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**Arbitration in Comprehensive Vehicle Insurance
Contracts according to Palestinian Law:
A Descriptive and Analytical Study of the Texts of
Arbitration and Insurance Laws**

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Abstract:

The increasing number of traffic accidents and the resulting physical and material damages have led countries to enact laws allowing vehicle owners to obtain insurance policies that cover all damages caused by their vehicles. This study aims to address the following question: **“To what extent is it possible to include an arbitration clause in disputes related to comprehensive vehicle insurance contracts under Palestinian legislation?”** The study concluded that an arbitration clause is considered valid and legally effective if it is stipulated as a separate clause from the general terms of the contract, in a clear and unequivocal manner indicating the intention of both parties to apply it. However, if it is stipulated in the form of an arbitration agreement, there is no dispute regarding the permissibility of resorting to it, as it is concluded after the dispute has arisen, and neither party may compel the other to resort to this method.

Keywords: Palestinian Insurance Law, Palestinian Arbitration Law, Arbitration Clause, Arbitration Agreement

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Introduction:

The comprehensive vehicle insurance contract is considered one of the most important civil contracts in Palestinian legislation, due to its wide prevalence and its central role in protecting individuals and their property from risks they may be exposed to as a result of owning vehicles, and the material and/or bodily damages and/or damage to the vehicle body that may result therefrom.

The need for this type of insurance has increased with the growing use of vehicles and the rise in their prices, in addition to the increase in repair costs due to the rise in traffic accidents. Therefore, attention has been focused on this type of insurance, which has produced multiple legal relationships between the insurer, the insured, and third parties, making the settlement of disputes arising from those relationships an important matter to ensure the stability of transactions and legal positions. For all these reasons, the vehicle owner bears the responsibility of obtaining comprehensive insurance for the vehicle in order to avert the potential damages that the vehicle may suffer as a result of a road accident.

In light of court congestion and the increasing need for alternative dispute resolution mechanisms, arbitration has emerged as an effective means in this context. However, resorting to arbitration in comprehensive insurance contracts raises several legal issues, the most important of which are the extent to which these contracts may include an arbitration clause, and whether the comprehensive insurance contract is considered a contract of adhesion or not.

Accordingly, the research problem lies in examining the extent to which disputes arising from comprehensive vehicle insurance contracts may be resolved through resorting to arbitration in accordance with Palestinian legislation.

Given the novelty of the study topic, the researcher adopted the descriptive analytical approach by analyzing the relevant legal texts in Palestinian legislation related to the subject of the study, with occasional reference to Algerian legislation and relevant judicial precedents.

In order to answer the research problem, the study was divided into two sections as follows:

- **Section One:** The Comprehensive Insurance Contract and the Arbitration Clause
- **Section Two:** Arbitration in Comprehensive Insurance Contracts

Section One: The Concept of the Comprehensive Insurance Contract and the Arbitration Clause

The comprehensive vehicle insurance contract is considered one of the common contracts in modern transactions. It refers to an agreement whereby the insurer undertakes to compensate the insured for damages sustained by the insured vehicle as a result of the occurrence of one of the risks specified in the insurance policy, in return for a premium paid by the insured. This contract is characterized by its contingent nature, its bilateral binding character, and the predominance of an adhesion nature that limits the freedom of the insured to negotiate its terms, in addition to its extension over a specific period of time.

In the course of performing this contract, disputes may arise between its parties, which necessitates the search for appropriate means to resolve them. Arbitration is considered one such means, as it is based on the parties' agreement to refer the dispute to a person or body to decide it by a binding decision instead of resorting to the judiciary. Arbitration is characterized by flexibility and speed in resolving disputes, and its clause is included in the comprehensive insurance contract as a tool for regulating how potential disputes are resolved, which raises a legal debate regarding the compatibility of this clause with the nature of the insurance contract and the legal position of the insured.

Accordingly, this section will address: the nature and characteristics of the comprehensive vehicle insurance contract (first requirement), and the nature and characteristics of the arbitration clause in the comprehensive vehicle insurance contract (second requirement).

First Requirement: The Nature of the Comprehensive Insurance Contract

The comprehensive vehicle insurance contract is considered one of the most important forms of insurance contracts, due to the financial protection it provides to the insured against risks that the vehicle may be exposed to. Studying this contract requires examining its legal nature (first branch), followed by explaining its characteristics (second branch).

First Branch: The Meaning of the Comprehensive Insurance Contract

The increase in the number of vehicles has naturally led to a rise in traffic accidents, which has come to pose a threat to vehicle users and third parties alike, whether in their bodies or their property.¹ As a result, Palestinian legislation enacted legislation containing provisions that define the mechanism for owning these vehicles and how they are to be used.²

Accordingly, every person wishing to own or drive a vehicle is required to obtain an insurance policy that covers all bodily injuries caused by the insured vehicle, regardless of whether the driver is responsible for the accident or not, and the liability of the insurance company under the law is unlimited. This is referred to as compulsory insurance.³

Since the compulsory insurance contract does not cover material damage to the vehicle body—where responsibility, according to the technical report issued by the police, falls on the vehicle driver—and given the high prices of vehicles and the high cost of their maintenance, Palestinian law has established another type of insurance in the form of the comprehensive vehicle insurance contract. This is an optional insurance whose idea is based on expanding the system of protection by alleviating the financial burdens on the vehicle owner, as it complements the coverage provided by compulsory insurance.⁴

The comprehensive insurance contract consists of two parts. The first is compulsory insurance, which relates to covering the liability of the insured or whoever drives the vehicle with the insured's permission toward third parties, arising from the

damages caused to them. A vehicle license shall not be issued or renewed except upon the existence of this policy.⁵

As for the second part, it is comprehensive insurance, which relates to covering the insured's vehicle itself, whereby the comprehensive insurance policy covers damage to the vehicle resulting from road accidents that are not covered by compulsory insurance.⁶ Accordingly, if a person's vehicle causes an accident, compulsory insurance covers the damage that may be sustained by third parties in accordance with the terms of the insurance policy, whereas the vehicle causing the accident is excluded from coverage unless it is insured under comprehensive insurance. In that case, the insurance company shall be responsible for covering the material damages sustained by the insured vehicle in return for the insured paying the agreed insurance premiums in addition to the fees for issuing the insurance policy, whether the accident is a collision, overturning, fire, lightning, self-ignition, robbery or theft, or even the fault or intentional act of a third party.⁷

Palestinian legislation did not address the comprehensive vehicle insurance contract in the effective Insurance Law No. 20 of 2005; however, its concept may be derived from the general provisions contained in the law. The comprehensive insurance contract is an optional insurance arising from the will of the two contracting parties, and the legislator has no role in regulating, forming, or establishing it.⁸

It is noteworthy that insurance companies prepare pre-drafted forms that represent the risks covered by the comprehensive insurance policy in return for a specific financial amount, such as overturning accidents, falling from a height, or collision with a fixed or moving object. This deprives the insured of the freedom to choose the risks they wish to insure against. If the insured wishes to insure against risks other than those covered by the comprehensive insurance policy, they are required to pay additional amounts in return for insuring against them.

In light of the foregoing, the comprehensive vehicle insurance contract is defined as: "an agreement whereby the insurer undertakes to compensate the insured for various material

damages sustained by the insured vehicle as a result of the occurrence of one of the risks stipulated in the insurance policy. It also extends to include coverage of civil liability arising from the use of the vehicle toward third parties, whether bodily or material damages, in return for an insurance premium that the insured undertakes to pay to the insurer in accordance with the terms and exclusions of the policy.”

Second Branch: Characteristics of the Comprehensive Insurance Contract

The comprehensive vehicle insurance contract is characterized by several features that distinguish it from other contracts, as follows:

1. Comprehensive insurance is a bilateral binding contract:

The comprehensive insurance contract imposes obligations on its parties, the insurance company and the insured, whereby the insured is obligated to pay the insurance premium to the insurance company and to disclose all information that may affect the contract,⁹ in return for the insurance company’s obligation to compensate the insured for the damages covered under the insurance policy.¹⁰

The binding nature of the comprehensive insurance contract was affirmed by the Palestinian Court of Cassation, which stated: “Since the insurance contract is a consensual contract binding on both parties, it is validly concluded in accordance with the general rules of contracts, is therefore enforceable against its parties, and creates reciprocal obligations in the parties’ liabilities. The insurer is obligated to provide coverage upon the occurrence of the risk by paying the compensation amount to the insured and compensating for the damage resulting from the insured risk, while the insured, in return, is obligated to pay the insurance premium and to disclose all accurate information that affects the insurer’s will at the time of contracting.”¹¹

2. Comprehensive insurance is a contract of exchange:

Exchange means “that each contracting party receives consideration for what they provide.” In comprehensive insurance against vehicle accidents, each party to the insurance

contract receives consideration for what they give; the insured pays the insurance premiums in return for obtaining financial compensation from the insurer if the risk occurs, and if the risk does not occur, the insured has obtained security during the contract period.¹²

3. Comprehensive insurance is a continuing time-based contract: Time plays a fundamental role in the comprehensive vehicle insurance contract, whereby the insurance company remains obligated to cover the risk throughout the insurance period or during the term of the contract, and the insured is obligated to pay the insurance premium in one payment or in several installments according to the agreement with the insurance company.¹³ The Palestinian Court of Cassation affirmed this by stating: “The insurance contract is an aleatory contract and a time-based contract in which time constitutes an essential element, whereby both contracting parties bear the risk of the possibility of the occurrence or non-occurrence of the risk from the date of its conclusion until the date of its expiration.”¹⁴

4. Comprehensive insurance is a contract of good faith: This means “that both parties to the comprehensive insurance contract must disclose truthful information to the other party so that each party may either accept or reject the conclusion of the contract. Accordingly, providing incorrect or misleading information by either party grants the other party the right to rescind the contract.”¹⁵

The Palestinian judiciary has affirmed this principle by stating: “The insured’s obligation in the insurance contract to disclose risks that may change the subject matter of the risk is an obligation that distinguishes the insurance contract from other contracts, as the insurance contract is one of good faith, and the law requires its parties to perform it in good faith.”

5. Comprehensive insurance is a contingent contract: This means that the parties to the contract, the insurance company and the insured, cannot determine the amount of benefit accruing to either of them at the time of concluding the contract.

Such benefit is determined only in the future, depending on whether the insured risk occurs or not. The absence of this characteristic at the time of contracting renders the contract void.

6. **Comprehensive insurance is an adhesion contract:** The concept of adhesion contracts is based on one party to the contract—the insurance company—adding a number of unfair terms to the contract that leave the insured with no option but to accept or reject the contract as it is, without having the right to negotiate those terms.

In this regard, the Karak Court of First Instance, in its appellate capacity, ruled that: “Our court finds that the insurance contract presented in this case is a printed contract that was not signed by the insured, and that it included exclusions that constitute unfair terms and a contract of adhesion for the insured, especially since this contract may be considered a comprehensive insurance contract and a supplementary insurance contract.”

Second Requirement: The Nature of the Arbitration Clause in the Comprehensive Vehicle Insurance Contract

The arbitration clause is one of the clauses included in comprehensive insurance contracts to regulate the manner of resolving disputes that may arise between the insurer and the insured. Addressing this clause requires examining its legal nature (first branch), then clarifying its characteristics in light of the specific nature of the comprehensive insurance contract (second branch).

First Branch: The Meaning of the Arbitration Clause

Arbitration is considered one of the alternative means of dispute resolution, and it is an exceptional method and an alternative to domestic judiciary, resorted to by the parties to a dispute for several advantages they find in it.¹⁶ Article 5(1) of the Palestinian Arbitration Law No. 3 of 2000 defined an arbitration agreement as: “An agreement between two or more parties stipulating for referral of all or some of the conflicts that emanated or may emanate from a specific legal relation whether

contractual or not contractual. The agreement on arbitration may be in the form of arbitration clause in a contract or in a separate agreement.” The Ottoman Civil Code (Majallat al-Ahkam al-Adliyya) also stipulated in Article 1790 that: “Arbitration is the process by which the parties, by mutual consent, appoint a third party to decide their dispute and claims.”

Some jurists have also defined arbitration as: “A means by which the parties dispense with state courts and agree to submit their disputes to a person or persons they choose or determine the method of selecting, in order to decide the dispute.”¹⁷

The arbitration agreement in a comprehensive vehicle insurance contract takes one of two forms: either as a clause in the original contract, which is called an arbitration clause, or in the form of a separate agreement independent from the original contract after the dispute has arisen, which is called an arbitration submission. As for the criterion for distinguishing between them, it relates to the timing of the agreement. If the agreement is concluded before the dispute arises—regardless of whether it is included in the original contract or in a separate agreement but prior to the dispute—it constitutes an arbitration clause. If the agreement is concluded after the dispute has arisen for the purpose of resolving an existing and specific dispute, it constitutes an arbitration submission.¹⁸

Based on the foregoing, “it is not required in an arbitration clause in comprehensive insurance contracts to precisely specify the disputes that will be referred to arbitration; rather, it suffices to generally agree to refer any potential disputes to arbitration, whether related to the interpretation or performance of the contract.”¹⁹ As for the arbitration submission, the disputes to be referred to arbitration must be precisely specified, otherwise it shall be void pursuant to Article 5(4) of the effective Palestinian Arbitration Law No. 3 of 2000,²⁰ as affirmed by the Ramallah Court of Appeal in its decision No. 21/2003.²¹

In order for there to be a valid arbitration agreement in a comprehensive insurance contract, several conditions must be met: legal capacity to dispose of the disputed right for both parties to the dispute; the arbitrability of the disputed right so

that it may be subject to arbitration; determination of the subject matter of the dispute to be submitted to arbitration—whether in a precise or general manner—according to the nature of the arbitration agreement as a clause or an arbitration submission; and that the arbitration agreement be in writing, otherwise it shall be deemed void.²²

Second Branch: Characteristics of the Arbitration Clause in the Comprehensive Vehicle Insurance Contract

Legal doctrine and jurisprudence have set out several distinctive characteristics of the arbitration agreement, which may be summarized as follows:

First: Arbitration as Specialized Adjudication:

Arbitration in the comprehensive insurance contract provides the advantage of specialization within the arbitral tribunal that examines the insurance dispute. A judge often needs to rely on a technical opinion to decide the dispute, by appointing one or more experts specialized in the subject matter of the insurance dispute. This is addressed in arbitration, as the disputing parties may assign the task of resolving the dispute to one or more persons with expertise in the subject matter of the dispute, which saves time due to the presence of a person knowledgeable in the matter presented, unlike a judge who may require more time to understand the subject of the dispute.²³

Second: Speed and Simplicity of Procedures:

Arbitration in the comprehensive insurance contract is characterized by the simplicity of the procedures followed from the initiation of arbitration proceedings until the resolution of the insurance dispute, in contrast to national courts, which are characterized by lengthy litigation due to the large number of cases before the courts.²⁴ What distinguishes arbitration in the comprehensive insurance contract is the absence of adherence to court procedures and deadlines, which accelerates the resolution of the dispute.²⁵

Third: Preservation of Confidentiality:

The parties to arbitration, especially insurance companies, may wish to preserve the confidentiality of their financial positions vis-à-vis third parties, which arbitration achieves. Attendance is limited to the parties to the dispute and within the narrowest scope, unlike national courts whose hearings are open to the public in compliance with the constitutional principle of public hearings.²⁶

Fourth: Independence of the Arbitral Tribunal:

What characterizes national courts is that judges are bound by mandatory legal texts that define the procedures to be followed when examining disputes, unlike arbitration in comprehensive insurance contracts, where the authority of the arbitrator derives from the agreement of the parties themselves. The arbitral tribunal has the authority to decide on its own jurisdiction and may also determine the procedural law applicable to the arbitration proceedings, based on the parties' agreement or by its own decision in the absence of such agreement.²⁷

Fifth: Lower Financial Costs:

There is a claim that resorting to arbitration is financially costly compared to national courts. This claim is countered by noting that arbitration fees in comprehensive insurance contracts are paid once and equally by both parties to the dispute, unlike ordinary litigation, where the claimant alone bears the fees upon filing the case.²⁸

Sixth: Independence of the Arbitration Agreement:

This means that the fate of the arbitration clause is not linked to the comprehensive insurance contract, unless the invalidity affects the arbitration clause itself.²⁹ Accordingly, "if the comprehensive insurance contract is invalidated, rescinded, or terminated, this does not affect the arbitration clause, which remains valid and effective despite the termination of the original contract. The arbitral tribunal retains the authority to decide on its existence and validity, based on the arbitration

agreement concluded between its parties.”³⁰ The arbitration clause is also unaffected by challenges that may affect the validity of the comprehensive insurance contract, which limits the grounds for challenging the arbitration clause before national courts and arbitral tribunals.³¹

In this regard, the Jordanian Court of Cassation ruled in one of its decisions that: “The principle of the independence of the arbitration clause provided for in Article 22 of the Jordanian Arbitration Law entails that the clause remains valid and binding between the parties to the contract even if the contract containing the clause is declared void. The clause remains valid and enforceable between its parties even if the contract is subject to approval by another authority, such as the Telecommunications Regulatory Commission, a fortiori.”³²

Section Two: Arbitration in Comprehensive Insurance Contracts

Arbitration is one of the mechanisms included in comprehensive vehicle insurance contracts to resolve disputes arising therefrom. However, its association with the nature of this contract, which is predominantly characterized by adhesion, raises questions regarding the legality of the arbitration clause and the legal limits of resorting to arbitration. Accordingly, this section will address adhesion in the arbitration clause (first requirement), and the legality of resorting to arbitration in the comprehensive insurance contract (second requirement).

First Requirement: Adhesion in the Arbitration Clause

The inclusion of an arbitration clause in a comprehensive insurance contract raises the issue of adhesion, as it is included within pre-drafted terms without enabling the insured to negotiate them. This necessitates examining the nature of adhesion in the arbitration clause (first branch), then clarifying the relationship between unfair terms and adhesion contracts (second branch).

First Branch: The Nature of Adhesion in the Arbitration Clause

The concept of arbitration is based on the existence of mutual consent between the two contracting parties to refer disputes arising between them due to the performance or interpretation of the contract to arbitration. Upon the conclusion of the contract, both parties become obligated to resort to arbitration, and the jurisdiction of domestic courts to hear the dispute is removed. Neither party may evade this obligation except in the case of an implicit or explicit waiver by the defendant of invoking the existence of the arbitration clause, which results in restoring jurisdiction to domestic courts to consider the dispute.³³

This raises the question of the validity of including an arbitration clause in an adhesion contract. Does this constitute abuse by one of the contracting parties through depriving the other party of their will? What is the relationship between unfair terms and adhesion contracts, and what is its effect on the arbitration agreement?

The concept of abuse is based on one contracting party exploiting its dominant economic power in order to impose terms that serve its interests, leaving the other party with no option but to accept those terms due to its weaker legal position compared to the dominant party in the contract.³⁴

Palestinian legislation has not provided an explicit and direct definition of the concept of abuse within a general civil legislative text, due to the absence of a Palestinian Civil Code as of the date of writing this article. However, this legislative gap has not led to denying or suspending the concept, as the Palestinian judiciary has relied on the general principles of justice and equity in applying it. Consequently, the judge intervenes to interpret the contract in order to protect the weaker party, as affirmed by the Palestinian Court of Cassation in its ruling: “Since the contract has acquired the character of adhesion, the judiciary is permitted to exclude unfair terms, guided by the nature of the dealings between the parties to the contract in order to avert harm.”³⁵

By contrast, the the concept of abuse was addressed in Article 204 of the Jordan Civil Code, which stipulates that: “If the contract was concluded by way of acquiescence and if it included arbitrary conditions, the court may amend these conditions or exempt the compliant party from them according to what is required by justice. Any agreement to the contrary is null and void.” It is clear from this text that Jordanian law grants the trial judge the authority to determine the existence of abuse based on the case presented before them.

As for Algerian legislation, Article 110 of the Civil Code provides that: “If a contract is concluded by way of adhesion and contains unfair terms, the judge may modify those terms or exempt the adhering party from them in accordance with the rules of justice, and any agreement to the contrary shall be void.”

It is inferred from the text of the above-mentioned article that Algerian legislation has established two legal conditions for judicial intervention to exercise its authority in modifying the contract: first, that the contract be a contract of adhesion; and second, that the contract of adhesion contain unfair and onerous terms for the adhering party.

As for legal doctrine and jurisprudence, several conditions have been established in order to consider the existence of unfairness by one of the contracting parties, namely: that one of the clauses of the original contract includes an unfair term;³⁶ that one of the contracting parties exploits its influence and dominance over the other contracting party by imposing terms that serve its own interest;³⁷ and that the other party be in a position of weakness, which is manifested by being deprived of the right to refuse or even negotiate such an unfair term, leaving it with no option but to submit to it.³⁸

Second Branch: The Relationship between the Unfair Term and the Contract of Adhesion

Practical application, as reflected in court decisions, demonstrates that there is no absolute correlation between an unfair term and a contract of adhesion, as a contract of adhesion

may be free from unfair terms, and an unfair term may appear in a negotiated contract. Accordingly, a contract of adhesion is merely an indication of the possibility of unfairness, and not a necessary or sufficient cause for its existence, which requires subjecting contractual terms to independent substantive judicial review.³⁹

The Jordanian Court of Cassation ruled in one of its decisions that the existence of unfair terms in contracts other than contracts of adhesion should not be excluded, such as loan contracts. It held that: “It is established that a loan contract is not considered a contract of adhesion, and therefore the terms it contains are not considered unfair terms or terms of adhesion... Accordingly, since the loan contract concluded between the appellant and the respondent included a clause granting the right to review the interest rate every three months, this is an agreed contractual term and is not considered a term of adhesion, as the appellant had the option to accept or reject such a term prior to signing the contract.”⁴⁰

By way of analogy, the existence of an agreement between the parties to a contractual relationship to resort to arbitration in general is not necessarily considered an unfair term, because each party to the dispute has the freedom to accept or reject arbitration as a means of dispute resolution prior to signing the contract. Conversely, the court has the authority to determine whether unfairness exists or not.

Since the subject of this study is limited to examining the arbitration agreement in a comprehensive insurance contract for vehicles, it is necessary to allocate an independent section to examine the legality of including an arbitration clause in this type of contract, which will be addressed in the second section.

Second Requirement: The Legality of Resorting to Arbitration in Comprehensive Vehicle Insurance Contracts

Arbitration constitutes a legal means for resolving disputes arising from comprehensive vehicle insurance contracts and derives its basis from the general rules of arbitration in Palestinian legislation. Addressing this subject requires

examining the legal basis of arbitration in comprehensive insurance contracts (the first branch), followed by an examination of the legality of agreeing to resort to arbitration in comprehensive insurance contracts (the second branch).

First Branch: The Legal Basis of Arbitration in Comprehensive Insurance Contracts

The concept of arbitration in comprehensive insurance contracts is based on depriving the domestic judiciary of jurisdiction to hear the dispute and referring it to an arbitral tribunal to resolve it, pursuant to the established legal principle that “the contract is the law of the contracting parties.” Accordingly, the contracting parties—the insurer and the insured—may include any contractual terms they deem appropriate, provided that such terms do not violate public order or public morals.

Article 4(2) of the Palestinian Arbitration Law No. 3 of 2000 stipulates: “The provisions of this Law shall not apply to the following matters: (2) issues that cannot be solved by reconciliation by law.” From this provision, it follows that arbitration is permissible—as a general rule—in all civil and commercial matters, including comprehensive insurance contracts, unless there is a legal text providing otherwise.

Once an agreement to resort to arbitration has been concluded, neither party may revoke, amend, or annul it unilaterally, otherwise such action shall constitute a breach of the binding force of the arbitration agreement.⁴¹ Conversely, nothing prevents the parties, by mutual agreement, from withdrawing from the arbitration agreement.⁴²

In order to determine the extent to which arbitration may be resorted to in comprehensive insurance contracts, it is first necessary to examine whether comprehensive vehicle insurance contracts may be considered contracts of adhesion, and then to examine the legality of including an arbitration agreement in the form of an arbitration clause or an arbitration submission, which will be discussed successively in the second subsection.

Second Branch: The Extent of the Legality of Agreeing to Resort to Arbitration in Comprehensive Insurance Contracts

Some legal scholars consider comprehensive insurance contracts to be contracts of adhesion, which renders the arbitration clause contained therein void, as it is included in a pre-printed standard form prepared in advance by the insurance company.⁴³

The researcher responds to this view by stating that, despite its apparent validity, it does not align with modern judicial rulings. The Court of First Instance of Irbid, acting in its appellate capacity, ruled that: “A comprehensive insurance contract is a consensual contract and does not fall within the concept of contracts of adhesion provided for in Article 10 of the Arbitration Law, because the insurance applicant who contracts with an insurance company to comprehensively insure their vehicle has full freedom to contract or not to contract. This type of contract—unlike compulsory insurance—is not considered a contract of adhesion or monopoly, as it does not relate to a commodity or facility deemed essential to the insurance applicant. Moreover, the law does not obligate a person to subscribe to or contract for this type of insurance, in addition to the fact that this type of insurance is not exclusive to the respondent alone; rather, the comprehensive insurance applicant has freedom of choice and is not originally obligated to comprehensively insure their vehicle.”⁴⁴

As for including the arbitration agreement in the form of a clause in a comprehensive insurance contract, Article 12 of the Palestinian Insurance Law No. (20) of 2005 provides: “Any of the following conditions shall be deemed invalid if provided for in an insurance contract: (4) The arbitration clause if provided for in the policy among printed general provisions thereof rather than in a special agreement separate therefrom.”

From the above article, it is concluded that Palestinian legislation has imposed restrictions on contracting parties with regard to agreeing to arbitration in insurance contracts, including comprehensive insurance contracts, by deeming an arbitration clause included in a printed insurance contract and not clearly

presented to the insured to be void and without legal effect against the insured. This is because including such a clause in this manner deprives the insured of the right to resort to the judiciary. Accordingly, such a clause is considered a form of unfairness against the insured. On the other hand, the legislator expressly required that the arbitration clause be included in the insurance policy in a form separate from the general contractual conditions, under penalty of nullity.

The Jordanian Court of Appeal ruled that: “This Court finds that the arbitration agreement was included in more than one document submitted as evidence in the case, as it appeared in the following documents: the insurance application submitted by the plaintiff himself, in which the arbitration clause appeared as an independent provision and bore a separate signature on this clause by the plaintiff, distinct from his signature on the insurance application itself. This clause was clearly and independently stated in this application No. (...) and explicitly and separately stipulated from the general conditions as follows: (Arbitration Clause: The two parties agreed that any dispute arising from the contract concluded pursuant to the insurance application shall be resolved through arbitration in accordance with Jordanian law). This independent clause bore the signatures of both the plaintiff and the insurance company, and therefore constitutes a valid clause.”⁴⁵

The Algerian legislation has adopted the same approach followed in Palestine, as it required, for the validity of an arbitration clause in an insurance contract, that it be included among its special conditions rather than the general ones, pursuant to Article 622 of the Algerian Civil Code, which provides: “Any of the following clauses in an insurance policy shall be null and void: (4) An arbitration clause that is included in the printed general conditions of the policy and not in the form of a special agreement separate from the general conditions.” The legislative purpose of this provision is “that the arbitration clause presumes bad faith on the part of the insurer who drafts the insurance contract by its unilateral will, without

allowing the other contracting party to amend it, obliging them to accept it in its entirety without discussion.”⁴⁶

Algerian legislation has imposed the sanction of nullity on the arbitration clause included among the general conditions of a comprehensive insurance contract, considering it an unfair term and placing it on the blacklist. At the same time, it allowed an arbitration agreement that is signed separately and independently from the insurance contract, whereby the insured agrees to waive their right to resort to national courts to claim their rights in the context of executing the insurance contract and grants exclusive jurisdiction to arbitrators within the framework of alternative dispute resolution mechanisms.⁴⁷

As for the arbitration submission, there is no dispute as to the legality of such an agreement, since the dispute has already arisen between the parties. Accordingly, both parties have the freedom to agree to refer the dispute to arbitration, as neither party—the insurance company nor the insured—may compel the other to resort to arbitration.⁴⁸

The conclusion reached is that if an arbitration clause is included in the insurance policy and appears among the general conditions, the clause shall be void while the contract remains valid. For the clause to be recognized, it must be stipulated in a special agreement separate from the general contractual conditions, whether in the form of an arbitration clause or an arbitration submission.

The reason behind the nullity of the arbitration clause when it is included among the general conditions of the contract is that insurance companies possess stronger influence than the insured, who is considered the weaker party in the contractual relationship. Insurance companies typically have greater connections and influence in the field of arbitration than the insured. Therefore, including an arbitration clause among the general contractual provisions constitutes a form of imbalance that may affect the insured upon signing the insurance policy, as they sign a contract of adhesion accepting all its terms without discussion.⁴⁹ In order to provide a degree of protection to the insured, the legislation provided for the nullity of the arbitration

clause that was not expressly approved by the insured and was not included in a special agreement separate from the general provisions of the insurance policy signed by both parties.⁵⁰

Conclusion:

This study examined the validity of the agreement concluded between the insurance company and the insured to refer disputes that may arise between them to arbitration. Below are the most prominent findings and recommendations reached, presented as follows:

Findings:

- Arbitration in comprehensive vehicle insurance contracts is permissible in principle, as neither Palestinian nor Algerian legislation prohibits resorting to arbitration in such contracts; however, there are conditions and controls that must be observed to ensure its validity.
- Arbitration in disputes arising from comprehensive insurance offers several advantages compared to national courts, as it shortens the time and reduces procedures, which is suitable for insurance disputes that require prompt compensation.
- Comprehensive vehicle insurance contracts are contracts of adhesion; however, this does not necessarily mean that they contain unfair terms. If such terms exist in the contract, the court has the authority to annul or modify them in a manner that achieves the interest of the adhering party.
- Palestinian and Algerian legislation distinguishes between an arbitration clause and an arbitration submission in comprehensive insurance contracts. In the case of an arbitration clause, the clause must be included as an independent provision separate from the general provisions of the contract, in a conclusive manner indicating the intent of both parties to apply it. As for the arbitration submission, there is no dispute regarding the permissibility of resorting to it, as it follows the

emergence of the dispute, and no party may compel the other to resort to this means.

Recommendations:

- Palestinian legislation should establish a special legislative framework regulating arbitration in insurance contracts and issue instructions or special provisions in the Insurance Law defining the rules and conditions for including an arbitration clause in insurance policies, in a manner that achieves balance between the parties to the contract.
- Palestinian legislation should stipulate the obligation of insurance companies to clearly highlight the arbitration clause in comprehensive vehicle insurance contracts in a distinct and clear font, with a separate signature from the insured, to ensure their awareness of it.
- Palestinian legislation should encourage resort to arbitration by establishing and supporting arbitration centers specialized in insurance disputes, whether in Palestine or in cooperation with Arab centers, to ensure the availability of arbitrators with technical and legal expertise.

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- 9 **Article 15 of Palestinian Insurance Law No. 20 of 2005:** The insured shall undertake to: 1. Pay the agreed upon amounts in times set in the contract. 2. State, at the time of concluding the contract, all information required by the insurer in order to assess risks assumed thereby. 3. Notify the insurer, thought the duration of the contract, of matters increasing said risks.
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