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Arbitrators' Jurisdiction to Decide the Merits of a Dispute in Accordance with the Applicable Rules of Law under Lebanese Law: A Comparative Analytical Study

Mirna Toufic Al Atrach, Ghaleb Farhat

Faculty of Law, Islamic University of Lebanon,
mirna-law-atrash@hotmail.com
0009-0000-3385-713X,
0009-0000-9233-1672

ABSTRACT: Background: This study analyzes arbitrators' jurisdiction to decide the merits of a dispute in accordance with the rules of law applicable to it under Lebanese law, while also highlighting key comparative approaches, particularly French law and international commercial practice. Specifically, it examines how an arbitral tribunal exercises jurisdiction over the substantive merits in both domestic and international arbitration frameworks.

Methods: The study adopts a doctrinal and analytical research methodology supported by comparative legal analysis, evaluating relevant provisions of the Lebanese Code of Civil Procedure and Code of Obligations and Contracts alongside Arabic and French legal scholarship, as well as key Lebanese, French, and international judicial precedents.

Results: The findings indicate that the arbitrator's jurisdiction over the substantive merits differs fundamentally between domestic and international arbitration. In domestic arbitration, ordinary arbitration at law binds the tribunal to strict statutory provisions and contractual terms, whereas an amiable compositeur possesses *ex aequo et bono* authority to adjust or soften rigid contractual provisions that fail to reflect the true spirit or equity of the agreement. In international arbitration, party autonomy governs the choice of substantive law, bounded by international public policy, while the absence of an explicit choice empowers the tribunal to apply appropriate legal rules while taking mandatory account of international trade usages.

Conclusion: These findings clarify and strengthen the legal framework governing commercial arbitration in Lebanon and comparative civil law jurisdictions.

INTRODUCTION

As a fundamental principle of public legal order, the judiciary has jurisdiction to determine all legal disputes because it possesses general jurisdiction to protect subjective rights and established legal positions (Eid, 2001.). Continuous economic expansion, commercial complexity, and international trade diversification, however, have significantly increased both the volume and technical difficulty of contractual transactions (Nammour, 2014). This rapid expansion has led to systemic court congestion, backlog in judicial dockets, pressure on judicial personnel, and prolonged litigation delays. The inability of State judicial systems to resolve complex commercial disputes within a reasonable time frame frequently undermines commercial confidence and conflicts directly with the imperative of prompt adjudication and the proper administration of justice (Robert, 1993).

To overcome these institutional disadvantages—most notably litigation delays, excessive procedural formalisms, and potential jurisdictional conflicts—national legal systems and international treaties have systematically developed alternative dispute resolution (ADR) mechanisms, chief among which is commercial arbitration (El-Ahdab, 1982). Contractual parties, including sovereign States and State-owned entities, enjoy broad procedural freedom to select the precise mechanism for resolving their disputes, whether through national courts or by entrusting binding decision-making authority to private third-party arbitrators (*Aquitaine-Elf v. NIOC*, 1982; *ARAMCO v. Saudi Arabia*, 1958).

Once all statutory and contractual requirements for a valid arbitration agreement are satisfied, jurisdiction over the substance of the dispute vests in the arbitral tribunal. The arbitration agreement serves as the foundational source from which arbitrators derive their mandate and adjudicative authority, whether operating in an ad hoc setting or under institutional arbitration rules (Al-Sharqawi, 2000). A detailed review of statutory provisions indicates that the tribunal applies both procedural rules and substantive principles falling within its mandate to issue a final, binding arbitral award (Hadery, 2015).

This study focuses specifically on the determination of the substantive merits in accordance with applicable legal rules under Lebanese law, drawing comparison with French legal standards. It establishes a fundamental structural distinction between the legal rules governing the merits in domestic arbitration (Part One) and those governing international arbitration (Part Two).

MATERIALS AND METHODS

This study adopts a doctrinal and analytical legal methodology supported by comparative legal analysis. The core analytical framework proceeds from the primary statutory provisions of the Lebanese Code of Civil Procedure (Articles 762 to 821) and the Lebanese Code of Obligations and Contracts (specifically Article 221), interpreted in light of leading French and Arabic legal scholarship (Batiffol, 1982; Bredin, 1984; Loquin, 1980; Nammour, 2014; Robert, 1993). The comparative dimension focuses heavily on French arbitration law (specifically Decree No. 80-500 of 12 May 1981 and subsequent statutory reforms) because Lebanese arbitration legislation was substantially modeled after French procedural law.

The theoretical analysis is systematically supported by judicial precedents from Lebanese higher courts (principally decisions of the Lebanese Court of Cassation and the Beirut Court of Appeal) and comparative decisions of the French Court of Cassation. Furthermore, the analysis of international arbitration rules incorporates major international arbitral jurisprudence, including institutional awards under the International Chamber of Commerce (ICC Case Nos. 7319, 8742) and landmark State-contract arbitrations such as *ARAMCO v. Saudi Arabia* (1958), *LIAMCO* (1980), and *Aquitaine-Elf v. NIOC* (1982).

RESULTS

Rules Applicable to the Merits in Domestic Arbitration

Domestic arbitration under Lebanese law requires a strict analytical distinction between deciding the merits under ordinary arbitration at law and deciding under amiable composition (*ex aequo et bono* arbitration).

Deciding the Merits under Ordinary Arbitration at Law

Article 789 of the Lebanese Code of Civil Procedure (CCP), as amended by Law No. 440 of 29 July 2002, provides that arbitrators shall decide the dispute in accordance with the substantive rules specified in Article 776, unless the parties expressly empower them in the arbitration agreement to act as amiable compositeurs pursuant to Article 777. Articles 776 and 789 establish that ordinary arbitration at law is the default legal rule under Lebanese civil procedure (Eid, 2001). In cases of ambiguity or contractual doubt, Article 776 creates a legal presumption in favor of ordinary arbitration at law. Consequently, for an arbitration to be characterized as amiable composition, the underlying arbitration clause must contain clear, explicit, and unambiguous authorization; otherwise, the tribunal remains bound to decide strictly at law (Beirut Court of Appeal, 1994a).

In ordinary arbitration at law, the tribunal is legally bound to apply positive substantive law in all its aspects, exactly as a national State court would. The tribunal must rigorously enforce the terms of the contract, which bind the parties pursuant to Article 221 of the Lebanese Code of Obligations and Contracts (COC), reflecting the classical doctrine of *pacta sunt servanda* (Lebanese Court of Cassation, 2005a). Both mandatory public policy provisions and supplementary statutory rules apply, the latter being obligatory unless the parties validly stipulated alternative contractual terms (Eid, 2001).

This substantive constraint must be distinguished from procedural exemptions. Article 776 permits contracting parties to exempt arbitrators from standard statutory procedural rules, provided such exemptions do not violate procedural public policy or fundamental defense rights specified in Articles 365 to 368 and 371 to 374 of the CCP (Beirut Court of Appeal, 2008a). Lebanese case law confirms that where an arbitration clause characterizes the tribunal as operating at law while exempting it from formal procedural rules, the tribunal acts fully within its mandate when applying substantive legal performance rules rather than deciding purely on equity (Lebanese Court of Cassation, 2005a).

Deciding the Merits under Amiable Composition

Amiable composition is a distinct form of arbitration wherein the tribunal is relieved from strict adherence to positive substantive rules of law and is empowered to decide *ex aequo et bono* based on equity and fairness (Loquin, 1980). Article 775 CCP authorizes parties to grant amiable composition powers in an arbitration clause, submission agreement, or independent contract, mirroring former Article 1474 of the French CCP (introduced by Decree No. 80-500). Under Article 777 CCP, an amiable compositeur is exempted from applying positive legal rules and ordinary judicial procedure, but remains strictly bound by procedural public policy, fundamental defense rights, the duty to state reasons, and mandatory arbitration rules (Beirut Court of Appeal, 2000).

Because ordinary arbitration at law is the statutory baseline, amiable composition can never be inferred from mere presumption or vague contractual phrasing (Beirut Court of Appeal, 2012a). Express terms such as 'deciding according to equity,' 'justice and good conscience,' or 'ex aequo et bono' are required (Lebanese Court of Cassation, 2009a). Conversely, stipulating that an arbitral award is final, binding, or unappealable does not transform an ordinary arbitration into amiable composition, as finality relates to enforceability rather than substantive mandate (Beirut Court of Appeal, 1994a). Parties may, however, mutually agree during proceedings to convert ordinary arbitration into amiable composition (Beirut Court of Appeal, 2001).

An amiable compositeur is not prohibited from applying legal rules; rather, the tribunal may apply statutory provisions provided it demonstrates that the resulting outcome aligns with equity and fairness (Mahmassani, n.d.; Robert, 1993). Equity does not inherently contradict positive law. The tribunal may either enforce statutory rules while confirming their equitable nature or depart from rigid contractual provisions that produce harsh, inequitable results (Nammour, 2014). Lebanese and French courts require amiable compositeurs to explicitly connect their legal reasoning to equitable considerations; failure to do so may result in annulment for exceeding arbitral mandate (French Court of Cassation, 2001, 2012a; Lebanese Court of Cassation, 2007, 2013).

Regarding recourse, Article 799 CCP dictates that awards rendered in amiable composition are not subject to ordinary appeal unless parties expressly reserved that right in their agreement. Where an appeal is reserved, the Court of Appeal hears the matter acting itself as an amiable compositeur. Under Article 804(4) CCP, cassation review is unavailable unless the Court of Appeal first annuls the award, restricting review strictly to statutory annulment grounds (Lebanese Court of Cassation, 2009b).

The Amiable Compositeur's Power to Soften Contractual Provisions

A central legal debate concerns whether an amiable compositeur can modify or 'soften' clear contractual provisions. Article 221 COC establishes that contracts lawfully formed have the force of law between the parties. Under the strict view, the binding force of contract is a core principle of civil law public policy that prevents any judge or arbitrator from altering unambiguous terms (Joreige, 2012; Beirut Court of Appeal, 1995). This rigid approach was adopted in certain international arbitral awards (e.g., ICC Case No. 3938). However, the prevailing view in modern Lebanese and French legal scholarship and jurisprudence recognizes that the primary purpose of conferring amiable composition is to allow the tribunal to mitigate contractual rigidity where strict performance produces manifest injustice (Bredin, 1984; French Court of Cassation, 1985). Non-mandatory contractual terms are supplementary in nature; thus, the amiable compositeur may adjust, temper, or modify clauses that conflict with the true spirit of the contract or overriding considerations of fairness (Beirut Court of Appeal, 2007; Lebanese Court of Cassation, 2009), Table 1.

Table 1. Jurisdictional Framework for Domestic Arbitration under Lebanese Law

Arbitration Type	Applicable Rules & Basis	Authority over Contract Terms	Recourse & Judicial Review
Ordinary Arbitration at Law (Default)	Articles 776 & 789 CCP: Applies substantive positive law and statutory provisions (Eid, 2001).	Strictly Bound: Must enforce contract under Art. 221 COC (pacta sunt servanda) without alteration (Lebanese Court of Cassation, 2005a).	Subject to standard appeal and annulment actions under general civil procedure rules.
Amiable Composition (Ex Aequo et Bono)	Articles 775 & 777 CCP: Exempted from strict legal rules; decides according to equity (Loquin, 1980).	Equitable Softening: May modify or temper rigid contractual terms that produce manifest injustice (Bredin, 1984; French Court of Cassation, 1985).	Art. 799 CCP: Non-appealable unless reserved. Art. 804 CCP: Cassation restricted to annulment judgments (Lebanese Court of Cassation, 2009b).

DISCUSSION

Rules Applicable to the Merits in International Arbitration

International commercial arbitration involves cross-border trade interests, requiring flexible conflict-of-laws mechanisms to determine substantive law (Nammour, 2014).

Agreement on the Law Applicable to the Merits

Party autonomy is the cornerstone of international commercial arbitration. Article 813 CCP provides that the arbitrator shall decide the dispute in accordance with the rules of law chosen by the parties, or failing such choice, in accordance with the rules considered appropriate, taking account of trade usages in all cases (Hadery, 2015). This provision derives from former Article 1496 of the French CCP and mirrors Article 28 of the UNCITRAL Model Law. The parties may select any national legal system, transnational principles, or neutral law unconnected to the parties or performance site (ICC, 1994; French Court of Cassation, 1910). Choice of law may be express or implied from clear contractual indicators, such as jurisdiction clauses, language, or connected contract networks (Audit & d'Avout, n.d.; Corneloup, n.d.).

Party autonomy extends to international contracts concluded by States or State-owned entities, as affirmed in seminal arbitral awards including ARAMCO v. Saudi Arabia (1958), LIAMCO (1980), and Aquitaine-Elf v. NIOC (1982). However, party autonomy is not absolute. Legal scholarship universally rejects the concept of a 'floating' or 'lawless' contract operating in a legal vacuum, as contracts require a pre-existing legal order to give binding force to party intention (El-Ahdab, 1982; Tro et al., 1992).

Limits of Party Autonomy: Public Policy Constraints

The primary limitation on party autonomy in international arbitration is international public policy. Under Article 814 CCP, arbitral awards are recognized and enforced in Lebanon provided they do not manifestly violate international public policy. Article 817(5) CCP allows appellate courts to set aside enforcement orders on public policy grounds. An international arbitrator must refuse to apply a chosen foreign law if its provisions contradict fundamental socio-economic foundations of the forum or enforcement State (French Court of Cassation, 1894; Naim, 1963; Lebanese Court of Cassation, 1968).

Lebanese jurisprudence strictly enforces domestic statutory provisions tied to public policy. For example, Lebanese courts have consistently held that exclusive jurisdiction over commercial representation agreements under Legislative Decree No. 34/67 constitutes a rule of mandatory public policy ('notwithstanding any agreement to the contrary'). Consequently, international arbitration clauses seeking to bypass Lebanese jurisdiction in commercial agency disputes have been declared invalid and unenforceable (Beirut Court of Appeal, 2004; Lebanese Court of Cassation, n.d.-c).

Absence of Choice and Methods for Determining Applicable Law

Where parties fail to designate the governing law, Article 813 CCP empowers the arbitrator to select the 'rules of law' considered most appropriate. This broad wording allows tribunals to go beyond traditional conflict-of-laws methods and apply direct or cumulative approaches, transnational rules, or general principles of international law (Al-Sharqawi, 2000; Batiffol, 1982; Frick, 2001; Kaufmann-Kohler & Rigozzi, n.d.). Furthermore, Article 813 mandates that international arbitrators 'in all cases' take account of international trade usages (lex mercatoria), including good faith performance, pacta sunt servanda, and res judicata (ICC Case Nos. 7319, 8742), Table 2.

Table 2. Determinants of Applicable Law in International Arbitration

Scenario	Statutory Framework	Arbitral Authority & Scope	Key Precedents & Sources
Express or Implied Choice	Art. 813 (Para 1) CCP; UNCITRAL Model Law Art. 28 (Hadery, 2015).	Party Autonomy: Tribunal must apply chosen legal system. Floating contracts prohibited (El-Ahdab, 1982).	ARAMCO (1958); LIAMCO (1980); Aquitaine-Elf (1982); French Court of Cassation (1910).
Absence of Party Choice	Art. 813 (Para 2) CCP (Nammour, 2014).	Direct & Cumulative Methods: Freedom to apply appropriate national laws or non-national rules (Frick, 2001).	ICC Case Nos. 7319 & 8742; French CCP Art. 1496; Batiffol (1982).
Public Policy Limits	Arts. 814 & 817(5) CCP (Mansour & Al-Ajouz, n.d.).	Mandatory Override: Rejection of chosen law violating international public policy or police laws.	Lebanese Court of Cassation (1968); Legislative Decree 34/67 (Beirut Court of Appeal, 2004).
Universal Requirement	Art. 813 (Final Para) CCP.	Trade Usages: Mandatory integration of lex mercatoria and commercial customs in all cases.	ICC, LCIA, WIPO Rules; Al-Sharqawi (2000).

CONCLUSION

This study demonstrates that arbitrators' jurisdiction over the merits under Lebanese law differs fundamentally depending on whether the arbitration is domestic or international. In domestic ordinary arbitration at law, tribunals are bound by positive substantive law and strict contractual provisions under Article 221 COC. In contrast, amiable composition empowers arbitrators to decide ex aequo et bono and soften rigid contractual terms that conflict with equity. In international arbitration, party autonomy governs the choice of substantive law subject to international public policy, while the absence of choice grants tribunal's broad discretion to apply appropriate legal rules and international trade usages.

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