LEGAL TERMINOLOGY FOR LAW STUDENT

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2019/2020

Contracts

The term contracts is used to denote three different kinds of thing:

1. The series of acts of the parties expressing their assent.
2. A physical document executed by the parties as evidence of their having performed the necessary acts expressing their intentions.
3. The legal relations resulting from the acts of the parties, including the relation of right in one party and duty in the other.

Definition:

A contract is an agreement enforced at law.

Classification Of Contracts

Contracts may be classified in several ways:

1. Formal And Informal Contracts:

A formal contract is one, the legal operation of which is dependent upon the form in which it is made.

An informal contract is one, the legal operation of

which does not depend upon the form in which it is made.

A contract under seal is a formal contract. It is expressed in a writing which is sealed and delivered by the promisor.

2. Unilateral And Bilateral Contracts:

A unilateral contract consists of a promise or group of promises made by one of the contracting parties only.

A bilateral contract consists of mutual promises, made in exchange for each other by each of the two contracting parties.

Requirements For Formation Of A Contract

For the formation of a contract, law requires:

1. A legal capacity.
2. A manifestation of assent by the parties who form the contracts.

The manifestation of mutual assent may be made by written or spoken words or by other acts or conduct. It takes the form of an offer by one party and an acceptance by the other party.

Offer: An offer may be made to a specified person or persons, or it may be made to the public.

An offer may be terminated by:

a) rejection by the offeree.

b) revocation by the offeror.

c) the offeror's death or such insanity as deprives him of legal capacity to enter into the proposed contract.

Where an offer is terminated in one of these ways a contract cannot be created by subsubsequed acceptance.

Acceptance: Acceptance of an offer is an expression of assent to the terms thereof made by the efferor.

A reply to an offer which adds qualifications or requires performance of conditions, is not an acceptance but is a counter-offer.

Breach Of Contract:

A breach of contract is a non-performance, without justification of any contractual duty.

A breach my be total or partial.

Remedies for breach of contract are:

a) damages, meaning a sum of money awarded as compensation for injury caused by a breach of contract.

b) restitution, meaning the restoration of a specific thing.

c) specific performance, meaning the rendering of a promised performance.

Damages will be given for the net amount of the losses caused and gains prevented by the defendants breach.

Damages are not recoverable for harm that the plaintiff should have foreseen and could have avoided by reasonable effort.

Contract	عقد
Contractor	متعاقد
Agreement	اتفاق
Promise	التزام – تعهد
Promisor	متعهد – مدين
Promisee	متعهد له – دائن
Defendant	مدعى عليه
Plaintiff	مدعى
Party	طرف
Evidence	إثبات – دليل
Formal contract	عقد شكلى
Informal contract	عقد غير شكلى
Unilateral contract	عقد ملزم لجانب واحد
Bilateral contract	عقد ملزم لجانبين
Legal capacity	أهلية قانونية
Assent	رضا – موافقة
Manifestation	تعبير
Offer	إيجاب
Offeror	موجب
Offeree	موجب له
Acceptance	قبول
Qualification	- تكييف - صلاحية تعديل

Condition	شرط
Breach	إخلال
Sanction	جزاء
Damages	تعويض عن الضرر
Restitution	رد – استرداد أو إعادة الشيء إلى أصله
Restoration	- تعويض رد – استرداد
Specific	محدد – معين
Specific performance	تنفيذ عينى
Loss	خسارة
Gain	ربح – كسب
Harm	ضرر
Auction	مزاد علنى
Bid	عطاء فى مزاد أو مناقصة
Bidder	مقدم العطاء
Act	عمل أو فعل إيجابى
Forbearance	امتناع
Joint promise	التزام أو تعهد مشترك
Creditor	دائن
Obligee	الدائن المتعهد له
Obligor	مدين - أو ملتزم
Assignment	حوالة حق
Perform	ينفذ – يؤدى
Impossibility	استحالة
Defect	عيب

Defective performance	تنفيذ معيب
Attorney	محامى
Counseller	محامى
Power of attorney	وكالة
Seal	ختم - يختم
Solidaridy	تضامن
Good faith	حسن النية
Implied promise	تعهد ضمنى
Insurance	تأمين
Payment	وفاء – دفع
Service	خدمة
Vender	بائع
Seller	بائع
Purchaser	مشترى
Wage	أجـر

العقـــد

يستخدم اصطلاح العقد للدلالة على ثلاثة معانى مختلفة:

١ - سلسلة من الأفعال يعبر بها الأطراف عن رضائهم.

٢ - وثيقة مادية يصدرها الأطراف كدليل على قيام بالأعمال اللازمة للتعبير عن نواياهم.

٣ - العلاقات القانونية التى تنتج عن أفعال الأطراف، ويشمل ذلك ترتيب حق لطرف وواجب على الطرف الآخر.

تعريف:

العقد هو اتفاق يمكن تنفيذه قانونا.

تقسيمات العقـــود

يمكن تقسيم العقود من عدة نواحى:

١ ــ عقود شكلية وعقود غير شكلية:

العقد الشكلى هو العقد الذى تتوقف فاعليته القانونية على الشكل الذى يفرغ فيه.

أما العقد غير الشكلى فهو عقد يكتسب فاعليته بصرف النظر عن الشكل الذى يتم به.

ويعتبر العقد المختوم عقدا شكليا، إذ يفرغ فى محرر يختم ويسلم إلى المتعهد له (الدائن).

٢ ــ العقود الملزمة لجانب واحد (غير التبادلية) والعقود الملزمة لجانبين (التبادلية):

يرتب العقد الملزم لجانب واحد التزاما أو عدة التزامات على عاتق أحد الطرفين المتعاقدين فقط.

أما العقد الملزم للجانبين فيشمل التزامات متبادلة، يتحمل بها كل طرف متعاقد فى مواجهة الطرف الآخر.

شروط انعقاد العقد

يتطلب انعقاد العقد:

١ - توافر الأهلية القانونية.

٢ - التعبير عن رضاء الطرفين اللذان يبرمان العقد.

والتعبير عن الرضاء المتبادل يجوز أن يتم كتابة أو مشافهة أو بأية أفعال أو سلوك. ويأخذ صورة إيجاب من أحد الطرفين وقبول من الطرف الآخر.

الإيجاب: يجوز أن يوجه الإيجاب لشخص أو أشخاص معينين، كما يجوز أن يوجه للجمهور.

ويسقط الإيجاب بسبب من الأسباب الآتية:

أ – رفض الموجب له.

ب – الرجوع فيه من قبل الموجب.

ج – وفاة الموجب أو إصابته بجنون يفقده أهليته القانونية لإبرام العقد المفتوح.

وإذا سقط الإيجاب لسبب من هذه الأسباب، فلا ينعقد العقد بقبول لاحق.

القبول: قبول الإيجاب تعبير عن الرضاء بالشروط التى قدمها الموجب.

وإذا تضمن الرد على الإيجاب تعديلات عليه أو اقترن بشروط يجب تنفيذها، فأنه لا يعتبر قبولا بل إيجابا مضادا.

الإخلال بالعقد: يكون هناك إخلال بالعقد إذا لم يتم تنفيذ أى واجب تعاقدى بدون مبرر. والإخلال قد يكون كليا وقد يكون جزئيا.

ويترتب على الإخلال بالعقد جزاءات هى:

١ - **التعويض** : ويقصد به منح مبلغ من النقود لجبر الضرر الناتج عن الإخلال بالعقد.

٢ - **الرد :** ويقصد به تنفيذ الأداء المتعهد به.

ويشمل التعويض صافى الخسائر الحادثة والكسب الذى كان فى استطاعة المدعى توعه وتجنبه بجهد معقول.

Examples for Questions and Answer

1. **What is a contracts?**

   A contract is an agreement enforced by Law.

2. **What is an informal contract?**

   An informal contract is which must be made through a certain form to the legally effective.

3. **What is a unilateral contract?**

   A unilateral contract is one which consists of a promise or a group of promises made by one contracting party only.

4. **What is a bilateral contract?**

   A bilateral contract creates mutual promises upon both contracting parties.

5. **How may the manifestation of assent be made?**

   The manifestation of assent may be made by made by written or spoken words or by other acts.

6. **How can an offer be terminated?**

   An offer can be terminated by:

   a) Rejection by the offoree.

   b) Revocation by the offoror.

c) The offorer’s death or incapacity.

7. **What constitute a breach contract?**

   A breach of contract is a non-performance, without justification of some or all the contractual duties.

8. **What are the remedies for breach of contract?**

   Remedies for breach of contract are:

   1. Damages.

   2. Restitution.

   3. Specific performance.

International Court Of Justice

The International Court of Justice whose seat is at the Hague, is the principle judicial organ of the United Nations. The Court functions in accordance with its Statute, which is an integral part of the United Nations Charter.

The Court is open to the parties to its Statute, which automatically includes all Members of the United Nations. A State not belonging to the United Nations may become a party to the Statute on conditions to be determined in each case by the General Assembly on recommendation of the Security Council. The Court is also open to States which are not parties to its Statute on conditions laid down by a Security Council resolution of 15 October 1946.

Jurisdiction:

The jurisdiction of the Court comprises all cases which the parties refer to it, and matters specifically provided be for in the Charter or in Treaties or Conventions in force.

States Parties to the Statute may at any time declare that they recognize as compulsory and without special agreement, in relation to any State accepting the same obligation, the jurisdiction of the Court in all legal disputes.

Advisory Opinions:

The General Assembly or the Security Council may request the Court to give an advisory opinion on any legal question. Other organs of the United Nations or specialized agencies when authorized by the Assembly, may also request advisory opinions on legal questions arising within the scope of their activities.

The Law Applied By The Court:

In accordance with Article 38 of the Statues, the Court applies:

a) International Conventions.

b) International Custom.

c) The General Principles of Law Recognized by civilized Nations.

d) Judicial decisions and the teachings of the most highly qualified publicist: as subsidiary means for the deternation of the rules of Law.

Further more, the Court may decide a case according to the principles of equity, if the parties concerned agree.

Composition Of The Court:

The members of the Court are 15 independent judges, of different nationalities, elected by the General Assembly and the Security Council.

Judges are elected for terms of nine years and are eligible for re-election.

If there is no judge of their nationality on the bench, the parties to a case are entitled to choose national judges to sit only in that particular case.

All questions are decided by a majority of the judges present, with nine constituting a quorum.

Terminologies

The sources of International Law	مصادر القانون الدولى
Treaties	معاهدات
International custom	العرف الدولى
The general principles of law	مبادئ القانون العامة
Civilized nations	أقرتها الأمم المتحدة
Judicial decisions	الأحكام القضائية
The Doctrine	الفقه
The pacific settlement	التسوية السلمية
International disputes	المنازعات الدولية
The judicial disputes	المنازعات القضائية
The judicial settlement	التسوية القضائية
International arbitration	التحكيم الدولى
International conciliation	التوفيق الدولى
Inquiry	التحقيق
Mediation	الوساطة
Good office	المساعى الودية (الحيدة)
State territory	إقليم الدولة
Land territory	الإقليم البرى
Airspace	الفضاء الجوى
Outer space	الفضاء الخارجى

International waters	المياه الدولية
Territorial sea	البحر الإقليمى
Contiguous zone	المنطقة المجاورة
Continental shelf	الامتداد القارى
Exclusive economic zone	المنطقة الاقتصادية الخالصة
High sea	أعالى البحار
Right of innocent passage	حق المرور البرى
Right of transit Passage	حق المرور العابر
Right of not pursuit	حق المطاردة الساخنة
International straits	المضايق الدولية
Historical waters	المياة التاريخية
Domestic jurisdiction	الاختصاص الداخلى
Colective security	الأمن الجماعى
Right of Veto	حق الاعتراض

محكمة العدل الدولية

محكمة العدل الدولية التى يقع مقرها بلاها، هى الجهاز القضائى الرئيسى للأمم المتحدة. وتعمل المحكمة وفق نظامها الذى هو جزء لا يتجزأ من ميثاق الأمم المتحدة.

المحكمة مفتوحة أمام الأطراف فى نظامها ويدخل فيهم تلقائيا كافة أعضاء الأمم المتحدة. والدولة غير العضو بالأمم المتحدة يمكن أن تصبح طرفا فى النظام وفق الشروط التى يحددها فى كل حالة الجمعية العامة بناء على توصية مجلس الأمن. والمحكمة مفتوحة كذلك أمام الدولة غير الأطراف فى نظامها وفق الشروط التى تضمها قرار مجلس الأمن الصادر فى ١٥ أكتوبر ١٩٤٦.

الاختصاص :

يشمل اختصاص المحكمة كافة القضايا التى يحيلها إليها الأطراف وكافة المسائل المنصوص عليها بصفة خاصة فى الميثاق أو المعاهدات أو الاتفاقيات النافذة.

وللدول الأطراف فى النظام أن تصرح فى أى وقت باعترافها بالاختصاص الالزامى للمحكمة فى كافة المنازعات القانونية، وذلك فى العلاقة مع أى دولة تقبل نفس الالتزام.

الآراء الاستشارية:

وللجمعية العامة أو مجلس الأمن أن يطلب من المحكمة أعطاء رأى استشارى حول أى مسألة قانونية. ولأجهزة الأمم المتحدة الأخرى أو الوكالات المتخصصة، حين تسمح لها

الجمعية، أن تطلب آراء استشارية حول مسائل قانونية تثور فى إطار أنشطتها.

القانون الذى تطبقه المحكمة:

وفقا للمادة ٣٨ من النظام تطبق المحكمة:

أ) الاتفاقيات الدولية.

ب) العرف الدولى.

ج) المبادئ العامة للقانون التى أقرتها الأمم المتحضرة.

د) الأحكام القضائية وآراء الفقهاء كطريق احتياطى لتحديد قواعد القانون.

وأكثر من هذا، يمكن أن تفصل المحكمة وفق قواعد العدل والأنصاف إذا وافق الأطراف على ذلك.

تشكيل المحكمة:

أعضاء المحكمة خمسة عشر قاضيا مستقلا من جنسيات متنوعة، مختارون من قبل الجمعية العامة ومجلس الأمن.

ويختار القضاة لفترة تسع سنوات، ويمكن إعادة انتخابهم من جديد، وإذا لم يوجد فى هيئة المحكمة قاض من جنسية الأطراف فى القضية، فلهم أن يختاروا قاضيا وطنيا أو قضاة وطنيون للجلوس مع هيئة المحكمة لنظر هذه القضية.

وتصدر قرارات المحكمة بأغلبية الأعضاء الحاضرين على أن لا يقل عن تسعة.

Questions And Answers

1. **What is the International Court of Justice?**

   The International Court of Justice is the principle judicial organ of the United Nations. The court functions in accordance with its Statute, which is an integral part of the United Nations Charter.

2. **What is the Jurisdiction of the Court?**

   The jurisdiction of the Court comprises all cases which the parties refer to it, and all matters specifically provided for the Charter or in Treaties of Conventions in force.

3. **What Law does apply by the International Court of Justice?**

   The Court applies:

   a) International Conventions.

   b) International Custom.

   c) The General Principles of Law recognized by civilized Nations.

   d) Judicial decisions and the teachings of the most highly qualified publicist ad subsidiary

means for the determination of the rules of law.

The Court may decide a case according to the principles of equity, if the parties concerned agree.

4. **How many members does the International Court of Justice compose?**

The members of the Court are 15 independent judges, of deferent nationalities, elected by the General Assembly and the Security Council, elected for terms of nine years and are eligible for re-election.

Function Of Money

The first and vital role played by money in economic life is that of a medium of exchange. It permits the separation of exchange into the two distinct acts of buying and selling, without requiring that the seller should purchase goods from the person who buys his product, or vice versa. Hence producers are enabled to concentrate on fiding the most suitable outlet for their goods, while buyers can concentrate on fiding the cheapest market for the things they wish to purchase. Specialization is encouraged, because people whose output is not a complete commodity but an intangible contribution to the manufacture of one in which many others are involved can be paid an amount equivalent to their share of the product, and can use this money income to purchase whatever they wish.

Another function of money is to act as a messure of value- that is, it serves as a unit in terms of which the relative values of different commodities can be expressed. In a barter economy it would be a difficult and time consuming task, to say the lest, to determine how many electric-light bulbs were worth

one kilogramme of meat, or how many fountain pens should to exchanged for a ton of coal. The process of establishing relative values would have to be undertaken for every act of exchange, according to whatever commodities were being offered against one another, and according to the particulter persons entering into the exchange.

A third, and related, function of money is that of acting as a store of wealth. It is difficult to in visage saving occurring under a barter system. Obviously there would be no way in which persons rendering services could set side some of their output to meat possible emergencies in the future. Nor could anyone engaged on only one stage in the production of a commodity save part of his output, since he would be producing nothing tangible. Even when a person actually produced a complete commodity the difficulties would be evewholming. Most commodities deteriorate fairly rapidly either physically orin value, as a result of long storage; even if storage were possible, the practice of storing commodities for years would involve obvious disadvantages-imagine a coal-miner attempting to

save enough coal to keep in his old age, example. Yet if wealth cannot be not aside, or can be accumulated only with great difficulty. How can future contingencies be provided for, or capital formation undertaken so as to raise productivity? The use of money disposes of these difficulties: instead of having to store physical commodities, a producer can ser aside sums of money which can be used in the future for whatever purposes he chooses. Without money, debts could be incurred only in terms of specific commodities; the modern system of financing capital accumulation from funds derived from a large number of different people and institutions would be impossible.

وظائف النقــود

أن الوظيفـة الأولـى والحيويـة التـى تؤديهـا النقـود فـى الحيـاة الاقتصـادية هـى كونهـا وسـيط فـى المبـادلات فهـى تسـمح بفصـل المبادلة إلى عمليتين متميزتين للبيع وللشراء دون تطلب أن يلتزم البـائع أن يشـترى السـلع مـن الشـخص الـذى يشـترى منتجاتـه، أو العكس. وهكـذا يـتمكن البـائعون أن ينصـرفوا إلـى إيجـاد أكثـر وجوه التصريف ملاءمة لسلعهم، فى حين ينصرف المشترون إلـى إيجاد أرخص الأسواق للأشياء التى يودون شراءها. وهكذا يشجع التخصـص، لأن النـاس الـذين لا يكـون إنتـاجهم سـلعا تامـة الصـنع ولكن مجرد إسهام غير ملموس فى إنتاج سلعة يسـهم فيهـا كثيـرون غيـرهم يمكـنهم أن يحصـلوا علـى دخـول متناسـبة مـع نصـيبهم فـى الإنتـاج، ويمكـنهم أن يسـتخدموا هـذه النقـود فـى شـراء أى شـيء يريدونه.

وتتحصل وظيفة أخرى للنقود فـى قيامهـا بقيـاس القيمـة أى أنهـا تستخدم كوحدة يعبر فـى شكلها عن القيم النسبية لمختلـف السلع. وفـى اقتصـاد المقايضـة سيكون من الصعب ومما يستهلك الوقت أن نحدد كم لمبة كهربائية تساوى كيلوجراما من اللحم، أو عدد أفلام الحبـر التـى يجـب أن تبـادل فـى مقابـل طـن مـن الفحـم. وسـيتعين التوصـل إلـى القـيم النسـبية للأشـياء فـى كـل عمليـة مـن عمليـات المبادلة بالنسبة لأية سلع تعرض فـى مقابل سلع أخـرى، وبالنسبة للأشخاص المعينين الذين يدخلون فى عمليات تبادل.

وتتمثـل وظيفـة ثالثـة – ومرتبطـة – للنقـود فـى كونهـا مخزنـا للثروة. فمـن الصـعب أن نتصـور حـدوث الادخـار فـى ظـل نظـام

المقايضة. ومن الواضح أنه لن توجد وسيلة يتمكن بها الأشخاص الذين يؤدون خدمات أن يستبقوا جزءا من إنتاجهم لمواجهة الظروف الطارئة فى المستقبل، ولن يمكن لأى شخص يشتغل فى مرحلة واحدة من مراحل إنتاج السلعة أن يدخر جزءا من إنتاجه، طالما أنه لا ينتج شيئا ملموسا. وحتى ولو كان الشخص ينتج سلعة كاملة فإن الصعوبات ستكون كبيرة للغاية. فمعظم السلع تتلف بسرعة، سواء ماديا أو فى قيمتها، كنتيجة للتخزين الطويل، وحتى لو كان التخزين ممكنا، فان عملية تخزين السلع لسنوات ستتضمن مساوئ واضحة – تصور عاملا فى مناجم الفحم يحاول أن يدخر ما يكفى من الفحم لإعاشته عندما يتقدم فى العمر مثلا. وإذا كان من غير الممكن ادخار الثروة، أو كان يمكنها أن تتراكم بصعوبة كبير، فكيف يمكن أن يحتاط المرء للطوارئ فى المستقبل، أو أن يتكون رأس المال اللازم لزيادة الإنتاجية؟ ويمكن استخدام النقود من تجنب هذه المشكلات، فبدلا من الاضطرار لتخزين سلع مادية، فإنه يمكن للمنتج أن يضع جانبا مبالغ من النقود التى يستخدمها فى المستقبل لأية أغراض يختارها. وبدون النقود فإنه يمكن للديون أن تتحقق فقط فى شكل سلع معينة، وسيكون من المستحيل إذن وجود النظام الحديث لتمويل تكوين رأس المال من المبالغ الآتية من عدد كبير من الناس ومن المؤسسات.

Questions & Answers

1. **Explain the function of money as a medium of exchange.**

   Money plays a vital role in economic life as a medium of exchange. It permits the separation of exchange into the two distinct acts of buying and selling, without requiring that the seller should purchase goods from the person who buys his product, or vice versa. Hence producers are enabled to concentrate of finding the most suitable outlet for their goods, while buyers can concentrate of finding the cheapest market for the things they wish to purchase.

2. **Explain the function of money as a measure of value.**

   This function means that money serves as a unit in terms of which the relative values of different commodities can be expressed. It is a barter economy it would be difficult and time-consuming task, to pay the least, to determine how many electric-light bulbs were worth one kilogramme of meat, or how many fountain pen should be exchanged for a ton of coal. The process of

establishing relative values would have to be undertaken for every act of exchange, according to whatever commodities were being offered against one another, and according to the particular persons entering into the exchange.

3. **Explain the function of money as a store of wealth.**

   It is difficult to envisage saving occurring under a barter system. Obviously there would be no way in which persons rendering services could set aside some of their output to meat possible emergencies in the future. Nor could anyone engaged on only one stage in the production of a commodity save part of his output, since he would be producing nothing tangible. Even when a person actually produced a complete commodity the difficulties would be overwhelming. Most commodities deteriorate fairly rapidly either physically or in value, as a result of long storage; even if storage were possible, the practice of storing commodities for years would in value obvious disadvantages. The use of money disposes of these difficulties, instead of having to store physical commodities, a producer can set aside sums of money which can be used in the future for whatever purposes he chooses.

The Court Of Arbitration Of The International Chamber Of Commerce

A. A Short Outline of the Historical and Operational Background of the Court of Arbitration.

Four decades ago, the International Chamber of Commerce established the ICC Court of Arbitration for the solution of disputes arising out of international economic problems. The members of the Court are appointed by the Council of the International Chamber of Commerce. The function of the Court is to provide a means for settlement by arbitration of business disputes with an international character. The Court of Arbitration does not itself settle the dispute, but it appoints or confirms the nomination of arbitrators in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

The parties to an arbitration proceeding are entitled to appoint a sole arbitrator if they agree on a particular person for confirmation by the Court of Arbitration. In the case of a tribunal consisting of three arbitrators, the parties are permitted to nominate

one arbitrator for each side. The third arbitrator of the Chairman of the tribunal, will be the nominee of the Court of Arbitration. Section 1 to 5 ot Article 7, of the Rules of Conciliation and Arbitration describe in detail various aspects of the selection of the sole arbitrator and the members of a multi-member arbitral tribunal in the event of a request for a tribunal.

The contracting parties are free to select the place or country where the arbitration proceedings are to be conducted. It may be the state of which either party is a national or some third state. However, the Court of Arbitration is entitled to confirm or change the selection of any country as the place of arbitration, unless the disputants agreed in advance upon the place of arbitration.

B. Substantive Law of Arbitration and the Rules of the ICC Arbitration.

None of the Articles established by the ICC specifies how the arbitrators are to resolve issues involving a question of choice of law. Further, the arbitrators are not free to apply ex aequo et bono in the capacity of amiables compositeurs in order to

resolve this question, unless the parties have agreed that they may do so. In other words, whenever the question of choice of law arises, the arbitrators must resort to some rules of a legal system for the purpose of giving the award. The ICC rules do not provide any guideline for the arbitrators on how to select that particular legal system. However, Article 16 says that the law of the place where the arbitration is held provides also the law governing the procedure the arbitration on those points on which the Rules of the ICC are silent. Of course, this does not mean that the local substantive law will necessarily apply. But, no provision under the ICC rules prohibits the arbitrators from accepting the local law as the substantive law of arbitration.

The selection of local substantive law of a third country other than that of the nation belongs to one of the parties in the arbitration under a TEDC and may cause some legal problems. For instance, the legal system selected by the tribunal may not necessarily have any substantial connection with the TEDC in dispute. In this case, the tribunal would naturally dissatisfy both the private investor and the

contracting state which do not want to apply the lex arbitri. To avoid this unfortunate occurrence, the tribunal could fill the gaps existing in the already selected local law, such as its "non-connection" with any of the aspects of the TEDC by accepting some relevant rules of the law of the contracting state party or of international law. However, this "process of filling up the gap" always depends on whether the rules of the local law permit the tribunal to do so. In other words, sometimes the tribunal may not be permitted under the local law to apply any outside legal rule other than that of the locl substantive law. The Italian legal practice with respect to international arbitration is a typical example of this practice.

The lack of specific directives for the arbitrators on how to solve the question of choice of law problem among the ICC Rules on arbitration makes arbitration tribunals sponsored by the Court of Arbitration inappropriate to handle legal disputes arising out of TEDCs. This is so because there is no guarantee to the disputants with respect to the application of whether the law of the contracting state or rules of international law will be applied whenever

gaps or conflicts appears among the rules of the law already applied by the tribunal for resolving a legal dispute.

Summing up the study on the relevant provisions of the Rules of arbitral procedures under the American Arbitration Association, the Inter-American Commercial Arbitration Commission, and the International Chamber of Commerce, the writer concludes that the rules of these economic dispute-settling agencies neither suggest nor recommend any appropriate legal systems, such as the law of the contracting state or international law, which are directly or indirectly responsive to the exigencies and peculiarities of a transnational economic development contract. The present rules of the AAA to the lex fori may or may not have a substantial connection with legal disputes under TEDCs. The Rules of IACAC which directly guide the arbitrator to apply “equity” and “commercial usage” (which are out of the scope of any specific legal system) may also not be generally acceptable helps in resolving the question of choice of law problem arising out of TEDC. Therefore, the use of the rules of arbitration

offered by the AAA, the IACAC, and the ICC for arbitration between foreign private investors and developing countries are unlikely to be as helpful for resolving legal disputes arising out of TEDCs as the use of arbitration rules established by the International Center for the Settlement of Investment Disputes which, as we shall see, provide specific solutions to resolve the question of choice of law. That the assertion that the ICSID's provision with respect to the selection of the law of arbitration in the more useful and acceptable one will explained in the latter art of this book after a detailed discussion on the relevant rules of the ICSID on arbitration law in the next chapter.

A. The Meaning and Scope of Economic Development.

This part of the present study will emphasize specifically the type of economic development that is motivated by the desirability or necessity of raising standards of living in developing countries as a result of foreign private investment activities in those countries since the Second World War. Although no single definition o “economic development” is entirely satisfactory, the term may generally be interpreted as the process by which an economy’s real national per capita income increases over a long period of time and such increase in national income reaches the poor for improving the quality of their life. Specifically, economic development in developing countries means a rising gross national product (GNP), an increase in investment and consumption (the twin pillars of traditional economics), and an improvement in the living style of the people of those developing countries. The tools for this kind of development include anything that could help to get the engines of investment production and consumption moving in the individual

developing country. In most cases this means an inflow of different types of foreign investment such as capital, commodities, services, patents, or business techniques from public and private sources of developed nations to developing nations. The use of these external resources, both capital and skills, is generally essential to the development process since few developing countries can generate adequate investment capital domestically at least until their development is well advanced. In particular, foreign private capital constitutes an important source of economic development finance, technical assistance (including the transfer of modern technology), and managerial skills, especially by opening up natural resources and creating broadly based manufacturing industries in developing countries. Even in those developing countries whose governments seek to generate their own investment fund, the capital of foreign private firms becomes an additional source of capital investment and usually is assigned a recognized role in the process of their economic development. In fact the economic development of many developing countries depends to a very large extent on private foreign capital.

Modern trends of investment in the economic development process have depended upon economic cooperation between corporations of developed countries and governments of developing countries both acting out of enlightened self-interest based upon mutual benefit and profit. In other words, a large and growing volume of foreign private investment in developing countries will take place only if both the investing corporation and the host country and mutual benefit in their economic ventures. This kind of economic cooperation attracts foreign private capital from the developed countries to developing countries for the purpose of investment in various projects.

A . Economic Development: Post World War II period

1. New Investment Climate in Developing Countries

The end of World War II paved the way for political independence which gave for the first time many of the emerging nations some range of choice, however limited, in deciding their own future. In addition, their votes in international organizations

won the newly emergent states a considerable measure of attention from great powers that formerly could ignore their wished with impunity. Thus when some poor countries acquired political power, the developed countries- as part of their new concern- encouraged their new concern- encouraged their national corporations to invest capital in developing countries. For example, during the early 1950's, the U.S. Government urged U.S businessmen to invest in the developing countries in order to promote the economic development of such countries. For this purpose, a government program as investment guarantees covering risks of convertibility of money, expropriation, and war was instituted. The European and Japanese governments followed the U.S., providing tax incentives and financial subsidies to assist their investors in capital investment abroad. Various United Nations economic development agencies were established to help promote support for prosperity, economic stability and financial strength in developing nations. The favorable effect of this campaign was quickly evident. Foreign capital and technology began to flow in increasing amounts to developing countries to promote the process of

economic growth and development. During the period of 1956-64, net foreign private capital worth $33.2 billion was transferred to developing countries from Austria, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Italy, Japan, the Netherlands, Norway, Portugal, Sweden, Switzerland, the United Kingdom, and the United States.

Many of the developing countries welcomed foreign private investment assistance for achieving their economic goals. In the words of Jack N. Behrman:

Host governments, for their part, have attempted to induce foreign investors to enter their countries so as to accelerate growth, relieve unemployment, and help reconstruct depressed areas in the economy. These inducements have included low-cost loans, provisions of plant and land, low rentals, low-cost utilities grants, and assistance in labor training programs

Although obtainable by businessmen who met the location requirements for new plants, those inducements tended to be accepted more readily by

foreign investors, who were not tied to an existing complex of plants or distribution system in the host countries. Moreover, in many poor countries, insufficient domestic investors existed to provide large amounts of capital for indigenous investment.

B. Changing Investment Policies and Legal Development in Developing Countries

In the latter part of the 1950's a wave or radical economic nationalism swept some A for-Asian developing countries. New political leaders and new ideologies appeared with a powerful influence on the political and economic outlook of developing countries.

Foreign investments came increasingly to be viewed with suspicion by these new leaders, as a new and subtler means of colonialism. The view was that many investments would amount to little more than indirect attempts by the old colonial powers to regain their lost control over their former colonies by a process of economic imperialism or neo-colonialism.

Economic nationalism and political motivations inspired new governments of capital-receiving countries to adopt restrictive legal measures to

control incoming foreign private investment. New legislation to replace the older colonial legislation on foreign investment was drafted and ratified. Some countries incorporated new provisions relating to foreign private investment to their national legal codes. According to the new investment laws of many host states, foreign private investors had a definite duty to improve the local economy and to improve the balance of payments situation in the host state. Governments in many developing countries often sought to control or take over existing foreign investments particularly those which tended to dominate the local economy as, for example, mining concerns did in a variety of African and Latin American countries. The laws enacted by such countries for the purpose of national control, nationalization, or expropriation generally led to disputes between the foreign investors "and their national governments" and the host governments since the investors rarely considered their investments to have been taken in accordance with law or equity.

C. Settlement of Legal Disputes Relating to

Investment

When legal disputes arose between foreign private investors and host governments, the investors were generally handicapped by the lack of suitable international dispute-settling legal mechanism. Generally, the settlement of investment disputes between private foreign investors and developing countries had been much less institutionalized than domestic processes of dispute settlement. For most of the legal suits involving foreign companies in developing countries, local law and local courts were employed. Often local remedies delayed a solution. Yet the foreign investor could do little to avoid these delays since under international law he was required to exhaust local remedies before seeking other means to settle the dispute. Many foreign investors could not afford the lengthy period of time before a final decision was forthcoming locally. Furthermore, a number of smaller countries did not possess well-established legal systems appropriate for the settlement of disputes between foreign investors and governments, and finally, the foreign investors frequently felt the local judicial procedures were

prejudiced against them. With few exceptions, foreign private investors preferred to submit all issues involved in their disputes with governments of developing countries to international arbitration if the local remedies failed to satisfy the disputants, or denied justice to the injured parties. Host governments of developing countries, on the other hand, tended to invoke the right of sovereign immunity in opposing the demand of foreign investors seeking international arbitration as a method of settling investment disputes although there was no basis for such a claim in international law. In addition, the developing countries tended to object to adopting traditional legal methods of international arbitration originating from centuries-old commercial practices as developed and followed by the colonial powers. As a result of this dilemma, those interested in economic development programs and the protection of foreign private investment abroad came forward during the 1960's with proposals for the adoption of economic development agreements incorporating arbitration clauses/ Many developing nations and foreign corporations signed economic development agreements either in the form of

international economic concessions or modified contrats administratifs which included provisions for the purpose of enforcing mutual rights and reciprocal obligations on the contracting parties. The following paragraphs will show the general characteristics of such economic development agreements.

4. Economic Concessions, Contrats Administratifs and Transnational Economic Development Contracts

A. Economic Concessions

The nature, specific character, and legal status of concessions have been insufficiently interpreted and no definition agreed upon. However, an economic concession is generally considered as special authorization, permission, or approval in the form of a special privilege granted by the government of a developing country or by its public authority. This privilege permits a foreign private investor (either individual or corporation) to engage in a particular investment activity relating to the economic development of the grantor state, including public utility services or exploitation of natural resources using local manpower and foreign capital.

Many legal scholars prefer to use the term "economic development agreements" to identify such "economic concessions", while one has described a concession as an economic development agreement. As a contract, an economic concession is like a contrat administratif or administrative contract. A contrat administratif is a legal instrument developed by the supreme administrative tribunal of France, the Conseil d'Etat, to permit legally binding contracts to be entered into between a public authority or the government and a private person or corporation. At present, this type of contract has been adopted by many African and Asian countries which have emerged from the colonial administrations of civil law countries such as France, the Netherlands, Belgium, and Italy.

One scholar has noted that the major element in an administrative contract is its close relation to public purpose or services concerned with the national interest of the contracting state party. In the opinion of another, the contrat administratif is dominated by the principle of the predominance of the public interest, from which flows a number of

unilateral powers of the administrative authority, balanced by the claim of the private contractor to equitable compensation or indemnification. Recently, one writer has added his support for this view:

> If a state makes use of the contrat administratif instrument when entering into an agreement with a foreign private investor, individual, or corporation, it can be assumed that the agreement qualifies as transnational economic development contract as previously suggested. Such a TEDC is different from an ordinary domestic contrat administratif. Generally, ordinary domestic contrats administratifs recognize the unilateral powers of the governmental authority to control or modify the execution of the contract in the public interest. But it is argued that a transnational economic development contract explicitly restricts that unilateral power of governmental authority to alter contractual relations with the foreign private party.,

B. Transnational Economic Development Contracts (TEDCs)

As stated before, economic concession agreements and contrats administratifs represent two

major types of economic development contracts which have developed in common law countries and civil law countries respectively. However, concession agreements and contracts administratifs which do not show certain identifying elements of economic development contract are not considered as that type of contract. The following elements help identify economic development contracts:

- One of the contracting parties is the sovereign government, and the other is a national or private corporation belonging to a foreign state;
- the contract concerns the movement of foreign capital to a developing country for the purpose of investment activities limited to a specified period;
- the contract concerns an investment activity which will assist the economic development of the host state; and
- the contract specifically mentions conditions which bind both parties in terms of reciprocal rights and obligations.

In the view of the present writer, all concession agreements and contrats administratifs which show

the above-mentioned four characteristics can be identified as transnational economic development contracts.

5. Arbitration: a remedy for disputes arising under economic development contracts.

Economic development agreement imply mutuality of obligation. The mutuality of obligation of a transnational economic development contract becomes ex-plicity clear and strong when the contracting parties agree to include an arbitration clause in the contract which provides for compulsory arbitration in case legal disputes arise as to rights or liabilities under the contract. Already, many economic development contracts have opened possibilities for ad hoc arbitration agreements including compromis "d'arbitrage" (special agreements for arbitration) in the event of disputes between governments of developing countries and foreign private investors. However, most such arbitration clauses usually fail to specify the applicable law of arbitration in order to guide arbitrators in their award-giving process.

Economic development	النمو الاقتصادى
Standards of living	مستويات المعيشة
Developing countries	الدول النامية
Private investment	لاستثمار الخاص
Capita income increases	حساب زيادة الدخل
Gross national product	تعظيم الانتاج القومى
Consumption	استهلاك
Capital	رأس المال
Commodities	منتجات
Services	خدمات
Patents	اختراعات
Developed notions	الدول المتقدمة
Finance	تمويل
Technical assistance	مساعدات تقنية
Natural resources	المصادر الطبيعية
Economic cooperation	فى ضوء التعاون الاقتصادى
enlightened self-interest	مصلحته الخاصة
Mutual benefit	المنفعة المتبادلة
The host country	الدول المضيفة
Project	مشروعات
Investment climate	مناخ الاستثمار
National corporations	الشركات الوطنية

Businessmen	المستثمرين (رجال الأعمال)
Investment guarantees	ضمانات الاستثمار
Money expropriation	مصادرة الأموال
Economic stability	الاستقرار الاقتصادى
Accelerate growth	الاسراع بالتنمية
Low- cost loans	قروض قليلة التكلفة
Labor training programs	برامج تدريب العمالة
Domestic investors	المستثمرين الوطنيين
Investment policies	سياسات الاستثمار
Subtler mean of colonialism	وسائل خفية للاستعمار
Colonial powers	قوى الاستعمار
Colonies	مستعمرات
Economic imperialism	الاستعمار الاقتصادى
Political motivations	المتغيرات السياسية
Restrictive legal measures	إجراءات قانونية تقيدية
Investment law	قانون الاستثمار
To improve the balance of payments	تحسين ميزان المدفوعات
Nationalization	التأميم
Expropriation	المصادرة
Disputes	منازعات
Settlement of legal disputes	تسوية المنازعات القانونية
Local law	القانون الوطنى
Local courts	المحاكم الوطنية

Exhaust local remedies	استنفاذ الإجراءات المحلية لطلب التعويض
Legal systems	نظم قانونية
Local judicial procedures	الإجراءات القضائية المحلية
Issues	قضايا أو منازعات
International arbitration	التحكيم الدولى
Denied justice	انكرت العدالة
The injured parties	الأطراف المتضررة
The right of sovereign immunity	الدفع بامتياز الحصانة
Economic development agreements	الاقتصادية اتفاقيات التنمية
Arbitration clauses	شروط التحكيم
Civil law countries	بلاد القانون المدنى (النظام الفرنسى وما يماثله)
Common law countries	بلاد القانون العام (النظام الانجلوسكسونى)
Liability	المسئولية
Ad-hac arbitration	تحكيم المرة الواحدة
Arbitrators	المحكمين
International economic concessions contracts	الاقتصادى عقود الامتياز الدولى
Contrats administratifs	العقود الإدارية

Mutual rights and reciprocal obligations	الحقوق والالتزامات المتبادلة
Privileges	مزايا
The "conseil d'Etat"	مجلس الدولة
Contracting state	الدولة المتعاقدة
Private contractor	المتعاقد الخاص
Equitable compensation	تعويض مناسب
Individual	فردى
The execution of the contract	تنفيذ العقد

Examples of Questions and Answers

1. Explain the meaning of economic development?

Although no single definition of "economic development" is entirely satisfactory, the term may generally be interpreted as the process by which an economy's real national per capita income increases over a long period of time and such increase in national income reaches the poor for improving the quality of their life. Specifically, economic development in developing countries means a rising gross national product (GNP), an increase in investment and consumption (the twin pillars of traditional economics), and an improvement in the living style of the people of those developing countries.

2. What is the tools for economic development?

The tools for this kind of development include anything that could help to get the engines of investment production and consumption moving in the individual developing country. In most cases this means an inflow of different types of foreign investment such as capital, commodities, services, patents, or business techniques from public and private sources of developed nations to developing nations. The use of these external resources, both

capital and skills, is generally essential to the development process since few developing countries can generate adequate investment capital domestically at least until their development is well advanced. In particular, foreign private capital constitutes an important source of economic development finance, technical assistance (including the transfer of modern technology), and managerial skills, especially by opening up natural resources and creating broadly based manufacturing industries in developing countries.

3. Why many of developing countries welcomed foreign private investment?

Many of the developing countries welcomed foreign private investment assistance for achieving their economic goals. In the words of Jack N. Behrman:

Host governments, for their part, have attempted to induce foreign investors to enter their countries so as to accelerate growth, relieve unemployment, and help reconstruct depressed areas in the economy. These inducements have included low-cost loans, provisions of plant and land, low rentals, low-cost utilities grants, and assistance in labor training programs

4. **Explain what are the obstacles confront the settlement of legal disputes relating to investment?**

When legal disputes arose between foreign private investors and host governments, the investors were generally handicapped by the lack of suitable international dispute-settling legal mechanism. Generally, the settlement of investment disputes between private foreign investors and developing countries had been much less institutionalized than domestic processes of dispute settlement. For most of the legal suits involving foreign companies in developing countries, local law and local courts were employed. Often local remedies delayed a solution. Yet the foreign investor could do little to avoid these delays since under international law he was required to exhaust local remedies before seeking other means to settle the dispute.

5. **Explain the meaning and elements of economic development contracts?**

As stated before, economic concession agreements and contrats administratifs represent

two major types of economic development contracts which have developed in common law countries and civil law countries respectively. However, concession agreements and contracts administratifs which do not show certain identifying elements of economic development contract are not considered as that type of contract. The following elements help identify economic development contracts:

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- the contract specifically mentions conditions which bind both parties in terms of reciprocal rights and obligations.

6. What is the importance of Arbitration?

Economic development agreements imply mutuality of obligation. The mutuality of obligation of a transnational economic development contract becomes ex-plicitly clear and strong when the contracting parties agree to include an arbitration clause in the contract which provides for compulsory arbitration in case legal disputes arise as to rights or liabilities under the contract

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The parties to an arbitration proceeding are entitled to appoint a sole arbitrator if they agree on a particular person for confirmation by the Court of Arbitration. In the case of a tribunal consisting of three arbitrators, the parties are permitted to nominate

one arbitrator for each side. The third arbitrator of the Chairman of the tribunal, will be the nominee of the Court of Arbitration. Section 1 to 5 of Article 7, of the Rules of Conciliation and Arbitration describe in detail various aspects of the selection of the sole arbitrator and the members of a multi-member arbitral tribunal in the event of a request for a tribunal.

The contracting parties are free to select the place or country where the arbitration proceedings are to be conducted. It may be the state of which either party is a national or some third state. However, the Court of Arbitration is entitled to confirm or change the selection of any country as the place of arbitration, unless the disputants agreed in advance upon the place of arbitration.

B. Substantive Law of Arbitration and the Rules of the ICC Arbitration.

None of the Articles established by the ICC specifies how the arbitrators are to resolve issues involving a question of choice of law. Further, the arbitrators are not free to apply ex aequo et bono in the capacity of amiables compositeurs in order to

resolve this question, unless the parties have agreed that they may do so. In other words, whenever the question of choice of law arises, the arbitrators must resort to some rules of a legal system for the purpose of giving the award. The ICC rules do not provide any guideline for the arbitrators on how to select that particular legal system. However, Article 16 says that the law of the place where the arbitration is held provides also the law governing the procedure the arbitration on those points on which the Rules of the ICC are silent. Of course, this does not mean that the local substantive law will necessarily apply. But, no provision under the ICC rules prohibits the arbitrators from accepting the local law as the substantive law of arbitration.

The selection of local substantive law of a third country other than that of the nation belongs to one of the parties in the arbitration under a TEDC and may cause some legal problems. For instance, the legal system selected by the tribunal may not necessarily have any substantial connection with the TEDC in dispute. In this case, the tribunal would naturally dissatisfy both the private investor and the

contracting state which do not want to apply the lex arbitri. To avoid this unfortunate occurrence, the tribunal could fill the gaps existing in the already selected local law, such as its "non-connection" with any of the aspects of the TEDC by accepting some relevant rules of the law of the contracting state party or of international law. However, this "process of filling up the gap" always depends on whether the rules of the local law permit the tribunal to do so. In other words, sometimes the tribunal may not be permitted under the local law to apply any outside legal rule other than that of the locl substantive law. The Italian legal practice with respect to international arbitration is a typical example of this practice.

The lack of specific directives for the arbitrators on how to solve the question of choice of law problem among the ICC Rules on arbitration makes arbitration tribunals sponsored by the Court of Arbitration inappropriate to handle legal disputes arising out of TEDCs. This is so because there is no guarantee to the disputants with respect to the application of whether the law of the contracting state or rules of international law will be applied whenever

gaps or conflicts appears among the rules of the law already applied by the tribunal for resolving a legal dispute.

Summing up the study on the relevant provisions of the Rules of arbitral procedures under the American Arbitration Association, the Inter-American Commercial Arbitration Commission, and the International Chamber of Commerce, the writer concludes that the rules of these economic dispute-settling agencies neither suggest nor recommend any appropriate legal systems, such as the law of the contracting state or international law, which are directly or indirectly responsive to the exigencies and peculiarities of a transnational economic development contract. The present rules of the AAA to the lex fori may or may not have a substantial connection with legal disputes under TEDCs. The Rules of IACAC which directly guide the arbitrator to apply “equity” and “commercial usage” (which are out of the scope of any specific legal system) may also not be generally acceptable helps in resolving the question of choice of law problem arising out of TEDC. Therefore, the use of the rules of arbitration

offered by the AAA, the IACAC, and the ICC for arbitration between foreign private investors and developing countries are unlikely to be as helpful for resolving legal disputes arising out of TEDCs as the use of arbitration rules established by the International Center for the Settlement of Investment Disputes which, as we shall see, provide specific solutions to resolve the question of choice of law.

The court of Arbitration	محكمة التحكيم
The International chamber of commerce	غرفة التجارة الدولية
International economic problems	المشـــــكلات و المنازعـــــات الاقتصادية الدولية
The members of the court	اعضاء المحكمة
Sole arbitrator	محكم وحيد
Chairman of the tribunal	رئيس المحكمة
Rules of conciliation and arbitration	لائحة التوفيق والتحكيم
The contracting parties	الأطراف المتعاقدون
Substantive	القانون الموضوعى
Articles	مواد
Question of choice of law?	مشـكلة اختيـار القـانون الواجـب التطبيق
Ex-qc quo et bono	مبادئ العدالة وحسن النية
Amiables compositeurs	التوفيق الودى
Guidlien	ارشادات
The law governing the procedure	القانون الذى يحكم الإجراءات
Prohibit	يحظر
Lex Fori	قانون القاضى

Substantial connection	رابطة حقيقية
Equity	مبادئ العدالة
Commercial uage	الأعراف التجارية

Examples of Questions and Answers

1. What is the function of the ICC ?

The function of the Court is to provide a means for settlement by arbitration of business disputes with an international character.

2. Describe the way to nominate the arbitrators in the ICC court?

The Court of Arbitration does not itself settle the dispute, but it appoints or confirms the nomination of arbitrators in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The parties to an arbitration proceeding are entitled to appoint a sole arbitrator if they agree on a particular person for confirmation by the Court of Arbitration. In the case of a tribunal consisting of three arbitrators, the parties are permitted to nominate one arbitrator for each side. The third arbitrator of the Chairman of the tribunal, will be the nominee of the Court of Arbitration. Section 1 to 5 of Article 7, of the Rules of Conciliation and Arbitration describe in detail various aspects of the selection of the sole arbitrator and the

members of a multi-member arbitral tribunal in the event of a request for a tribunal.

3. **How you can- as a contracting parities - select the place of arbitration?**

   The contracting parties are free to select the place or country where the arbitration proceedings are to be conducted. It may be the state of which either party is a national or some third state. However, the Court of Arbitration is entitled to confirm or change the selection of any country as the place of arbitration, unless the disputants agreed in advance upon the place of arbitration.

4. **How the arbitrators solve issues?**

   None of the Articles established by the ICC specifies how the arbitrators are to resolve issues involving a question of choice of law. Further, the arbitrators are not free to apply ex aequo et bono in the capacity of amiables compositeurs in order to resolve this question, unless the parties have agreed that they may do so. In other words, whenever the question of choice of law arises, the arbitrators must resort to some rules of a legal system for the purpose of giving the award. The

ICC rules do not provide any guideline for the arbitrators on how to select that particular legal system. However, Article 16 says that the law of the place where the arbitration is held provides also the law governing the procedure the arbitration on those points on which the Rules of the ICC are silent. Of course, this does not mean that the local substantive law will necessarily apply. But, no provision under the ICC rules prohibits the arbitrators from accepting the local law as the substantive law of arbitration.

The International Center For Settlement of Investment Disputes "ICSID"

A. The Development of the ICSID-Historical Perspective

The International Center for Settlement of Investment Disputes (ICSID) was established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States sponsored by the World Bank (The International Bank for Reconstruction and Development) in March 1965. The Convention came into force on October 14, 1966, thirty days after the deposit of the twentieth instrument of ratification. By the end of September, 1974, sixty-five nations from both developed and developing areas had become parties to the Convention; a further five countries had signed, but not yet ratified the Convention.

The establishment of the Center responded to the perceived unavailability of adequate machinery for international conciliation and arbitration. This deficiency often frustrated attempts to agree on an appropriate mode for the settlement of investment

disputes between sovereign governments and private foreign investors. Tribunals set up by private organizations such as the American Arbitration Association, the Inter-American Commercial Arbitration Commission and the International Chamber of Commerce were frequently unacceptable to governments. Furthermore, the only existing public international arbitral tribunal, the Permanent Court of Arbitration, was not open to private investors. In addition to this, all attempts of different agencies to establish Conventions to provide facilities for the settlement of investment disputes resulted in the dissatisfaction of different interested parties.

This particular situation was considered by the Economic and Social Council of the United Nations; but the U.N. has not contributed anything other than a General Assembly resolution which requested the U.N. Secretariat to continue its work in cooperation with the World Bank to provide facilities for achieving an effective and satisfactory method of settling foreign investor-capital-importing disputes. The World Bank had already has some experience in facilitating the settlement of disputes between

member governments and invesotrs, but prior to its establishment of the ICSID the Bank was not equipped to perform these tasks on a regular basis. According to one observation:

This past experience of the Bank led to the feeling that the creation of some specialized forum for the settlement of these disputants (which would also contribute to improvement of the investment climate) should be investigated.

At its 1962 annual meeting, the Bank's Board of Governors adopted a resolution requesting the Executive Directors to study the possibility of the establishment of a forum of arbitration to settle investment disputes between host governments and foreign investors. As a result of this resolution, the World Bank initiated the Convention of 1965 with the objective of encouraging a larger flow of private investment for the purpose of accelerating economic development of developing countries by resolving legal disputes arising out of foreign investment programs between the capital-exporting foreign national and the receiving host states.

Observing this new step taken by the World

Bank, it has been noted that this Convention was the first and, so far, the only attempts since 1945 to get beyond the developing stages of all attempts made protecting investments abroad on a multilateral and potentially universal scale. Finally, on October 14, 1966, the Convention established the International Center for Settlement of Investment Disputes as a new ancillary organization within the World Bank group in order to provide facilities for conciliation and arbitration to resolve investment disputes between contracting states and national of other contracting states.

As mentioned earlier, the arbitral tribunals of the ICSID can resolve the questions of choice of law with the help of the power given to such tribunals under Article 42. The way in which such a power can be exercised will best be understood if some outline is given of the way in which the ICSID is administrated and its tribunal established, as well as the way that functions are entrusted to its tribunals.

B. The Operation of the ICSID and its Arbitral Tribunals

1. The Organs of the ICSID and their Major Functions

The major organs of the ICSID are the Administrative Council and the Secretariat. The Administrative Council is composed of one representative of each Contracting State. The president of the World Bank will serve ex officio as the Chairman of the Council, but has no power to vote.

The Secretariat consists of a Secretary-General, one or more Deputy Secretaries-General, and their staffs. Article 10, which requires that the Secretary-General and any deputy Secretary-General be elected by the Administrative Council with a majority of two-thirds of its members on the nomination of the Chairman, limits their term of office to a period not exceeding six years and permits re-election. The SID Convention requires the Secretary-General to perform various administrative functions such as legal representative, registrar and principal officer of the ICSID.

2. Jurisdiction of the ICSID and Nature of the

Dispute

The ICSID can extend its jurisdiction to any legal dispute arising directly out of an investment between a Contracting State or any agency of that Contracting State and a natural person or juridical person belonging to another Contracting State. Consent of the parties is the cornerstone of the jurisdiction of the Center. Consent to jurisdiction must be in writing and once given cannot be withdrawn unilaterally. "Consent" may be given, for example, in an arbitration clause included in a TEDC, providing for the submission to the Center of future legal dispute arising out of that agreement or in a compromis regarding a legal dispute which has already arisen, A capital-receiving state may in its investment promotion legislation offer to submit a legal dispute arising out of certain classes of investments to the jurisdiction of the Center, and the investor may give his consent by accepting the offer in writing. Moreover, the right of a foreign investor to submit a claim to the Center depends upon the condition that his national state and the disputing state already have signed the SID Convention.

The reference to a legal dispute in Article 25 limits jurisdiction in one important regard. Referring to this aspect of the provision, the Executive Directors of the World Bank have commented that the expression 'legal dispute' had been used to make clear that while conflicts of rights were within the jurisdiction of the Center, mere conflicts of interests were not. The dispute must concern the existence or scope of legal right or obligation, or the nature or extent of the reparation to be made for breach of a legal obligation.

3. Arbitration Tribunals Under the ICSID

a. Panels of arbitrators. Article 3 requires the ICSID to maintain a Panel of Conciliation and a Panel of Arbitrators, and Article 14 (1) seeks to insure that Panel members will possess a high degree of competence and be capable of exercising independent judgment. However, the Convention permits parties in a dispute to appoint arbitrators from outside the Panels but requires that such appointees possess the qualities described under-Article 14(1):

"Persons designated to serve on the Panels shall be person of high moral character and recognized

competence in the field of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators".

As the wording of Article 14 (1) indicates, there is no absolute requirement that arbitrators be trained in the law. This point raises serious doubt as to how non-legal experts appointed by the parties or the Chairman of the Administrative Council as arbitrators will interpret and apply rules of law in an international arbitration which is a judicial method of settling legal disputes. However, the assurance under Article 14 (2) that the Chairman will pay due regard to the importance of the representation of principal legal systems of the world provides some kind of assurance to lawyers who may question the required qualifications of the arbitrators. But this assurance applies only to appointments of arbitrators by the Chairman, not by the disputing parties.

b. Formation of the Arbitral Tribunal. After receiving a written request from any Contracting State or any national of a Contracting State wishing

to institute an arbitration proceeding, the arbitral tribunal must be formed as soon as possible. The tribunal may consist of a sole arbitrator or any uneven number of arbitrators. In the absence of an agreement between the parties on the number of arbitators, the tribunal will consist of three arbitrators, one arbitrator appointed by each party, and the President of the tribunal by the common agreement of the parties. If the tribunal is not consituted within 90 days after the registration of the written request, the Chairman of the ICSID Administrative Council will appoint either the sole arbitrator or all arbitrators of the tribunal after consulting with the disputing parties. Unlike the nominees agreed to by the parties, these nominees of the Chairman must be nationals of countries other than those of parties.

c. Powers and Function of the Tribunal. Before acting on an arbitration, all the members of the tribunal must sign a declaration that they will judge the dispute fairly according to the applicable law. The tribunal is the judge of its competence and is empowered to make rulings as to the extent of its

own jurisdiction. As early as possible, after the tribunal has been constituted the President and members of the tribunal have to endeavor to ascertain the views of the parties regarding questions of procedure, including the quorum of the tribunal at its hearing, the usage of the language of the proceedings, matters relating to oral and written procedure, and the cost of the proceedings. This rule enables the tribunal to create an atmosphere of cooperation with disputants and a concrete procedural framework. This preliminary procedural consultation of the tribunal with the parties may help the parties reach some understanding on issues involved with the taking of evidence, the admissibility of counter claims, the determination of the law that the tribunal is to apply and its power to decide the dispute ex aequo et bono if the parties agree.

d. Accomplishments of the ICSID. According to A. Broches, Secretary-General of the ICSID, the years 1972/73 and 1973l74 have brought a continuation of the upward trend in the use of arbitration clauses agreeing to submit to arbitration of future disputes arising out of various kinds of

international investments including loans and credits provided by banking syndicates. Acceptance of the jurisdiction of the ICSID is also becoming more widespread in bilateral treaties for the protection and promotion of foreign investments and in the investment laws of host countries. The contracting parties to those instruments have thereby accepted resort to the settlement mechanism of the SID Convention at the initiative of private investor and sometimes at the initiative of the host state. A number of member countries have already signed such treaties, and examples of such instruments which have entered into force are the treaties concluded by Indonesia with Belgium, between Indonesia and France and between Tunisia and France. Examples of national legislation are found in the laws of Ghana, Niger, Tunisia, the United States, and Zaire among others.

For the first time in the history of the ICSID, an arbitration proceeding (Holiday Inns. Occidental Petroleum, Inc. v. Government of Morocco) was instituted on December 29, 1971. The dispute involved in the arbitration concerns the interpretation

of the contractual agreements between the parties for a joint venture in the tourism sector and was submitted to arbitration pursuant to an ICSID arbitration clause constrained in their agreement. In March, 1972, an arbitral tribunal consisting of Professor Paul Reuter (France) and Sir John Foster (United Kingdom) and under the Chairmanship of the Judge Sture Petren (Sweden) was constituted in accordance with the agreements of the parties.

In addition, at the end of 1972, the ICSID was informally advised of two disputes involving different investors and host states which one of the parties to each dispute intended to submit to the Center. According to the information received, both disputes arose out of contractual arrangements which included compromised ICSID clauses; and , in both cases, the parties concerned decided to postpone the institution of proceedings in order to provide a final opportunity for settlement by amicable agreement. As has often been noted, the existence of an effective arbitration clause if frequently a decisive factor in inducing parties to settle their disputes through negotiation and amicable agreement. On March 6,

1974, the second request for the institution of arbitration between Société Adriano Gardella S.P.A. (an Italian Company) and the Government of Ivory Coast was registered in accordance with an arbitration clauses incorporated into their investment contract.

Finally, three disputes: Alcoa Minerals of Jamaica, Inc. V. Government of Jamaica; Kaiser Bauxite Company v. Government of Jamaica; Reynolds Jamaica Mines and Reynolds Metals Company v. Government of Jamaica were submitted by the companies concerned, nationals of the United States, on the basis of ICSID dispute settlement clauses in contracts between the respective corporations and the Government of Jamaica. The Secretary-General of the ICSID registered the three requests for arbitration on June 21, 1974.

The International center for settlement of investment disputes	المركز الدولى لتسوية منازعات الاستثمار
Convention	اتفاقية أو معاهدة
States	دول
Nationals	مواطنين
The International Bank for Reconstruction and Development	البنك الدولى للتعمير والتنمية
Ratification	التصديق
Private organization	المنظمات الخاصة
Commission	لجنة
Unacceptable to governments	لدى الحكومات غير مقبول
The permanent court of arbitration	المحكمة الدائمة للتحكيم
Dissatisfaction	عدم رضاء
The economic and social council of the UN	المجلس الاقتصادى والاجتماعى للأمم المتحدة
General Assembly	الجمعية العامة
Resolution	توصية
Satisfactory method	طريقة مرضية
Experience	خبرة

Specialized forum	قضاء متخصص
Annual meeting	الاجتماع السنوى
Bank's board of governors	مجلس محافظى البنك
Adopted a resolution	أخذ توصية
Executive director	المدير التنفيذى
Conciliation	التوفيق
Arbitral tribunals	محكمة التحكيم
The questions of choice of law	مشكلة تنازع القوانين
The organs of the "ICSID"	اجهزة محكمة التحكيم
Secretary - General	السكرتير العام
Majority of Two- Thirds	أغلبية الثلثين
Legal representative	الممثل القانونى
Registrar	مسجل (المحكمة)
Jurisdication	قضاء أو حكم
Legal dispute	نزاع قانونى
Netural person	شخص طبيعى
Juridical person	شخص قانونى
Consent	رضاء
Cornerstone	حجر الزاوية
Jurisdiction	الاختصاص "القضائى"
Arbitration clause	شرط التحكيم
Submission to the court	الخضوع للمحكمة

Capital receiving state	الدولة المستقبلة لرأس المال
Investment promotion legislation	قانون تشجيع الاستثمار
Moral character	سمعة أدبية
Formation of the arbitral tribunal	تشكيل محكمة التحكيم
Powers and function of the tribunal	سلطات ووظائف المحكمة
Declaration	اعلان - أقرار
Written procedure	المذكرات المكتوبة
Loans and credits	القروض والائتمان
Amicable agreement	اتفاق التسوية الودية
Negotiation	مفاوضات

Questions and Answers

1. **Explain the importance of the establishment of the ICSID?**

   The establishment of the Center responded to the perceived unavailability of adequate machinery for international conciliation and arbitration. This deficiency often frustrated attempts to agree on an appropriate mode for the settlement of investment disputes between sovereign governments and private foreign investors. Tribunals set up by private organizations such as the American Arbitration Association, the Inter-American Commercial Arbitration Commission and the International Chamber of Commerce were frequently unacceptable to governments. Furthermore, the only existing public international arbitral tribunal, the Permanent Court of Arbitration, was not open to private investors. In addition to this, all attempts of different agencies to establish Conventions to provide facilities for the settlement of investment disputes resulted in the dissatisfaction of different interested parties. The creation of some specialized forum for the

settlement of these disputants (which would also contribute to improvement of the investment climate).

2. **Explain how the world Bank initiated the convention of 1965 and for what objective?**

   At its 1962 annual meeting, the Bank's Board of Governors adopted a resolution requesting the Executive Directors to study the possibility of the establishment of a forum of arbitration to settle investment disputes between host governments and foreign investors. As a result of this resolution, the World Bank initiated the Convention of 1965 with the objective of encouraging a larger flow of private investment for the purpose of accelerating economic development of developing countries by resolving legal disputes arising out of foreign investment programs between the capital-exporting foreign national and the receiving host states.

3. **What is the organs of the ICSID?**

   The major organs of the ICSID are the Administrative Council and the Secretariat. The Administrative Council is composed of one

representative of each Contracting State. The president of the World Bank will serve ex officio as the Chairman of the Council, but has no power to vote. The Secretariat consists of a Secretary-General, one or more Deputy Secretaries-General, and their staffs.

4. **Explain the role of consent in the ICSID jurisdiction?**

Consent of the parties is the cornerstone of the jurisdiction of the Center. Consent to jurisdiction must be in writing and once given cannot be withdrawn unilaterally. "Consent" may be given, for example, in an arbitration clause included in a TEDC, providing for the submission to the Center of future legal dispute arising out of that agreement or in a compromis regarding a legal dispute which has already arisen, A capital-receiving state may in its investment promotion legislation offer to submit a legal dispute arising out of certain classes of investments to the jurisdiction of the Center, and the investor may give his consent by accepting the offer in writing.

5. Explain how the investor can start the arbitration proceeding?

After receiving a written request from any Contracting State or any national of a Contracting State wishing to institute an arbitration proceeding, the arbitral tribunal must be formed as soon as possible. The tribunal may consist of a sole arbitrator or any uneven number of arbitrators. In the absence of an agreement between the parties on the number of arbitators, the tribunal will consist of three arbitrators, one arbitrator appointed by each party, and the President of the tribunal by the common agreement of the parties. If the tribunal is not consituted within 90 days after the registration of the written request, the Chairman of the ICSID Administrative Council will appoint either the sole arbitrator or all arbitrators of the tribunal after consulting with the disputing parties. Unlike the nominees agreed to by the parties, these nominees of the Chairman must be nationals of countries other than those of parties.