validity of the condition as it relates to the interpretation of the terms of the work contract. (Appeal, 2019). The researcher believes that one of the most important obligations that permit the validity of the arbitration clause in the employment contract is that the condition is attached to the best interest of the laborer in improving his working conditions and contract terms in each period. In addition, the reality is changing at a rapid pace, which requires the laborer to have the right individually to negotiate with the employer to improve working conditions. In no case can the arbitration clause in the work contract be considered void under the pretext that the laborer during the contractual relationship is the weak party, as this violates the peremptory rules in the Palestinian Labor Law, which provided the maximum goals of legal protection for the laborer. Based on what was included in Paragraph (3) of Article 39, which provided protection for the laborer from any action taken by the employer if he submits a complaint or claim against the employer in its text, the following cases in particular cannot be considered among the real reasons that justify the termination of work by the employer: 3. The laborer files a case or participates in procedures against the employer claiming to have violated the law, as well as submitting a complaint to the competent administrative bodies..." (Al-Waqa'I, 2001). Therefore, it is a priority that the inclusion of the arbitration clause in the work contract is compatible with the interest of the laborer as long as there is no prejudice to the laborer. On the other hand, when it comes to referral to an arbitral tribunal, the arbitral decision will not become final until it is ratified by the court, as indicated by the text of Article (45) of the Arbitration Law No. 3/2000 (Al-Waqa'I, 2000). The judgment is not considered in accordance with the legal principles if there is unfairness to the laborer in the outcome of the arbitration and the court ratifies it. Rather, the obligations to enforce the provisions of the law grant the court full and absolute legal authority to address the invalidation of the arbitration decision in the case that the outcome of the arbitration is unfair in any way to the laborer.

The researcher believes that the arbitration clause in work contracts is a valid action that is compatible with the strengthening of additional guarantees that give the laborer an advantage in the additional rights to him in terms of working conditions, increasing wages, increasing vacation days and other rights that can be agreed upon by arbitration by experts and specialists.

## **Section Two: The Reason for the Invalidity of the Arbitration Clause in The Work Contract:**

One of the most important features that distinguish the Labor Law from all other laws is the legal rules included in its peremptory texts that it is not permissible to agree on violating or working against them. This feature also made it distinct from the provisions of the civil law, especially with regard to the provisions and rules of obligations. Perhaps the legislator's goal is to provide the maximum means of protection for the laborer in the face of the employer. Consequently, it became implicit in an exaggerated positive discrimination for the benefit of the laborer, which made it a negative point towards laborers by the reluctance of employers to hire laborers because of the rights that must be provided to the laborer with or without a contract. This is reflected in one way or another on the high rates of unemployment in the Palestinian society (Mas, 2007). This is reflected in the nature of what may and may not be agreed upon by the laborer and the employer to be included in the working contract, so that the argument exists for the invalidity of everything that violates the minimum set for the protection of the laborer in accordance with the rules of law, which includes any arbitration clause related to the laborer's bargaining over these rights. On the other hand, the researcher believes that any violation that leads to an increase in protection for the benefit of the laborer is considered valid and there is no reason for its invalidity. Moreover, any stipulation, condition, or arbitration agreement in the contract, whether it includes the terms of the contract or under an agreement separate from the contract, is valid if it is related to the settlement of any dispute related to the increase in the rights established in the law above the minimum for the interest of the laborer. Looking at Arab legislation, we find that the Egyptian legislator has included in the labor laws an article that includes a categorical provision that "any reconciliation, waiver or release of the rights granted to the employee under its provisions during the period of establishment of work interests and until the lapse of six months from its expiry is considered null." (Rasheed, 2021). This reinforces our opinion on the permissibility of the arbitration clause to achieve additional benefits for the laborer. Thus, "it can be said that any condition that contradicts these provisions should not be taken into consideration if it is unfair to the employee whom the legislator aims to protect..." (Rasheed, 2021).

Based on the *jus cogens* provisions of the law, the researcher believes that if the contract includes more beneficial conditions for the laborer, the requirements of justice and fairness for the laborer are that the arbitration clause should be looked at in isolation from the rest of the contract terms to decide whether this condition achieves additional benefits for the laborer before the nullity ruling is issued on this condition. This is because the argument that is adhered to for deciding the nullity of the arbitration clause in the work contract before entering into the outcome of the arbitration proceedings and its ratification by the competent court is exaggeration and deviation from the truth due to the legitimacy of the condition in favor of the laborer. Therefore, the Moroccan jurisprudence is considered successful in deciding the outcome of the arbitration

clause in individual labor disputes. Therefore, it looks forward to a determination of the nullity of the clause according to the outcome of the arbitration. If it does not affect issues related to public order – the minimum rights of the worker – it is permissible and valid and there is no argument for its invalidity as long as it was decided as a result of the agreement between the laborer and the employer to grant the laborer additional rights (Lamia, 2016). In the view of the Jordanian legislator, the validity of the nullity of the arbitration clause in the work contract is linked to "...the nullity clearly and explicitly, specifically through the concept of Article (4) of the Labor Law, which clarifies the legal mechanism to be followed when such type of nullity is received so that the violating clause is canceled and the status of the legal base regulating it is replaced without any problematic legal or practical case being raised in this type of invalidity, as well as the case in the contract whose invalidity was decided before its parties began to implement it..." (Talafta, 2010). The invalidity argument here extends only to the arbitration clause that affects rights related to public order that cannot be violated and are protected by the force of law. The researcher believes that in this case, the effect of the invalidity argument is removed, not for the arbitration clause in its entirety, but rather the effect of invalidity is limited to what is contained in the clause under the arbitration contract or the arbitration clause that contravenes public order, contrary to what some legal scholars have acknowledged "that the entire contract is void if it is found that the contracting party would not have contracted had it not been for the existence of the condition requiring its nullity..." (Talafta 2010). As for the authenticity and legal doctrine that the Palestinian judiciary embraced with a unique ruling – within the limits of my knowledge – issued by the Magistrate's Court held in Ramallah on February 27, 2014, it considers the arbitration clause in work contracts as invalid as it is". The court decided to reject the application submitted to it by not accepting a lawsuit filed to claim labor rights, on the pretext of the existence of an arbitration clause in the contract signed between the laborer and the employer. The court considered that the arbitration clause contained in the employment contract is a void condition in line with "what has been established by the jurisprudence that the clearances that the laborer signed during his work, and related to his rights, are not considered, due to the union of the cause in the two issues, which is that the laborer is still at the work, and he is the weaker party in the relationship..." (Arafat, 2017).

The researcher sees from the facts of the findings of the Magistrate's Court in its decision, which reinforces the legal belief that the reason is not in the arbitration clause, but rather in nullifying the clause regardless of its place in the contract according to the case whose facts were presented before the court's consideration. Here, it must be pointed out that the legal principles and duty require the court to expand its legal understanding of the nature of the arbitration clause in the contract as to whether it includes basic rights that may not be reconciled with and violate the public order and thus invalidate it, or rights in which conciliation is permissible and thus allow it for the benefit of the laborer. This is given that the laborer is on top of his work, which makes his rights subject to bargaining, and that the condition is permissible if it occurs after the end of the contractual bond between the laborer and the employer. Here, it is also worth noting that the legal position of the laborer, after the end of the contractual bond, is in its weakest condition, as there is no legal or legislative umbrella on which to base the conciliation or agreement to settle the dispute outside the contractual bond, and this is what the Egyptian and Jordanian legislators alike drew attention to. In this respect, the Palestinian legislator is satisfied with providing all protection guarantees for the laborer while he is on the job without extending this protection after the end of the contractual bond under the pretext that the rights and stability of the laborer are in place, ignoring the text that despite its stability, the laborer may fall under the sword of harsh living conditions and the urgent need that compels him to reconcile with the employer in or during judicial litigation or through arbitration.

## Conclusions and Recommendations

Based on what was reviewed in the axes of this study and with reference to the roots and origins of our understanding of legal provisions and jurisprudential views regarding the arbitration clause in individual labor disputes, the arbitration clause in work contracts was intended to achieve the best interest of the laborer. This complements the peremptory provisions of the law that guarantee the minimum limits for the laborer. We conclude that this condition is another positive feature for the laborer, and it provides him with a legal space to improve his working conditions or to overcome any dispute between him and the employer through the arbitration procedure that will achieve the laborer's permanence in his work and at the same time create a kind of balance between the interests of both parties. In line with the position of the Egyptian and Jordanian legislators, which guaranteed more protections for the laborer during work and after the termination of the work contract, regarding their leave of the arbitration clause in individual labor disputes, we conclude that the arbitration clause in individual labor disputes is considered a legal tool according to which it enhances the empowerment of the laborer with the tools and the arbitration procedure because of its differentiation from other contract clauses. Accordingly, we recommend conducting a legislative treatment of the Palestinian Labor Law with clear texts that allow the inclusion of arbitration clause in individual labor contracts. At the same time, the legislative text clarifies issues that conflict with the public order in Palestine and issues in

which conciliation is not legally permissible, similar to collective labor disputes. In this context, we present the legal elements of the proposed text legislation, taking into account the following:

- 1- Considering it a procedural condition that has its own legal nature, making it an independent part that does not affect the terms of the contract that contain basic rights whose violation constitutes a breach of public order.
- 2- The effect of the arbitration clause is influenced by the contract only in terms of its competence as a qualitative condition to avoid any dispute related to additional requests to the laborer that gives power to the laborer in the case that they are rejected by the employer, which will create a space for its existence as a contract within a contract, meaning that the contract in which there is an arbitration clause is in fact two contracts contained in one legal document.
- 3- Considering it a consensual condition subject to the will of the laborer and the employer. All legal rules of contract and contractual liability apply to it, provided that it is clear without ambiguity, meaning that arbitration must be resorted to in matters where the law permits reconciliation or achieves a benefit for the laborer.

### **References: Books**

- [1] Edwinovan and Omaro (2013). Labor dispute regulations, publications of the International Training Center, Turin, Italy, available from [https://www.ilo.org/publication.wcms\\_302437](https://www.ilo.org/publication.wcms_302437).
- [2] Douri, Qahtan (2002) Arbitration Contract in Islamic Jurisprudence and Positive Law. Jordan, Dar Al-Furqan (1st ed.).
- [3] Farakhna, Samah (2015). Strengthening Arbitration Mechanisms in Labor Disputes,” Publications of the Center for Democracy and Workers’ Rights, Palestine, available from <http://dwrc.org/ar/1/38/366/2015>.
- [4] Daboubi, Khaled (2020). Arbitration Law” Publications of the Jordan Judicial Institute Available from [http://www.jij.gov.jo/sites/default/files/ilovepdf\\_merged\\_16.pdf](http://www.jij.gov.jo/sites/default/files/ilovepdf_merged_16.pdf).
- [5] Maas, (2007). The Effects of the Application of the Palestinian Labor Law on the Competitiveness of the Private Sector, Palestinian Economic Policy Research Institute, available from [http://info.wafa.ps/userfiles/server/pdf/labor\\_law\\_arabic.pdf](http://info.wafa.ps/userfiles/server/pdf/labor_law_arabic.pdf).

### **Theses:**

- [1] Abhis, Marwan (2016) “The rule of origin in legal contracts” an authentic jurisprudential study, An-Najah University Publications – Palestine Available from <https://scholar.najah.edu/>
- [2] Talafha, Bahaa El Din Mohamed Ahmed. (2010). The invalidity of the individual work contract and its impact on the laborer’s rights under Jordanian law. Available from <https://search.emarefa.net/detail/BIM-303798>.

### **Journal articles:**

- [1] Rasheed, Bara’a (2021). The distinguishing characteristics of the Labor Law from other laws, available from <https://e3arabi.com>
- [2] Khalil, Abdel Aal (2015). Special Conditions in the Employment Contract” Available from <https://al-sharq.com/opinion>.
- [3] Amr, Ihab (2016). Legality of the arbitration clause in the employment contract, available from <https://pulpit.alwatanvoice.com/content/print/407770.html>
- [4] Othman, Khaled (2010) Provisions for nullity in labor law Available from <https://www.aleqt.com>
- [5] Arafat, Husam (2017) How Legal Is the Arbitration Clause in the Employment Contract, available from <https://pulpit.alwatanvoice.com/content/print/438988.html>
- [6] Salama, Naim (2014). “Arbitration in Labor Disputes and Public Order.” Available from <https://pulpit.alwatanvoice.com/content/print/323859.html>
- [7] Swailem, Sally (2021) Stages of a valid, invalid, suspended, and corrupt contract. Available from <https://wadaq.info>.

### **Peer Reviewed Articles:**

- [1] Abu Zeid, Muhammad (2018). A study entitled "The Possibility of Recourse to Arbitration in Individual Labor Contract Disputes", The Egyptian Journal of Legal and Economic Studies, Ain Shams University, (p. 10). 330-408, available from Dar Al-Manzma.
- [2] Jreissati, Alt (2011). A study entitled “Arbitration and Labor Issues” Journal of Lawyers, Fourth Year, P5, p. 1-22 Available from [https://www.international-arbitration-attorney.com/wpcontent/uploads/arbitrationlawArticle\\_10.pdf](https://www.international-arbitration-attorney.com/wpcontent/uploads/arbitrationlawArticle_10.pdf)

- [3] Diab, Ali and Al-Shweish, Abdullah (2019), a study entitled "Lights on Arbitration in Individual Labor Disputes in Islamic Jurisprudence and Saudi and Egyptian Labor Law" Journal of the College of Sharia and Law, Egypt, (p. 34), (vol. 1), pp. 10-115, available from House of the system.
- [4] Zayed, Lamia (2016), a study entitled "Arbitration in Collective Labor Disputes" Journal of Law and Business, Hassan I University, Morocco, p. 8, pp. 176-189, available from Dar Al-Manzma
- [5] Awad, Belabdoun (2012) A study entitled "Development of mechanisms for amicable settlement of individual labor disputes in Algerian legislation" Journal of Labor and Employment Law, Mostaganem University, Algeria, vol.3, pp. 46-68.
- [6] Al-Ateen, Omar Falah (2009), a study entitled "Arbitration in Labor Issues" Al-Manara Journal for Research and Studies, Al al-Bayt University, Vol.
- [7] Al-Nuaimi, Sahar (2008) a study entitled "The Place of the Arbitration Agreement" Journal of Contemporary Egypt, The Egyptian Association for Political Economy, Statistics and Legislation, vol. 100, p. 494, pp. 591-614, available from Dar Al-Manzma.

### **Court Resolutions:**

- [1] Civil Appeal 39/2019 issued by the Ramallah Court of Appeal on October 16, 2019 available from <https://maqam.najah.edu/judgments/6223>

### **Legal sources:**

- [1] The Palestinian Authority (2001). A(39). Labor Law No. 7 of 2000 p. 7-67, (Al-Waq'a' I' 2000).
- [2] Palestinian (2000). P. (33) Arbitration Law No. 3 of 2000, p. 5-29, - (Al-Waq'a' I' 2000).
- [3] Palestinian (2004). P. (50) The Executive Regulations of the Arbitration Law, pp. 168-199.
- [4] Journal of the Just Provisions (1876). Ottoman Civil Code, available from
- [5] <https://maqam.najah.edu/legislation/158>