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WRITING GUIDELINES

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The submitted research must be proofread linguistically and grammatically.
- 

The first page of the research must include the full title of the research, the name(s) of the researcher(s), and their academic title or position.
- 

The list of Arabic and foreign references must follow the APA citation and referencing style.
- 

The research must be typed using Microsoft Word on A4 paper size, single-sided only, with margins of 2.5 cm on each side.
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The font used shall be Traditional Arabic. Main headings should be in size 18 bold black font, the main text in size 16 regular font, and footnotes in size 12 regular font.
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The researcher must provide an abstract of the research in both Arabic and English, not exceeding 200 words or one page.
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Sources and references must be documented through footnotes by citing the source or reference and placing the corresponding footnote number in the appropriate location.
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References must be listed separately at the end of the research in alphabetical order according to an approved academic referencing method, while including complete publication details for all sources and references.
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If the researcher uses software, measurement tools, tests, questionnaires, or similar instruments, the researcher must provide a complete copy of the tools used if they are not included within the body of the study, or attach them within the appendices, and must indicate the official procedures authorizing their use in the research.
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PUBLICATION CONDITIONS



- The submitted research must be original and characterized by authenticity, innovation, sound scientific methodology, proper direction, accurate language, and adherence to academic ethics in its concept and content.



- The researcher must comply with recognized academic standards in presentation, documentation, citation, illustrative figures, tables, and appendices.



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- The researcher must submit a declaration confirming that the research has not been previously published, submitted for publication elsewhere, or submitted to any other journal while under consideration.



- The research must not be extracted from a thesis, book, previous research, or involve infringement of intellectual property rights.



- After review by the Editorial Board, all research papers are subject to scientific peer review by specialists. The researcher shall be informed of the reviewers' observations in order to revise the research accordingly, while the Editorial Board reserves the right to decide on disputed matters.



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- The journal does not provide financial compensation for published research.



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1



The original research must be submitted in both Microsoft Word (Word) format and PDF format, prepared in accordance with the journal's writing guidelines and formatting requirements (attached).

2



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The researcher will be notified upon receipt of the research and its referral to the Editorial Board.

4



The Editorial Board shall conduct an initial review of the research and determine its eligibility for peer review.

5



Accepted research papers shall undergo confidential scientific peer review.

6



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MAIN COMPONENTS OF SCIENTIFIC RESEARCH ACCEPTED FOR PUBLICATION:

Scientific research conducted under recognized research methodologies must take into account the diversity of humanities research approaches, ranging from quantitative to qualitative methods, and from experimental to descriptive approaches. Nevertheless, the principal common elements include the following:

-  The research title, the researcher's name, and job title in both Arabic and English.
-  The researcher's name or the names of the researchers must not be mentioned within the body of the research, footnotes, or references, nor through any indication revealing their identity. Instead, the terms "the researcher" or "the researchers" shall be used.
-  An abstract of the study in both Arabic and English, which must include the general objective of the study, the methodology and tools used, the main findings reached, and the key recommendations, provided that it does not exceed ten lines.
-  The introduction or background of the study.
-  The research problem and identification of its elements and questions.
-  The objectives and significance of the study.
-  Previous studies relevant to the subject matter of the study, which assist the researcher in discussing the findings. The researcher shall present previous studies according to chronological order, either from oldest to most recent or vice versa, whenever justified by the strength and objectives of the study, its nature, or procedures.
-  A clear explanation of the study methodology appropriate to the nature of the research problem, including the quantitative or qualitative procedures and data enabling the researcher to address the research problem.
-  Precise identification of the study population and sample.
-  Identification of the tools used in the study and clarification of their psychometric characteristics.
-  Presentation of the study findings in a scientific manner.
-  Discussion of the findings through a scientific analysis based on the theoretical framework and previous studies, reflecting the researcher's engagement with the study topic through the conclusions and recommendations derived from those findings.



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EDITORIAL FOREWORD

Praise be to Allah, Lord of all worlds,
and peace and blessings be upon our trustworthy Prophet,
his family, and all his companions. To proceed:



The Editorial Board of the Journal of Sharia and Legal Sciences at Taif University is pleased to present to the esteemed readers Issue No. (12) of its publications. The journal, recognized as one of the accredited peer-reviewed academic journals that has earned the trust of researchers and specialized academic institutions, continues—like its previous editions—to distinguish itself through the diversity of its disciplines and topics. These contributions cover various fields of Sharia and legal sciences, including the Qur'an and Sunnah, creed, jurisprudence, legal theory, and law.



It is worth emphasizing that all research papers included in this issue have undergone rigorous academic peer review by distinguished reviewers in accordance with the journal's policies and regulations.



As the journal presents this edition, it prays to Allah Almighty to grant it acceptance and to reward all those who contributed to its publication with the best reward, including researchers, reviewers, members of the editorial board, and the university, as well as this generous nation that has supported and promoted knowledge and its people—may Allah protect it under wise and prudent leadership.



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Defects in the Legislative Drafting of the Seat of Arbitration under the Saudi Arbitration Law

An Analytical Comparative Study in
Light of Islamic Jurisprudence



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Imam Muhammad ibn Saud Islamic University



Higher Institute of Judiciary –
Department of Sharia Policy

Introduction

Praise be to Allah, who said:

“Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Indeed, Allah is ever Hearing and Seeing.”

And He also said:

“O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day. That is the best and best in result.”

Peace and blessings be upon the Messenger of Allah.

The soundness of legal meaning stems from the soundness of wording and structure; thus, meaning cannot be properly established without precise language and formulation. When the legislative drafting of laws and regulations is sound, it plays a significant role in clarifying the intended meaning of the legislator. Therefore, states strive to achieve the highest levels of accuracy and clarity in legislative drafting. To accomplish this, they establish specialized committees responsible for drafting laws and regulations, ensuring that they are presented in the best possible form. This enables judges, arbitrators, lawyers, consultants, and specialists to correctly understand the legal text and apply it properly according to the legislator’s intent.

In this context, a practical issue has arisen regarding the understanding of part of the meaning and implication of **Article (28) of the Saudi Arbitration Law**, where the term “*place of arbitration*” appears in more than one position within the text of the article. However, it has been interpreted in different ways, as will be clarified. This variation affects the comprehension and application of the article, which provides that the parties to arbitration may agree on the place of arbitration, whether inside or outside the Kingdom. If no agreement is reached, the arbitral tribunal shall determine the place of arbitration, taking into account the circumstances of the case.

1 Surah An-Nisa, Verses 58, 59

Taking into account the circumstances of the dispute and the suitability of the place for its parties, this does not limit the authority of the arbitral tribunal to convene in any place it deems appropriate for deliberation among its members, for hearing witnesses or experts, or for examining the subject matter of the dispute, reviewing documents, or inspecting them.

Thus, when reading this part of the provision: *“If there is no agreement, the arbitral tribunal shall determine the place of arbitration, taking into account the circumstances of the dispute and the suitability of the place for its parties,”* this does not restrict the tribunal’s authority to meet in any place it considers appropriate. However, a form of contradiction may appear, as the wording initially indicates that the arbitral tribunal determines the place of arbitration, followed by another statement affirming that this does not prevent the tribunal from convening in any place it deems suitable.

Here arises the issue: the reader may question how the tribunal determines the place of arbitration and then is allowed to meet in any place it considers appropriate. What, then, is the benefit of specifying the place of arbitration?

Based on this issue, and in light of the reasons for selecting the topic of this research, as well as the importance and problems it addresses, the title of this study has been formulated to reflect its content and scope.

Reasons for Choosing the Research Topic:

1. *The wording of this provision makes the solution to the issue complex to understand, and difficult for non-specialists to comprehend.*
2. *Commentators on the Saudi Arbitration Law have differed significantly in interpreting the wording of the provision (Article 28), which has influenced the resolution of this issue.*
3. *The researcher encountered several arbitration cases in which there was ambiguity in understanding this provision, prompting the need to study this topic and seek appropriate solutions to this issue.*

4. I encountered and discussed this issue through one of the directors of the Royal Complex in Britain, during one of the arbitration training courses. It became clear that this issue is not limited to the Saudi Arbitration Law alone, but extends to other systems as well. This prompted an interest in identifying the types of defects in such legislative drafting, the reasons that led to their existence, and the resulting implications, along with proposing appropriate solutions and treatments.
5. The legal provision addressing this issue has existed for more than thirteen years and has not been amended to date, despite the apparent ambiguity in its drafting. The researcher aims to highlight this issue, its implications, and its treatment through this study.

From this, the importance of the research becomes evident: it lies in identifying the issues in the drafting of the provision and the effects resulting from them, as well as the legal methods for addressing these issues. Indeed, a defect has appeared in the drafting of this legal provision, which justifies focusing the research on it, examining the causes of these defects, especially in light of the absence of a clear legislative solution to address the wording of the provision.

In reviewing previous studies, the researcher found a number of books and research papers that addressed defects in legislative drafting in general, such as a study titled: *“Defects in Legislative Drafting and Methods of Avoiding Them”* by Dr. Haitham Hamed Al-Sarouji, published in the Journal of Judicial Life. That study discussed the concept of legal drafting, defects in legislative drafting, and ways to avoid them.

However, this research differs from previous studies in that it focuses specifically on the Saudi Arbitration Law and a particular legal provision, examining the defects in the drafting of this provision, the reasons that led to the issue, and the implications resulting from it.

2 He is: Professor Dr. Mohammed Rafa, lawyer and arbitrator.

This study examines these drafting defects in a specific manner, which was not addressed in the previously mentioned studies.

There are also studies that have addressed **types of legal drafting** and discussed them in detail, such as the book “*The Concise Guide to Legal Drafting*” by Dr. Mohammed Abdullah Al-Barzouqi. This work covered topics including **foundational drafting, applied drafting, preventive drafting, and drafting of regulations**. However, the present research differs from that study in that it focuses specifically on the **Saudi Arbitration Law**, examining a particular legal provision, identifying the defects in its drafting, the reasons leading to the issue, and the consequences resulting from it. This specific focus was not covered in the previously mentioned study.

There are also studies addressing **constitutional drafting**, such as a study titled: “*The Quality of Constitutional Drafting and Its Role in Achieving Legal Security Through the 2020 Constitutional Amendments*” by researcher Hajar Ayman Al-Gharousi Halim, published in the Journal of Law and Human Sciences. This study examined the concept of legal security, its historical development, its establishment as a constitutional principle, the concept of constitutional drafting, and the relationship between constitutional drafting and legal security.

However, the present research differs from that study as well, since it focuses on the **Saudi Arbitration Law**, analyzing a specific legal provision, identifying the defects in its drafting, the causes leading to this issue, and the resulting implications. This particular analytical focus was not addressed in the previously mentioned study.

Defects in Legislative Drafting of the Place of Arbitration in the Saudi Arbitration Law – An Analytical Comparative Study with Islamic Jurisprudence

This research aims to identify the causes that led to the existence of the issue in the drafting of the legal provision محل البحث, and to determine the effects resulting from defects in the legislative drafting of this provision. It also seeks to identify solutions through which the researcher aims to address the issues in the drafting of this provision, and to reach a correct legislative formulation of the provision محل البحث.

Among the difficulties faced in preparing this research was the lack of finding a study or book that addresses the analysis of drafting issues in the legal provision محل البحث.

Research Methodology:

The research relies on the analytical approach, through analyzing the source, causes, and effects of the issue in the drafting of the legal provision محل البحث, and analyzing the defects of legislative drafting, in order to identify these defects, provide evidence of their existence, and analyze the causes behind them.

The research also adopts the comparative approach, by comparing legal provisions with Islamic jurisprudence as much as possible, and comparing the Saudi Arbitration Law with the laws of other countries and arbitration rules, both Arab and foreign. These include: the UNCITRAL Model Law on International Commercial Arbitration, the English Arbitration Law, the Egyptian Arbitration Law, and the Jordanian Arbitration Law.

As well as arbitration rules such as: the ICC Arbitration Rules (2021) issued by the International Chamber of Commerce in Paris (in Arabic and English), the UNCITRAL Arbitration Rules (in Arabic and English), and the arbitration rules issued by the Saudi Center for Commercial Arbitration.

If the issue presented has a basis in Islamic jurisprudence or a legal principle, the researcher refers to that basis and explains the ruling of the issue. The researcher also seeks to weigh the different opinions on the research topics, which may involve اختلاف.

Within the discussion of the research problems, the points of agreement and disagreement are identified, and the stronger opinion is preferred among the different views. The reasons for preference are clarified, and the arguments of opposing views are addressed. The meanings are documented from approved Arabic language dictionaries as much as possible, Qur'anic verses are cited with proper referencing of surahs, and Arabic language rules are followed in spelling and punctuation. References are cited in footnotes when the text is quoted directly. If the quoted text is conveyed by meaning, even slightly, it is attributed to its source in general. The research focuses on its main topic and avoids unnecessary elaboration as much as possible.

This research focuses on addressing the main issues and problems of the study. After identifying the defects and errors in the drafting of **Article (28) of the Saudi Arbitration Law**, the research finds that the provision uses one term with two different meanings. The term “**place**” appears in the first, second, and third positions to mean: the **legal seat of arbitration**. However, in the fourth position, the term “**place**” refers to the **physical location where arbitration sessions are held**.

The legal provision under study did not clearly distinguish between these meanings in its drafting, which resulted in a noticeable confusion when interpreting the Saudi Arbitration Law. Therefore, the research seeks to correct the drafting, address the errors, propose solutions, and resolve the apparent اختلاف among commentators regarding the meaning of the term “**place**” in this provision.

The study also addresses the issue of relying on legal sources in legislative drafting that may themselves contain defects, and the need for careful legislative effort in identifying the origin of such drafting issues.

Defects in Legislative Drafting of the Place of Arbitration in the Saudi Arbitration Law – An Analytical Comparative Study with Islamic Jurisprudence

This research also answers the most prominent aspects of the research problem, which are formulated in the form of the following questions:

1. Is it conceivable that there are defects in legislative drafting? If so, what are these defects in the legal provision under study, how did they arise, and who is responsible for their occurrence?
2. Can the Saudi Arbitration Law rely in its drafting on Arab or foreign legal sources? If so, what are these sources, and can they be free from defects?
3. Is it appropriate to amend the drafting of the legal provision under study?
4. Can اختلاف in understanding the legal provision under study lead to practical implications affecting arbitration procedures and rulings?

These are the most important questions around which this research revolves.

Structure of the Research:

The research is divided as follows:

- **Preliminary Section:** Definition of defects in drafting, the concept of drafting, the system, arbitration, and the place of arbitration
- **First Section:** Types of defects in drafting the place of arbitration
- **Second Section:** آثار defects in drafting the place of arbitration
- **Third Section:** Methods of addressing defects in drafting the place of arbitration
- **Conclusion**
- **List of References and Sources**

After that, an index is included: a detailed table of contents and the research مطالب.

Preliminary Study: Definition of Defects, Drafting, Regulation, Venue, Arbitration, and Its Location

In this section, I will discuss the definitions of the terms in the research title, defining each term individually and then defining the full phrase as a complete concept.

We begin first by defining the term “*defects*”:

Definition of defects in language:

The word “*‘uyūb*” (*defects*) is the plural of “*‘ayb*”, meaning: flaw or imperfection. It is said: “so-and-so has many defects,” meaning he has many faults. It is also said: “the defect of the garment,” meaning what makes it flawed; and “the defect of a man,” meaning his secret or hidden fault. Likewise, “the defect of milk,” meaning what has changed or spoiled it; and “the defect of goods,” meaning defective merchandise.

They said: “the flaw and the defect: the stigma,” and they said: “a man with defects: one who has faults,” and they said: “many defects among people,” and they said: “the defect: what makes something flawed,” and they said: “the defect of a man: his hidden secret,” and they said: “the defect: spoiled milk,” and it was said: “the defect: a fault,” and it was also said: “the defect: deficiency.”

Lisan al-Arab, by Muhammad ibn Mukarram ibn Ali ibn Manzur, Vol. 6, p. 332, Dar Sader, Beirut, 3rd edition, 1414 AH – “Chapter: عيب”. Taj al-‘Arus, by Muhammad Murtada al-Husayni al-Zabidi, investigated by: a group of scholars, Vol. 3, p. 65, Kuwait.

4. Lisan al-Arab, previous reference, Vol. 6, p. 332. Taj al-‘Arus, previous reference, Vol. 3, p. 449.
5. Lisan al-Arab, previous reference, Vol. 6, p. 364. Al-Sihah Taj al-Lughah wa Sihah al-‘Arabiyyah, by Abu Nasr Ismail ibn Hammad al-Jawhari al-Farabi, Vol. 5, p. 190, investigated by: Ahmad Abd al-Ghafour Attar, Dar al-‘Ilm lil-Malayin, Beirut, 4th edition, 1407 AH – 1987 AD.
6. Lisan al-Arab, previous reference, Vol. 6, p. 364. Taj al-‘Arus, previous reference, Vol. 3, p. 449.
7. Lisan al-Arab, previous reference, Vol. 6, p. 364. Taj al-‘Arus, previous reference, Vol. 3, p. 450.
8. Taj al-‘Arus, previous reference, Vol. 3, p. 450.

Defects in Legislative Drafting of the Place of Arbitration in the Saudi Arbitration Law – An Analytical Comparative Study with Islamic Jurisprudence

In the terminology of Islamic jurisprudence, it has been stated:

Among the Malikis: it is “what departs from what is considered good according to Sharia, custom, or condition.”

And it was said: “defect,” and “harm in sale according to Sharia: it is what reduces the value of the item purchased, according to those experienced in trade and industry.”

And “a gross defect” according to the Hanafis: “that which does not fall under the category of accepted valuation.”

And “defect” in lease contracts according to the Shafi‘is: “what affects the benefit in a way that leads to a difference in the value of the rent.”

In the terminology of legal jurists, I did not find a specific definition for the term “defect” in legal jurisprudence or in statutory laws. However, usages of this term by legal scholars were found within a composite expression: “defects of legislative drafting,” indicating that the intended meaning of the term here is “defect.”

After reviewing these usages, we can say that the term “defect” in legal jurisprudence refers to: “a flaw that affects a thing.” It has been stated: “A defect in legislative drafting occurs when there is a flaw or ambiguity in the legislative text, such that understanding it or deriving rulings from it becomes difficult or problematic.”

It is also mentioned that one of the meanings of “drafting” in the Arabic language is: “to shape something according to a straight example,” and it also means: “the difference or variation in a matter.”

9. *Al-Qamus al-Fiqhi: Language and Terminology*, by Sa‘di Abu Jayb, p. 368, Dar al-Fikr, Damascus, 2nd edition, 1408 AH – 1988 AD.

10. *Al-Qamus al-Fiqhi*, previous reference, p. 262.

11. *Al-Qamus al-Fiqhi*, previous reference, p. 268.

12. *Al-Qamus al-Fiqhi*, previous reference, p. 269.

13. *Defects of Legislative Drafting and Ways to Avoid Them*, by Dr. Hashim Hamed Al-Samrani, p. 18, published in Al-Bayan Journal.

They said: “ṣawgh (drafting/formulation) is derived from ṣād, wāw, and ghayn, and its origin is correct. It refers to shaping something according to a straight example.” From this comes their saying: “the jeweler fashioned it,” meaning he shaped it into a form; and “what are two ṣawghān?” meaning if each one is formed in the shape of the other. It is also said: “he formulated speech,” meaning he arranged and organized it.

As for defining the term “drafting” in the terminology of early Islamic jurists, it appears that the usage of this term by jurists does not depart from its linguistic meaning. Among their usages is the statement: “the chapter of lease in the crafting of gold and the work of metals.”

In the terminology of legal jurists, after research, I found that most specialists define “drafting” as a compound term along with the legal or legislative context, rather than defining the term “drafting” independently. However, some specialized dictionaries do provide a standalone definition of drafting. It has been defined as: “the science and art of formulating (legal) rules.”

14. *Mu'jam Maqayis al-Lughah*, by Ahmad ibn Faris al-Razi, Vol. 3, pp. 321–322, edited by: Abd al-Salam Harun, Dar al-Fikr, 1399 AH – 1979 AD. See also: *Taj al-'Arus*, previous reference, Vol. 22, p. 353; and see: *Lisan al-'Arab*, previous reference, Vol. 8, p. 442.

15. *Lisan al-'Arab*, previous reference, Vol. 8, p. 442.

16. *Kuwaiti Fiqh Encyclopedia*, Ministry of Awqaf and Islamic Affairs in Kuwait, Vol. 28, p. 101, 1st edition, 1404 AH – 1427 AH, Dar al-Safwah, Egypt. It is stated in this encyclopedia under the definition of “ṣinā'ah” (craftsmanship): “The craftsman shapes gold into a form, and its crafting is called ṣawgh, and the craftsman is called a ṣā'ig (goldsmith).”

17. See: *Sharh al-Shihab*, by Abdullah Muhammad ibn al-Hasan al-Shihabi, Vol. 3, p. 52, edited and studied by: Dr. Muhammad Buniyah Kalan, Dar Ibn Hazm, Beirut, 1st edition, 1433 AH – 2012 AD.

18. See: *Defects of Legislative Drafting and Ways to Avoid Them*, previous reference; and *Research on the Nature of Legislative Drafting and Its Components*, and further details will be provided later.

(Gény) states that the legal rule is based on several factors imposed by its nature—historical, intellectual, and ideal—and that the legislator formulates these needs into legal rules in accordance with the principles of legal drafting.

As previously mentioned, drafting has also been defined as a compound concept combined with another term, such as: legal drafting and regulatory drafting. I consider the composite definition more appropriate to our purpose, as it better reflects the intended meaning. Since legal drafting illustrates the nature of regulatory drafting, it becomes clear that legal drafting is more comprehensive, as it represents a stage of skill, mental effort, and process that precedes regulatory drafting. Therefore, it can be said that legal drafting has been defined in several ways, including: “means or technical tools through which primary materials are transformed into established legal rules.”

Regulatory drafting has also been defined as: “the method used by the legislator in formulating legal values within the structure of the law, expressed through the legislative text.”

Definition of “regulation” linguistically:

In the Arabic language, the term “nizām” (regulation/system) has multiple meanings. It is said: “to arrange or organize something,” meaning to put it in order and structure. For example: “he organized it, arranging it in an orderly manner,” and “the pearls were strung together,” meaning they were arranged and ordered.

19. *Dictionary of Law*, Arabic Language Academy, p. 117, Cairo, General Authority for Amiri Press Affairs, 1420 AH – 1999 AD.

20. *The Nature of Legislative Drafting and Its Components*, by Dr. Khalid Jamal Ahmad Hassan, research submitted to the Faculty of Law, Kuwait University, 5th year, May 2017, as part of the fourth level course (Law: Tool of Reform and Development), Issue 13 – Part One.

21. Previous reference, p. 10.

It is also said: “to string it on a thread,” meaning what is arranged upon it; and “a system (nizām): everything that is ordered,” and every branch derived from it follows this origin. It is said: “the system of everything: its arrangement,” and “the plural: systems (anzimah), and I organized and arranged.”

It is also said: “there is no order in his matter,” meaning it is not properly arranged; and it is also said: “order (intizām): consistency and harmony.” It is also said: “the system: a necklace made of jewels and pearls and the like, strung together.” And “system” also refers to “a method or way,” and it is said: “there is no system for his matter,” meaning there is neither guidance nor stability in it.

Considering these definitions, it is clear that the term “system” (nizām) conveys meanings of organization, arrangement, coordination, and composition. It also conveys the meaning of consistency and may also refer to the concept of grouping. It likewise carries the meaning of harmony.

In my view, the intended meaning of “system” in this context encompasses all these linguistic meanings, as it involves organizing elements and bringing them together in a structured manner. Through the system, provisions are arranged and unified, and people’s conduct is regulated in a coherent way.

As for the term “system” in Islamic jurisprudence, it appears in various contexts, and its meaning varies depending on the context and the subject matter. It takes on a specific technical meaning appropriate to each situation, derived from its linguistic meanings.

22. *Lisan al-‘Arab*, previous reference, Vol. 12, p. 578. See also: *Taj al-‘Arus*, previous reference, Vol. 33, pp. 496–497.

23. *Lisan al-‘Arab*, previous reference, Vol. 12, p. 578. See also: *Taj al-‘Arus*, previous reference, Vol. 33, pp. 496–497.

24. *Lisan al-‘Arab*, previous reference, Vol. 12, p. 578. See also: *Taj al-‘Arus*, previous reference, Vol. 33, p. 497.

25. *Lisan al-‘Arab*, previous reference, Vol. 12, p. 578. See also: *Taj al-‘Arus*, previous reference, Vol. 33, p. 497.

26. *Lisan al-‘Arab*, previous reference, Vol. 12, p. 578. See also: *Taj al-‘Arus*, previous reference, Vol. 33, p. 497.

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As for the technical (terminological) definition of the term “system” (nizām), as mentioned in the books of Islamic jurisprudence, it has been defined as:

“A set of rules and provisions that regulate a specific aspect of human life, and through which society functions based on the obligation to respect and implement them.”

The definition of “system” in the terminology of legal or regulatory jurisprudence refers to two meanings: a general meaning and a specific meaning. In the general sense, the term “system” has been defined in several ways, including:

“A set of abstract general rules that regulate the behavior of individuals in society in a fair manner, guaranteeing the freedoms of individuals, achieving equality and justice among them, and the public good, and which the state enforces, even by force when necessary.”

In the specific sense, “system” has also been defined in several ways, including:

“A specific rule or a set of rules established by the legislative authority to regulate a particular matter in a specific field.”

As for the definition of the term “place” (makān) in the Arabic language, it has been stated:

“The place is that which contains something and serves as its stable location [where a person resides on earth and where they settle], and it is the location of existence and establishment.”

27. *Economic System in Islam*, by Dr. Omar Al-Zarqa, Dr. Abdullah Al-Saadi, Dr. Abdullah Al-Tariqi, and Dr. Abdullah bin Ahmad Al-Tayyar, Maktabat Al-Rushd, 5th edition, 1432 AH – 2010 AD.

28. *Al-Wajiz fi Madkhal li Dirasat al-Anʿam*, by Dr. Adel Al-Fajjal, p. 14, Dar Al-Nashr Al-Dawli, Riyadh, 1st edition, 1439 AH – 2018 AD.

29. Previous reference, p. 14.

30. *Al-Kulliyat: Dictionary of Terms and Linguistic Differences*, by Ayyub ibn Musa al-Husayni al-Qurami al-Kafawi Abu al-Baqa al-Hanafi, edited by: Adnan Darwish and Muhammad al-Masri, Mu’assasat al-Risalah, Beirut, 1412 AH.

As for defining the term “*place*” (*makān*) in the technical (Sharia) sense: after research, it appears that commentators of the Qur’an have used the term “*place*” in a way that does not depart from its linguistic meaning. This is evident in the interpretation of the verse—and also mentioned in the Books (Torah)—regarding Maryam: “*when she withdrew from her family to an eastern place*”; it was said: “*she withdrew and separated from her family to a place before the sunrise, without specifying it.*”

As for defining the term “*place*” in the regulatory sense: after research, it appears that the legal usage of the term “*place*” does not depart from its linguistic meaning. Evidence of this is found in the Law of Commercial Transactions, in Article (9), which states:

“The place of business is the location where a person practices their trade or profession, or a place connected to managing the activities of that trade or profession.”

As for defining the combined term “*place of arbitration*”, its clarification will come at the end of this study.

Regarding the definition of “*arbitration*” (*taḥkīm*) in the Arabic language: it is derived from the root meaning prevention or restraint, and from this meaning arises its general sense. The verbal noun “*taḥkīm*” comes from “*ḥakama*”, and “*al-ḥukm*” is originally one root, meaning prevention. The first meaning of “*ḥukm*” is prevention from injustice, and it is said: “*the bridle (ḥakama) of the animal*” because it restrains it. It is also said: “*I judged and ruled,*” and “*I controlled the sword,*” meaning when I grasped it firmly in my hand.

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- Surah Maryam, verse 16.
 - *Jami‘ al-Bayan fi Ta’wil al-Qur’an*, by Imam Abu Ja‘far al-Tabari, Vol. 18, p. 162, edited by: Ahmad Muhammad Shakir, Dar al-Risalah, 1st edition, 1420 AH.
 - Issued by Royal Decree No. (M/191) dated 29/09/1444 AH, published in the Official Gazette *Umm Al-Qura*, issue dated 01/10/1444 AH, corresponding to 19 June 2023 AD. Available at:
<https://www.uqn.gov.sa>
 - *Mu‘jam Maqayis al-Lughah*, previous reference, Vol. 2, p. 901. See also: *Lisan al-‘Arab*, previous reference, Vol. 12, p. 141.

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“And *al-ḥukm* (judgment) is derived from *al-ḥikmah* (wisdom).” It is also mentioned in *Lisan al-‘Arab*: “*ḥakamtu* the animal and restrained it,” and “*al-ḥakam* is the restrainer and controller of its mouth... and from this comes the expression ‘under the control’—when we discover something hidden, we attribute it to *ḥikmah* (wisdom).”

In the terminology of Islamic jurists, their definition is close to our subject. They said:

“It is the act of appointing a judge, accepted by both disputing parties, to decide their dispute and claims.”

In the terminology of legal jurists, it is defined as:

“Commercial arbitration: the submission of commercial disputes to bodies chosen by the disputing parties, whose decision constitutes a binding judgment.”

In the terminology of arbitration centers, it is defined as:

“An agreement to resolve disputes that have arisen or may arise between parties through arbitrators selected by them, based on their mutual consent, instead of resolving them through the competent judiciary.”

It has also been described as:

“An internationally recognized method for resolving disputes outside the judicial system of the state.”

36. Previous reference, Vol. 12, p. 91. See also: *Lisan al-‘Arab*, previous reference, Vol. 12, p. 143.

37. Previous reference, p. 91.

38. *Al-Qamus al-Fiqhi: Language and Terminology*, by Sa‘di Abu Jayb, p. 92, Dar al-Fikr, Damascus, 2nd edition, 1408 AH – 1988 AD.

39. *Dictionary of Law*, previous reference, p. 419.

40. Saudi Center for Commercial Arbitration – official website:

<https://www.sadr.org/ADRService-arbitration-arbitration-FAQs>

41. Cairo Regional Centre for International Commercial Arbitration – official website:

<https://crica.org/ar/arbitration>

It has also been defined as:

“A system through which disputes can be resolved, particularly commercial disputes between businesspersons, by means of ordinary individuals, instead of the judiciary.”

In the terminology of the Saudi Arbitration Law, it is closest to being defined as:

“The arbitral tribunal, which consists of one or more arbitrators, and which decides the dispute referred to arbitration.”

After explaining the meanings of the terms in the research title, and in line with the scope and issues of the study, I find it appropriate to define the term “*venue*” (maqarr) by considering the presumed meaning of the word—according to the researcher’s view—in place of the term “*place*”, as referred to in Article (28) of the Saudi Arbitration Law, for reasons that will be discussed later in the body of the research.

Accordingly, I state in defining the term “*venue*” linguistically: it has several meanings in the Arabic language. The closest meaning intended here is “*settlement or establishment*.” It is said: “qarra al-shay” (something settled), meaning it became stable. The root letters (qāf, rā’, rā’) indicate two correct original meanings: one refers to coolness, and the other refers to stability and settlement. It is said: “the eye became cool,” meaning it became comforted; and it is also said: “the place of settlement,” meaning where something becomes stable.

41. Sharjah International Commercial Arbitration Centre – official website:

<https://www.tahkeem.ae/ar/arbitration>

42. Issued by Royal Decree No. (M/34) dated 24/05/1433 AH, published in *Umm Al-Qura* (the official gazette) in Issue No. (4413), dated 18/07/1433 AH, corresponding to 08/06/2012 AD.

43. Article One.

44. *Mu‘jam Maqayis al-Lughah*, previous reference, Vol. 5, p. 7, root “qarra”. See also: *Lisan al-‘Arab*, previous reference, Vol. 7, p. 63, root “qarra”.

45. *Mukhtar al-Sihah*, by Zayn al-Din Abu Abdullah Muhammad ibn Abi Bakr al-Razi, edited by: Yusuf al-Shaykh Muhammad, Al-Maktabah Al-‘Asriyyah – Al-Dar Al-Namudhajiyyah, Beirut, 5th edition, 1420 AH – 1999 AD.

It is also said: “the day of settlement (qarr) is the day when people settle in Mina, and that is the day after the Day of Sacrifice.”

The closest meaning to what we intend, based on their usage, is their statement: “al-qarr (with a dammah) means stability and settlement in a place.” It is said: “he settled in the place” (qarr bi al-makān), with kasrah; and it is also said with fathah: “qarra, yaqarru, qarāran, qarrūrā,” meaning he remained and became stable in a place, and the latter form is more common and stronger.

As for defining the term “venue” (*maqarr*) in the terminology of Islamic jurisprudence: after research and review, I found that the technical definition revolves around the meaning of “stability” or “settlement,” which is one of the linguistic derivations of the term. It was also found that jurists use the term “*qarār*” (stability) with several meanings, including:

1. Land, which does not depart from the linguistic meaning.
2. Stability and non-separation.
3. When used in a possessive sense: “right of stability” (ḥaqq al-qarār), meaning the right to benefit from a leased property and remain in it without eviction unless due to fault—i.e., the right to retain the property.

As for defining the term “venue” (*maqarr*) in the terminology of legal jurisprudence or regulations: after research, I did not find an independent definition for this term. Rather, it appears only in conjunction with another term in legal and regulatory usage—for example, what is mentioned in Articles (37) and (38) of the Law of Pleadings before Sharia Courts.

44. *Mu‘jam Maqayis al-Lughah*, previous reference, Vol. 5, p. 7, root “qarra”. See also: *Lisan al-‘Arab*, previous reference, Vol. 12.

45. *Mukhtar al-Sihah*, previous reference, Vol. 1, p. 25, root “qarra”.

46. *Mu‘jam Maqayis al-Lughah*, previous reference, Vol. 5, p. 8, root “qarra”. See also: *Mukhtar al-Sihah*, previous reference, p. 250, root “qarra”.

47. *Lisan al-‘Arab*, previous reference, Vol. 12, p. 84, root “qarra”. See also: *Mukhtar al-Sihah*, previous reference, p. 250, root “qarra”.

48. See: *Kuwaiti Fiqh Encyclopedia*, previous reference, Vol. 33, p. 76.

49. Issued by Royal Decree No. (M/1) dated 22/01/1435 AH, published in *Umm Al-Qura* (the official gazette), Issue dated 01/02/1435 AH, corresponding to 06 December 2013 AD.

Among the evidence is the provision stating: “A lawsuit shall be filed against government entities before the court within whose jurisdiction their headquarters (main office) is located.” This indicates the meaning of *place*.

In examining the definition of the *venue of arbitration* as a composite term in laws and regulations, I found a definition in the Jordanian Arbitration Law, in Article (2), which states:

“Venue of arbitration: the country agreed upon by the parties to be the seat of arbitration, or the country whose arbitration law the parties have agreed to apply to the arbitration procedures, or the country determined by the arbitral tribunal as the seat of arbitration in the absence of an agreement.”

It is also mentioned in legal jurisprudence that the *venue of arbitration* means: “the legal place of arbitration, through which the applicable law is determined, and through which the competent court is also identified.”

It has also been defined as:

“The geographical location in which arbitration is legally considered to have taken place, and where an arbitral award is deemed to have been issued, even if some arbitration procedures were conducted elsewhere.”

Accordingly, there is a distinction between the concept of *venue of arbitration* and *place of arbitration*. The *place of arbitration* refers to the physical location where arbitration sessions are held, and where it is possible for sessions to be conducted in different physical locations, whereas the *venue of arbitration* remains a single legal location that does not change.

50. Issued under No. 3 for the year 2001.

51. See: *Place of Arbitration and Its Legal Effects*, by Dr. Bandar Khalid Al-Dibyan, p. 26, published in the Journal of the College of Law, Taibah University, Vol. 1, Issue 1, June 2022.

52. *The Importance of the Place of Arbitration in Controlling Arbitration*, by Louis ‘Abd al-Baqi, p. 339, published in the Journal of Administrative Studies, Issue 40, Special Issue on Judiciary and Arbitration, 2020.

53. See: *Place of Arbitration and Its Legal Effects*, previous reference, p. 25. Quoted from: *A Guide to Egyptian Judiciary*.

Based on the above, it can be said that the intended meaning of the research title is: “clarifying the aspects of defect in the regulatory drafting of the venue and place of arbitration, in a manner that aligns with the meaning of the regulatory provision governing the subject of the study, and what is intended by the term ‘system’ in the Arbitration Law.”

After defining the intended meanings of the terms forming the subject and title of the research, we now move to explaining the types of defects in the drafting of the regulatory provision governing the research topic.

First Section: Types of Defects in Drafting the Place of Arbitration

Introduction and Division:

In this section, I will present the forms and types of defects in drafting this regulatory provision, which is the subject of the study. As previously mentioned, the provision under study contains flawed drafting, indicated by ambiguity, lack of clarity in meaning, variation in drafting among similar provisions in English-language laws—as will be detailed later—and differences in interpretation among commentators on the Saudi Arbitration Law—as will also be explained later.

The aspect of defect in drafting this provision lies in the use of the term “*place*” (makān), which carries two different meanings:

The first meaning: the legal place of arbitration, through which the applicable law is determined and the competent court is identified.

The second meaning: the physical place where arbitration sessions are held, which may vary and take place in different locations—as previously mentioned.

To identify the aspects of defect in the use of the term “*place*” within this provision, I will examine its occurrences in the text of the provision and explain them through the types of defects in its regulatory drafting, analyzing and dividing them accordingly.

First Requirement: discusses the first defect in drafting this provision, which is **ambiguity**.

Second Requirement: discusses the second defect in drafting this provision, which is **contradiction**.

First Requirement: Defect of Ambiguity

Legal scholars discuss the defect of ambiguity in regulatory drafting, and by it they mean that the intended meaning of the legislative text is unclear, and that it may carry more than one meaning.

In legal jurisprudence, other terms are also used for the defect of ambiguity, such as: obscurity and confusion.

A question may arise here: does ambiguity exist in the drafting of the regulatory provision under study, where the term “*place*” (makān) is used in a single provision with two different meanings—as previously explained—either unintentionally due to oversight, or without the drafter intending both meanings, or was it deliberate?

The answer to this question is that there are legal scholars who believe that ambiguity generally exists in legal texts, and that it may occur unintentionally by the drafter in some cases, and may be intentional in other cases. They argue that the presence of ambiguity in drafting may be intentional, especially when the drafter does not wish to reveal the precise legal meaning of certain terms.

An example of intentional ambiguity in regulatory drafting is what is found in the Personal Status Law.

54. See: *Defects of Legislative Drafting and Ways to Avoid Them*, previous reference, p. 24.

55. See: previous reference, p. 24.

56. See: previous reference, p. 25.

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Al-‘Arini mentioned in one of his works the term “*ijtimā’*” (cohabitation/meeting), and by it he meant intimacy; and the word “*ijtimā’*” in this provision may carry a known meaning: meeting in one sitting, and meeting in the marital bed—i.e., intimacy.

Through the researcher’s review, it appears that the opinions of Islamic jurists are among the closest terminologies that convey the meaning of ambiguity, for the purpose of comparison between them and ambiguity in the legislative text. The researcher found in the books of legal theory (usul al-fiqh) a term close in meaning to ambiguity, which is the term “*al-muḥmal*” (the unspecified/indeterminate term), defined as:

“That which does not indicate one of two possible meanings more than the other in relation to it.”

And in another formulation of the definition:

“In relation to it,” meaning with respect to the term itself. The concept of *al-muḥmal* thus corresponds to the notion of ambiguity.

57. Issued under No. 188, dated 19/12/1959.

58. Paragraph (6) of Article (43) of the Iraqi Personal Status Law, issued under No. 188, dated 19/12/1959, provides:

“A wife may request separation upon the occurrence of one of the following reasons:

First: if, after the contract, she finds that her husband is impotent or afflicted with a condition that prevents marital relations with her without harm... provided that if the court finds, after medical examination, that the condition is curable, it shall grant the husband a period for treatment, and if he refuses or the wife refuses cohabitation with him, or if the condition is incurable, the court shall grant the wife the right to request separation, unless she accepts to remain with him.”

It also states: “If the wife files for divorce through the competent court, and the husband objects, the judge may issue a ruling for separation.” Published on the website: <https://iraqi-alamal.org/>

59. *Defects of Legislative Drafting and Ways to Avoid Them*, previous reference, p. 25.

60. This is what the researcher concluded regarding the defects of legislative drafting and ways to avoid them, previous reference, p. 25.

61. *Al-Ihkam fi Usul al-Ahkam*, by Ali ibn Abi Ali al-Amidi, Vol. 3, p. 9, edited by: Abdul Razzaq Afifi, Islamic Office, Beirut–Damascus.

See also: *Usul al-Fiqh alladhi la yasa‘ al-faqih jahluhu*, by Dr. Iyad bin Nami Al-Sulami, p. 369, Dar al-Tadmuriyyah, Riyadh, 1st edition, 1426 AH – 2005 AD.

62. See: *Usul al-Fiqh alladhi la yasa‘ al-faqih jahluhu*, previous reference, p. 369.

The term *al-muḥmal* (the unspecified/indeterminate) applies to two possible meanings in the sentence that is the subject of the research, namely: *place of arbitration* (makān al-taḥkīm). The term *place* indicates two meanings: the physical place and the legal place, as previously explained. Therefore, the word *place* has come to indicate one of two meanings without preference for either, as long as it remains in this state. Based on what is established in the principles of jurisprudence, it must be clarified. However, the reality of the regulatory provision using the term *place* has not yet been clarified until now.

In comparing the researcher's perspective—regarding the *muḥmal* in the Sharia text—with ambiguity in the judicial text that is the subject of the research, it appears from one aspect that both involve the meaning being uncertain between more than one interpretation, without clarification. The researcher found that scholars of *usul al-fiqh* have established that the *muḥmal* exists in any Sharia text imposing an obligation, and that all ambiguous texts in the Sharia must be clarified.

An example of this in Sharia texts is the verse: “*And give its due right on the day of its harvest*” (Qur'an). This text came with ambiguity regarding the term “*its due right*”, as there is no specific clarification in the text. Scholars have differed regarding the correct interpretation of this term: some held that it refers to *zakat* in a specified amount, while others said that it refers to general charity without specifying an amount.

However, they all agreed that what is meant by “its due right” is something that the obligated person must give from his wealth as a duty owed to Allah.

62. See: previous reference, p. 369.

63. Surah Al-An'am, verse 141.

64. See: previous reference, p. 397.

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Some Islamic jurists held that the *muḥmal* (unspecified term) is that which has not been clarified, and it is called *mutashābih* (ambiguous). Among its examples is the verse: “... ”

As for the recurrence of the term “*place*” (*makān*) with more than one meaning in the regulatory provision under study, the situation of ambiguity remains, as the provision still retains its ambiguity and has not been amended, and its meaning has not been determined to a single interpretation in the legislative text until now.

After that, a question may arise: what are the causes that lead to ambiguity in legislative texts?

The answer is as follows: the most prominent causes of ambiguity in legislative texts are:

First cause: lexical ambiguity (polysemy).

This means that a word may carry two or more meanings, with those meanings being equal, and the legislative text does not provide a clear indication of which meaning is intended.

An example cited by scholars of *usul al-fiqh* is the word “*al-qurū’*” in the verse: “*And divorced women shall wait for three periods (qurū’).*” The word *qurū’* here has two possible meanings: menstruation and purity, and the text does not specify which meaning is intended.

65. Surah Al-Baqarah, verse 1.

66. See: previous reference, p. 397.

67. Surah Al-Baqarah, verse 228.

68. See: *Al-Ihkam fi Usul al-Ahkam*, previous reference, Vol. 3, p. 5. See also: *Usul al-Fiqh alladhi la yasa’ al-faqih jahluhu*, previous reference, p. 398.

Second cause: frequent use of metaphor and its prevalence.

What is meant by this cause is that a word has a literal meaning, and the same word is also used in a figurative meaning that differs from the literal meaning. Moreover, the figurative meaning may become as common as the literal meaning in usage. Scholars of *usul al-fiqh* give as an example the word “eye” (*‘ayn*): its literal meaning is the organ that sees, while its figurative meaning refers to a spy. The figurative meaning has become widely used to the extent that it equals the literal meaning in usage. Accordingly, when the term “eye” appears in a legal text, it may be interpreted as either the physical eye or the spy.

Third cause: generality or unrestricted wording.

This refers to a situation where the context in which the word appears does not allow it to be limited to a specific meaning, and thus it remains broad and lacks specification. Scholars of *usul al-fiqh* cite as an example texts that command prayer before the details of its form were clarified.

The majority of scholars of *usul al-fiqh* hold that the *muḥmal* (ambiguous/unspecified term) is of three types based on the clarity of its meaning:

1. A text that indicates a clear meaning.
2. A text whose meaning is unclear and requires clarification.
3. A text that remains general without specification.

69. See: *Al-Ihkam fī Usul al-Ahkam*, previous reference, Vol. 3, p. 9. See also: *Usul al-Fiqh alladhi la yasa‘ al-faqih jahluhu*, previous reference, p. 398.

70. See: *Al-Ihkam fī Usul al-Ahkam*, previous reference, Vol. 3, p. 11. See also: *Usul al-Fiqh alladhi la yasa‘ al-faqih jahluhu*, previous reference, p. 399.

71. See: previous reference, p. 390. See also: *Al-Ibāḥ fī Sharh al-Minhāj*, by Taqī al-Dīn al-Subkī and his son Taj al-Dīn Abdul Wahhab, Vol. 2, p. 215, Dar al-Kutub al-‘Ilmiyyah, Beirut, 1st edition, 1415 AH – 1995 AD.

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“...its indication does not allow for interpretation,” and this is the apparent (ẓāhir). The second category is: “what may carry two meanings, one of which is more apparent than the other.”

As for the scholars of the Hanafi school, they divided terms—based on the clarity of their indication and the obscurity of their meaning—into: clear indication and hidden indication. They further divided hidden indication into four types: the hidden (khafī), the problematic (mushkil), the ambiguous (mujmal), and the allegorical (mutashābih).

The hidden (khafī), according to them, is: “a term whose intended meaning is concealed due to an external factor in the formulation that prevents the indication of the intended meaning except through investigation.”

The problematic (mushkil) is: “a term whose intended meaning is unclear because it resembles other forms, and its meaning cannot be known except through evidence that distinguishes it from other similar forms.”

Among the Hanafis, the problematic term is considered equivalent to what the majority of usul scholars call the *mujmal* (ambiguous). According to the researcher, this concept is the closest to the notion of ambiguity in regulatory drafting.

An example of this is found in the verse: “*Divorced women shall wait for three periods (qurū’)*.” They said: the word *qurū’* here carries two possible meanings: menstruation and purity. Thus, the term is considered problematic before clarification, not merely ambiguous.

72. *Usul al-Fiqh alladhi la yasa’ al-faqih jahluhu*, previous reference, p. 390. See also: *Al-Ibāj fī Sharh al-Minhāj*, previous reference, Vol. 2, p. 215.

73. *Usul al-Fiqh alladhi la yasa’ al-faqih jahluhu*, previous reference, p. 391. See also: *Al-Ibāj fī Sharh al-Minhāj*, previous reference, Vol. 2, p. 215.

74. See: *Usul al-Fiqh alladhi la yasa’ al-faqih jahluhu*, previous reference, p. 404. See also: *Al-Taqrir wa al-Tahbir*, by Ibn Amir Haj, and it is said that the hidden meaning (khafī) appears through investigation, Dar al-Kutub al-‘Ilmiyyah, 1st edition, 1983 AD.

75. *Usul al-Sarakhsi*, by Muhammad ibn Ahmad Shams al-A’immah al-Sarakhsi, Vol. 2, p. 167, Dar al-Ma’rifah, Beirut. See also: *Usul al-Fiqh alladhi la yasa’ al-faqih jahluhu*, previous reference, p. 403.

76. See also: *Usul al-Sarakhsi*, previous reference, Vol. 2, p. 168; and *Usul al-Fiqh alladhi la yasa’ al-faqih jahluhu*, previous reference, p. 404.

77. Surah Al-Baqarah, verse 228.

The problematic aspect (ishkāl) returns to the fact that the word *qurū'* has multiple meanings and is not formulated in a way that clearly indicates one specific meaning over the others. It is a term that appears in the Sharia without a defined meaning being explicitly assigned to it.

Therefore, determining its intended meaning requires contextual clues or external evidence that clarifies which meaning is intended.

The *mujmal* (ambiguous/unspecified term), according to them, is: “a word whose intended meaning cannot be understood except through interpretation and clarification from another source.”

And the *mutashābih* (ambiguous in a broader sense) is defined by them as: “a term whose intended meaning is unclear, and no expectation remains of knowing its meaning.”

Discussion of ambiguity in legal jurisprudence does not differ from what has been mentioned by scholars of *usul al-fiqh* in explaining the concept of *mujmal*. An example of this is when the term “insurance” appeared in the Civil Law of Bahrain.

78. See: *Al-Wajiz fi Usul al-Fiqh al-Islami*, by Dr. Muhammad Mustafa Al-Zuhayli, Vol. 2, p. 113, Dar al-Khayr, Damascus, 2nd edition, 1423 AH – 2002 AD. See also: *Ilm Usul al-Fiqh* and *A Summary of the History of Legislation*, by Dr. Abdullah Suleiman Al-Khalaf, p. 112, Al-Madani Library, Saudi Arabia. See also: details of this issue in: *The Nature of Legislative Drafting and Its Components*, previous reference, pp. 156–157.

79. *Usul al-Fiqh alladhi la yasa' al-faqih jahluhu*, previous reference, p. 40. See also: *Al-Taqrir wa al-Tahbir*, previous reference, Vol. 1, p. 161.

80. *Usul al-Fiqh alladhi la yasa' al-faqih jahluhu*, previous reference, p. 40. See also: *Al-Taqrir wa al-Tahbir*, previous reference, Vol. 1, p. 161.

81. It is possible to compare the concept of ambiguity in regulatory drafting in Islamic jurisprudence with what was mentioned by scholars of *usul al-fiqh* in the discussion of linguistic indication, particularly in the aspect of shared meaning (*ishtirāk*), as mentioned by Dr. Al-Zuhayli in the margin on p. 24 of the previous reference. However, the researcher does not consider shared terms to be the best example for explaining ambiguity in regulatory drafting.

82. Issued by Law No. (1) of 2001, under a decree in the Kingdom of Bahrain.

The following provision states:

“A guarantor’s liability is to cover what the debtor fails to pay from the secured obligations.”

This sentence has been classified by some as ambiguous due to the presence of multiple possible interpretations without a clear preference for one over the others. The researcher adopts the view that it falls under more than one category of ambiguity, including the problematic (*mushkil*) and the hidden (*khafi*). Such ambiguity requires clarification from the legislator who issued the provision. Indeed, the legislator provided clarification, stating:

“By guarantees is meant all insurance provided to secure a debt, even if it is established after the guarantee, as well as any security established as a guarantee under this law.”

Applying this legal and jurisprudential analysis to the term “*place*” (*makān*) in the regulatory provision under study, we find that ambiguity arises in the use of this term in four instances within the provision. This ambiguity stems from the lack of clarity regarding the intended meaning of “*place*” in the legislative text, as it carries more than one possible meaning.

When examining these four instances in the regulatory provision:

- The first instance states: “The parties may agree on the place of arbitration.”
- The second instance states: “If no agreement exists, the arbitral tribunal shall determine the place of arbitration.”
- The third instance states: “Taking into account the circumstances of the case...”

These examples demonstrate how the term “*place*” is used in multiple contexts, contributing to ambiguity in interpretation.

83. Article (721) of the Bahraini Civil Law states: “A guarantor’s liability is to cover what the debtor fails to pay from the secured obligations.”

“By guarantees is meant all insurance provided to secure a debt, even if it is established after the guarantee, as well as any security established as a guarantee under this law,” published on the official eGovernment portal of Bahrain:

<https://www.bahrain.bh>

84. Previously mentioned text and its source.

85. See: *The Nature of Legislative Drafting and Its Components*, previous reference, p. 154. See also: *Principles of Legislative Drafting*, by Dr. Khalid Jamal Ahmad Hassan, pp. 51–52, published in the Legal Journal, Issue Four.

“...for its parties), and the fourth provision states: “This does not prevent the arbitral tribunal from meeting in any place it deems appropriate.”

The aspect of ambiguity lies in the fact that this term, in all four instances, does not clearly indicate whether the intended meaning is the legal place or the physical place, both of which carry the same designation, unlike what will be clarified later in explaining this regulatory provision. Understanding this depends on an external factor, which can be determined by specialists.

This is what is referred to in *usul al-fiqh* by the majority as *mujmal* (ambiguous), and by the Hanafi scholars as *mushkil* (problematic), which is a type of hidden wording.

However, the regulatory text is not limited to this defect alone; rather, it also involves another defect, which is contradiction, as explained below:

Second Requirement: Defect of Contradiction

The defect of contradiction in the regulatory provision under study arises from the ruling in the second instance, which states:

“If there is no agreement, the arbitral tribunal shall determine the place of arbitration, taking into account the circumstances of the case and the suitability of the place for its parties.”

This ruling conflicts with the fourth instance, which states:

“This does not prevent the arbitral tribunal from meeting in any place it deems appropriate for deliberation among its members.”

The contradiction lies in the fact that if there is an agreement between the parties on the place of arbitration, the second provision implies that the authority to determine the place rests with that agreement, whereas the fourth provision grants the arbitral tribunal the authority to meet in any place it chooses. This creates an apparent conflict regarding the determination of the place.

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The first provision assigns the arbitral tribunal the authority to determine the place of arbitration, while the second suggests that no such determination is necessary and that the tribunal may meet in any place.

Contradiction may occur within a single regulatory provision. Therefore, it can be said that contradiction refers to the presence of conflicting rulings within one or more regulatory provisions, in a manner that makes it difficult to reconcile between them.

The researcher considers that this form of contradiction falls under *apparent contradiction*. Apparent contradiction, as understood by specialists, occurs when there are two different rulings that apply to situations that do not overlap.

In the context of the provision under study:

- The second instance refers to the *legal place of arbitration* (i.e., the juridical seat that determines the applicable law).
- The fourth instance refers to the *physical place of arbitration* (i.e., where arbitration sessions are actually held, whether in a private office, arbitration center, or through electronic means).

Thus, alongside apparent contradiction, there exists another type known as *real contradiction*, which refers to a situation where two rulings conflict in the same context and conditions. However, the researcher concludes that this type of contradiction does not apply to the subject of this study.

86. See: *Defects of Legislative Drafting and Ways to Avoid Them*, previous reference, p. 25.

87. See: previous reference, p. 25.

88. See: previous reference, pp. 25–26.

A question may arise here: does the contradiction in drafting the regulatory provision under study result from an oversight by the drafter, or was it intentional?

The answer is as follows: there are legal scholars who believe that ambiguity in legal texts generally does not arise from a single cause; rather, it may result from oversight, and it may also result from haste in drafting the legal provision. In some cases, contradiction may also be intentional. However, the researcher considers that the latter cause is unlikely in the provision under study, as it is more appropriate to attribute such issues to ambiguity rather than deliberate contradiction.

This is because one of the causes of ambiguity in legal texts is that the legislator intends to amend or replace a previous rule but does not do so clearly, which leads to confusion. Therefore, this cannot be considered a deliberate cause applicable to the provision under study.

An example of this type of contradiction is found in the Iraqi Personal Status Law, which states:

“The judge may permit the marriage of one of the spouses if it is medically proven that the marriage does not harm the community, and that the personal interest of the other spouse does not prevent the marriage, and that the other spouse explicitly consents.”

The aspect of contradiction lies in the phrase “*one of the spouses*”, as it may be understood in more than one way. This suggests that the legal provision relates to the conditions under which a judge may permit marriage

89. See: previous reference, p. 26.

90. Previously mentioned source details.

91. Article (7), paragraph (2). This law is published on the previously mentioned website:

<https://iraqi-alamal.org/>

It is also cited in: *Defects of Legislative Drafting and Ways to Avoid Them*, previous reference, p. 26.

This second interpretation becomes clear when reading the source of the legal provision mentioned. It indicates that the legal provision sets the conditions under which a judge may permit marriage without regard to whether it is a second marriage. This interpretation becomes evident upon completing the reading of the legal provision, which outlines the conditions for permitting the marriage of a mentally ill person. These conditions include: the issuance of a medical report confirming that the marriage does not harm society, that it serves the personal interest of the individual, and that the other party explicitly consents. This latter meaning is the intended meaning of the legal provision.

A further question may arise: how was the regulatory rule in the provision under study established in this way? And can defects in legislative drafting occur due to flaws in its formation?

The answer is that specialists in legislative drafting discuss the formation and establishment of regulatory rules in general through two elements:

First element: Purpose (Objective).

This means that the drafter envisions the purpose or objective intended to be achieved through the regulatory provision, understands the reality to which it applies, and recognizes its influences and effects. From this, the idea of the regulatory rule emerges.

92. See: previous reference, p. 26.

93. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, by Dr. Abdullah Al-Zarqawi, pp. 20–22, Maktabat Al-Tawbah, 1st edition, 1439 AH – 2018 AD, Riyadh, Kingdom of Saudi Arabia.

Second Element: The Rule (Judgment).

By this, it is meant the result that is intended to be applied to the assumed situation. When determining this result, the nature of the assumed situation and its effects must be taken into account, and the rules that achieve the objective of regulating that situation must be established. For example, if the objective of the regulatory rule is to encourage a certain behavior, then a rule must be set that motivates its implementation.

The relationship between these two elements is a necessary and reciprocal one. Whenever the objective is achieved, the rule follows. The regulatory rule loses its effectiveness if there is a defect in balancing the relationship between these two elements.

The researcher concludes that the regulatory rule in the provision under study is well-structured; however, the defect in legislative drafting lies in the use of the term “*place*” (makān). This defect arose because the element of purpose did not fully account for the conceptual distinction between the meanings of the term. The term “*place*” carries two meanings:

- A physical place where sessions are held.
- A legal place that determines the applicable law and the competent court.

This overlap in meaning led to ambiguity in the regulatory provision.

94. *Principles of Legislative Drafting*, by Dr. Zughayr bin Muhammad Al-Saghir, p. 48, Dar Al-Osrah, Riyadh, 1st edition, 1438 AH – 2017 AD.

95. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, p. 22. See also: *Principles of Legislative Drafting*, previous reference, p. 48.

96. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, p. 22. See also: *Principles of Legislative Drafting*, previous reference, p. 48.

Second Section: Effects of Defects in Drafting the Place of Arbitration

Introduction and Division:

The defects in drafting the regulatory provision under study—explained in the previous section—result in an effect on the interpretation of the term “*place*” (makān) in its four instances within the provision. This leads to differences among commentators on the Saudi Arbitration Law and has a clear practical impact on arbitration procedures.

Another effect includes direct practical consequences on the parties to the dispute and the arbitral tribunal, as well as its relationship to the application of the provisions of the regulatory rule under study.

The discussion of these two effects will be divided into two requirements as follows:

First Requirement: Dispute over the Interpretation of the Term “Place of Arbitration”

The defects in drafting the regulatory provision under study—particularly the term “*place*” in its four instances—have led to disagreement among commentators on the Saudi Arbitration Law. This has resulted in a divergence of views regarding the interpretation of the term “*place*” in the regulatory provision.

First: There is disagreement among commentators on the Saudi Arbitration Law regarding the meaning of the term “*place*” mentioned in the provision. In its four instances, it does not go beyond two meanings:

The first meaning:

It refers to the legal place of arbitration, through which the applicable law is determined and the competent court is identified.

The second meaning:

It refers to the physical place where arbitration sessions are held, and where sessions may be conducted in different physical locations.

Accordingly, some commentators on the Saudi Arbitration Law have interpreted the term “*place*” in all four instances within the regulatory provision as referring to the physical place where arbitration sessions are held, which may take place in different locations.

This view is supported by Dr. Abdullah Al-Jarīdan, who stated—while explaining the provision under study—that:

“Place of arbitration” refers to the venue where arbitration sessions are held and where the arbitral tribunal meets to conduct the dispute proceedings and deliberate on them. The provision confirms that the arbitral tribunal has discretionary authority—without restriction—to meet in any place it deems suitable for deliberation among its members, hearing witness statements or expert opinions, examining documents, or reviewing them.

Accordingly, the determination of the place where the arbitral tribunal meets is made as follows:

1. The place agreed upon by the parties. If the parties agree on a place of arbitration within or outside the Kingdom, that agreement prevails.
2. If no agreement exists between the parties on the place of arbitration, the arbitral tribunal determines the place of arbitration, taking into account:
 - a. The suitability of the place for the parties to the dispute.
 - b. The suitability of the place for the arbitral tribunal.

There is no need to replace the agreed or designated place with another, and this does not constitute a ground for annulment of the arbitral award as long as the parties attended and did not object to the location. Silence of the parties is considered implicit consent to the place.

This understanding is reflected in the interpretation of the Arbitration Law by Sheikh Abdullah Al-Jarīdan (*Explanation of the Arbitration Law*, Dar Al-Hadara, Riyadh, 1st edition, 1441 AH – p. 180–179).

Dr. Bandar Al-Dibyan also supports this view, stating:

“The place of arbitration” refers to the physical location where arbitration sessions are held. This is consistent with what is stated in Article (28) of the Saudi Arbitration Law, which allows arbitration sessions to be held in any city within or outside the Kingdom.

He further notes that when choosing the place of arbitration, consideration must be given to the circumstances of all parties involved.

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Other scholars have held the view that the term “*place*” (makān), and specifically the phrase “*place of arbitration*” as mentioned in its four instances in the regulatory provision under study, refers to the **legal place of arbitration**, through which the applicable law is determined and the competent court is identified.

The particularity of arbitration also relates to the place where the arbitral tribunal convenes and conducts procedures, as it is not limited to meeting in a single location. Rather, it may hold its sessions in different places, exercising the authority granted to it by the provision. This means that the arbitral tribunal may meet in any place it deems appropriate for deliberation among its members, hearing witness statements or expert opinions, examining documents, or reviewing them.

However, the claimant loses the advantage granted by the law in choosing the place of arbitration if the place is not suitable.

Those who support this view include Dr. Faisal Al-Fadhil, who stated—when explaining the provision under study—that:

“The place of arbitration is the place where the arbitral award is issued and where the arbitration is legally considered to have taken place, regardless of where the arbitration procedures were actually conducted. In other words, the place of arbitration is the legal place that determines the applicable law and the competent court.”

Accordingly, if the parties do not specify the place of arbitration, the arbitral tribunal selects the place, taking into account the circumstances of the case and the suitability of the place for the parties. It must also consider the legal environment of the chosen place to ensure it serves the interests of the parties. It is preferable that the place be close to the parties to facilitate their participation, close to witnesses to enable them to testify, and close to the location of the dispute if necessary.

It is also preferable that arbitration be conducted in a country where it is easy for arbitrators and witnesses to enter and where communication is available both domestically and internationally. It is advisable to avoid choosing a country that lacks well-established legal rules or whose laws are unfamiliar to arbitrators.

Additionally, it is recommended that the place of arbitration be in a country that is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

(Dr. Faisal Mansour Al-Fadhil, pp. 118–119, 1st edition, 1439 AH – 2018 AD, Dar Al-Kitab Al-Jami‘i, Riyadh.)

Secondly, commentators on the Arbitration Law have differed in interpreting the term “*place of arbitration*” in the provision stating:

“The parties to arbitration may agree on the place of arbitration within or outside the Kingdom; and if no agreement exists, the arbitral tribunal shall determine the place of arbitration, taking into account the circumstances of the case.”

They have also differed in interpreting the term “*place*” in the provision stating:

“This does not prevent the arbitral tribunal from meeting in any place it deems appropriate for deliberation among its members, hearing witness statements or expert opinions, or examining the subject matter of the dispute, or reviewing documents.”

These interpretations have led to two opinions:

First opinion:

The term “*place*” in this provision refers to the legal place of arbitration, through which the applicable law is determined and the competent court is identified.

This view is supported by Dr. Faisal Al-Fadhil.

Second opinion:

The term “*place*” refers to the physical place where arbitration sessions are held, and where sessions may be conducted in different physical locations.

This view is supported by Sheikh Abdullah Al-Jarīdan and Dr. Bandar Al-Dibyan.

98. *Al-Wasit fi Sharh Qanun al-Tahkim al-Saudi* (The Intermediate Commentary on the Saudi Arbitration Law), previous reference, pp. 118–119.

99. Member of the teaching staff at the College of Law, Dar Al-Uloom University, Riyadh (previously).

100. *Al-Tafhim fi Sharh Nizam al-Tahkim* (Understanding the Arbitration Law), previous reference, pp. 179–180.

101. Previous reference, p. 23.

102. Judge at the Court of Appeal in Riyadh (previously), and a member of a panel of senior scholars.

103. Assistant Professor of Law at the College of Sharia and Legal Studies, Islamic University of Madinah.

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The view adopted by the researcher is that neither of the two opinions outweighs the other. The correct interpretation is that the term “*place of arbitration*” in the first part of the regulatory provision under study—stated as:

“The parties to arbitration may agree on the place of arbitration within or outside the Kingdom; and if no agreement exists, the arbitral tribunal shall determine the place of arbitration, taking into account the circumstances of the case”—refers to the **legal place of arbitration**, through which the applicable law is determined and the competent court is identified.

As for the term “*place*” in the latter part of the same provision—stated as:

“This does not prevent the arbitral tribunal from meeting in any place it deems appropriate for deliberation among its members, hearing witness statements or expert opinions, or examining the subject matter of the dispute, or reviewing documents”—it refers to the **physical place** where arbitration sessions are held, and where such sessions may take place in different physical locations.

The reasons for adopting this interpretation are as follows:

First reason:

The corresponding provision in the UNCITRAL Model Law on International Commercial Arbitration is drafted in English, where two different terms are used. In the first part of the provision, the term “*Place*” is used, which the researcher considers to refer to the legal place of arbitration. In the latter part of the provision, the term “*Location*” is used, which the researcher interprets as referring to the physical place where arbitration sessions are held.

This distinction between *Place* and *Location* supports differentiating between the legal seat of arbitration and the physical venue of hearings.

103. Issued by the United Nations Commission on International Trade Law (UNCITRAL), Vienna – April 2011. Website: <https://uncitral.un.org>

104. UNCITRAL Arbitration Rules (Place of Arbitration).

The legal place of arbitration and the physical place of arbitration are expressed using two different terms, which indicates a difference in meaning between them. Each term carries a distinct meaning and implication. The term (*Place*), in its context, indicates the legal place of arbitration, whereas the term (*Location*) indicates the physical place where arbitration sessions are held.

Second reason:

The corresponding provision in the 2021 Arbitration Rules issued by the International Chamber of Commerce (ICC) in Paris uses, in its English version (Article 18), the term “*Place*” in the first part of the provision. The researcher interprets this as referring to the legal place of arbitration.

Article 18

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal, having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.
3. Issued by the International Chamber of Commerce (ICC) International Court of Arbitration – International Centre for ADR, Paris, France, January 2021. Website:
<https://iccwbo.org>

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As for the term “*place*” in the latter part of the regulatory provision under study, the researcher concludes that it refers to the **physical place where arbitration sessions are held**, expressed by the term (*Location*).

As mentioned earlier, the distinction in terminology between the legal place of arbitration and the physical place is not merely linguistic, but reflects a difference in meaning. Each term carries a distinct implication. The context and usage of the term (*Place*) indicate the legal seat of arbitration, whereas the context and usage of (*Location*) indicate the physical place where arbitration sessions are conducted.

Third reason:

Some laws explicitly distinguish between the *seat of arbitration* and the *place of arbitration*, treating them as separate concepts. Examples include the UK Arbitration Act and the Jordanian Arbitration Law.

Article 18 – Place of Arbitration (Arbitration Rules 2021)

1. The place of the arbitration shall be fixed by the Court, unless agreed upon by the parties.
2. The arbitral tribunal may, after consulting the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties.
3. The arbitral tribunal may deliberate at any location it considers appropriate.

107. See: *The Importance of the Place of Arbitration in Controlling Arbitration*, previous reference, p. 339.

108. In Article (2) mentioned above, its text has already been cited.

Fourth reason: The Arbitration Rules issued by the Saudi Center for Commercial Arbitration have been drafted clearly—according to the researcher—in contrast to the regulatory provision under study. They distinguish between the *seat of arbitration* (the legal place) and the *place of arbitration sessions* (the physical place). The term “*seat of arbitration*” is used to refer to the legal place, while the term “*place of arbitration sessions*” is used to refer to the physical location, as stated: “The arbitral tribunal may meet in any place it deems appropriate for hearings or procedural meetings.”

Opponents of this view argue that the corresponding provision in the UNCITRAL Model Law on International Commercial Arbitration does not make this distinction, and that the original language of the text does not explicitly differentiate between the two meanings.

109. Issued by the Saudi Center for Commercial Arbitration (SCCA), effective from 11 Shawwal 1444 AH, corresponding to May 2023.

110. The text of this provision (Article 22: Place of Arbitration):

“If the parties do not agree on the place of arbitration within the period specified by the administrative body, the Board of Directors shall determine the place of arbitration in principle, while the arbitral tribunal shall determine the place of arbitration definitively within 30 days from the date of its formation. When deciding on the place of arbitration, both the Board of Directors and the arbitral tribunal shall take into account the circumstances of the case and the suitability of the place for the parties.

Unless otherwise agreed by the parties, the arbitral tribunal may, after consulting the parties, hold hearings or sessions in any place it deems appropriate, whether for hearings or procedural meetings. The arbitral tribunal may also deliberate in any place it deems appropriate.

The arbitral award shall be deemed to have been issued at the place of arbitration, regardless of the location where the award was actually signed (including electronic signing).”

111. Issued by the United Nations Commission on International Trade Law (UNCITRAL), Vienna – July 2006. Website: <https://uncitral.un.org>

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In the English version, both the first and second parts of the corresponding provision—relating to the regulatory provision under study—use the same term (*Place*) to refer to both the legal place of arbitration and the physical place where arbitration sessions are held. This appears in Article 20 of that law.

This can be answered in two ways:

First: The text of Article 20 of the UNCITRAL Model Law on International Commercial Arbitration differs in its expression of the physical place from what is stated in the UNCITRAL Arbitration Rules and the ICC Arbitration Rules (2021) issued by the International Chamber of Commerce in Paris. Therefore, this drafting supports the distinction previously mentioned in the second point.

UNCITRAL Model Law on International Commercial Arbitration

Article 20 – Place of Arbitration

1. The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties.
2. Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Second: The lack of independence of meaning—if we assume that meanings correspond exactly to the terms—leads to the absence of benefit in the provision contained in the first part of the article under study, which grants the arbitral tribunal the authority to determine the place of arbitration. The reasoning is that as long as the place of arbitration can be changed according to what the arbitral tribunal deems appropriate—as stated in the second part of the same provision—then what is the benefit of granting this authority in the first part?

This disagreement among commentators on the Arbitration Law—according to the researcher—stems from the meaning of the term “*place*” in the provision under study. The researcher concludes that the issue arises from defects in legislative drafting, as explained in the previous section.

The researcher believes that these defects originated from the reliance, in drafting the Saudi Arbitration Law, on sources that themselves contain similar drafting issues. For example, the UNCITRAL Model Law on International Commercial Arbitration uses a single term in its English version—“*Place*”—to refer to both meanings. Likewise, the Arabic version of the Model Law also uses the same term (place) in all instances.

This demonstrates that the drafting approach adopted in the Saudi Arbitration Law follows similar linguistic patterns found in international legal texts, which may contribute to ambiguity.

113. The text of this provision in the UNCITRAL Model Law on International Commercial Arbitration is as follows (Article 20 – Place of Arbitration):

114. The parties are free to agree on the place of arbitration. If they do not agree, the arbitral tribunal shall determine this place, taking into account the circumstances of the case, including the convenience of the parties.

115. Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may meet at any place it deems appropriate for deliberation among its members, hearing witness statements or expert opinions, or inspecting goods or documents, unless the parties agree otherwise.

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Similarly, the 2021 Arbitration Rules issued by the International Chamber of Commerce (ICC) in Paris use the term (place) in the Arabic version across all instances of the corresponding provision.

Likewise, the Egyptian Arbitration Law also uses the term (place) in Article 28 in all instances.

The Jordanian Arbitration Law similarly uses the term (place) in Article 27 in all instances of the corresponding provision.

114. The text of this provision in the UNCITRAL Arbitration Rules is as follows (Article 18 – Place of Arbitration):

If the parties have not previously agreed on the place of arbitration, the arbitral tribunal shall determine the place of arbitration, taking into account the circumstances of the case. The arbitral tribunal may meet for deliberation in any place it considers appropriate. It may also meet in any place it deems appropriate for other purposes, including holding hearings, unless otherwise agreed by the parties.

115. The text of this provision in the 2021 Arbitration Rules issued by the International Chamber of Commerce (ICC) in Paris is as follows (Place of Arbitration):

The Court shall determine the place of arbitration unless the parties have agreed otherwise. The arbitral tribunal may hold hearings and meetings at any place it considers appropriate, after consulting the parties, unless they have agreed otherwise. The arbitral tribunal may also deliberate in any place it considers appropriate.

116. Issued by Law No. 27 of 1994, published in the Egyptian Arbitration Center (Cairo Regional Centre for International Commercial Arbitration) website:

<https://crica.org>

117. The text of the provision states:

“The parties to arbitration may agree on the place of arbitration in Egypt or outside it; if no agreement exists, the arbitral tribunal shall determine the place of arbitration, taking into account the circumstances of the case and the suitability of the place for the parties. This does not prejudice the arbitral tribunal’s authority to meet in any place it considers appropriate to conduct arbitration procedures, such as hearing the parties, witnesses, or experts, or examining documents or property, or carrying out deliberations among its members, or otherwise.”

118. The text of the provision states:

“If the parties do not agree on the place of arbitration within or outside the Kingdom, the arbitral tribunal shall determine the place of arbitration, taking into account the circumstances of the case and the suitability of the place for the parties. This does not prevent the arbitral tribunal from meeting in any place it considers appropriate to conduct any of the arbitration procedures.”

This disagreement among commentators on the Saudi Arbitration Law regarding the meaning of the term “*place*” in the provision under study has a clear effect on the legal consequences associated with both the *seat of arbitration* (the legal place) and the *place of arbitration sessions* (the physical place).

For example, with regard to determining the competent court: jurisdiction is determined based on the **seat of arbitration**, not the physical place where sessions are held. Therefore, the competent court of appeal does not consider requests that fall outside the jurisdiction of the seat of arbitration, even if such requests are submitted before a court of appeal located in a place where arbitration sessions were actually conducted.

This difference also affects the determination of the applicable law: the applicable legal system is determined based on the **seat of arbitration**, not the place where sessions are held. Consequently, the arbitration law of the country where the seat is located applies, unless the parties agree to apply a different procedural arbitration law.

This is in accordance with Article (2) of the Saudi Arbitration Law, which states that the provisions of the law apply to any arbitration conducted within the Kingdom, regardless of the legal relationship underlying the dispute. The law also applies to international commercial arbitration conducted abroad if the parties agree to subject it to the provisions of this law.

...such as hearing the parties to the dispute, witnesses, or experts, examining documents, inspecting goods or property, conducting deliberations among its members, or otherwise. The arbitral tribunal may also use modern means of communication to carry out any of the arbitration procedures.

119. See: *The Effects of the Seat of Arbitration and the Place of Arbitration Sessions*, previous reference, pp. 40–42. See also: *The Importance of the Place of Arbitration in Controlling Arbitration*, previous reference, pp. 268–269.

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In addition to the effect already discussed—caused by defects in legislative drafting of the provision under study—there is another effect related to the parties to the dispute and the arbitral tribunal, and its connection to the application of the regulatory provision. To elaborate on this second effect, I state the following:

Second Requirement: Disturbance in Interpretation, Discretion, and Application of Legal Rules

Specialists in legislative drafting emphasize the importance of precision in drafting legal texts, as well-crafted provisions lead to positive outcomes in society. The researcher concludes that when defects occur in drafting, their effects become numerous and varied. Among these effects are:

1. **Expanding the scope of judicial discretion** in interpreting the meaning of “*place*” in its four instances within the provision under study. Legal scholars argue that high-quality drafting reduces excessive judicial discretion, which is considered a potential source of inconsistency and misuse of legislative intent.
 2. **Lack of legal stability and consistency**, leading to confusion and variation in interpreting the term “*place*” in the four instances within the provision. This also results in differences in how these interpretations are applied in practice.
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120. See this effect in general: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, p. 23. See also this effect in general: *The Nature of Legislative Drafting and Its Components*, previous reference, p. 104. See also this effect in general: *Principles of Legislative Drafting*, previous reference, p. 64.

121. See this effect in general: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, p. 23. See also this effect in general: *Quality Standards of Legislative Drafting*, previous reference, p. 139. See also this effect in general: *Principles of Legislative Drafting*, previous reference, p. 64.

3. Creating differences in understanding the intended meaning of the term under study in its four instances mentioned earlier, which affects its application in terms of equality and reflects on achieving justice in applying the provision under study.
 4. Creating contradiction in the phrase “*place of arbitration*” in its four instances mentioned earlier, leading to confusion and lack of consistency in the application of the regulatory provision under study.
 5. Difficulty in achieving a unified understanding and interpretation of the term “*place*” in its four instances mentioned earlier, as its intended meaning does not become clear except after conducting research outside the regulatory provision itself to reach the correct interpretation.
 6. Difficulty in translating the term “*place of arbitration*”, especially in its first three instances mentioned earlier. This has indeed occurred in practice, as the text lacks precision in its wording and structure, resulting in confusion and differences in interpretation, which inevitably affects the accuracy of translation.
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122. See this effect in general: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, p. 23. See also this effect in general: *Quality Standards of Legislative Drafting*, previous reference, p. 139. See also this effect in general: *Principles of Legislative Drafting*, previous reference, pp. 63–64.

123. See this effect in general: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, p. 23. See also this effect in general: *Quality Standards of Legislative Drafting*, previous reference, p. 139. See also this effect in general: *Principles of Legislative Drafting*, previous reference, pp. 63–64.

124. See this effect in general: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, p. 23. See also this effect in general: *Quality Standards of Legislative Drafting*, previous reference, p. 139. See also this effect in general: *Principles of Legislative Drafting*, previous reference, pp. 63–64.

Accurate translation into foreign languages of this phrase would have been achieved if, in its first three instances, it had been expressed using the term “*seat*” instead of “*place*”, which would have clarified the meaning in translation.

7. Difficulty in fully understanding the effects and implications of the regulatory text under study—previously mentioned in relation to the term “*place*” in its four instances—when applying it correctly by the parties to the dispute, arbitral tribunals, subject-matter judges, enforcement judges, and others.
 8. Inability to accommodate different and evolving cases and situations, which indicates the need to amend the regulatory provision under study.
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125. See this effect in general: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, p. 23.

126. See this effect in general: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, p. 24. See also this effect in general: *Quality Standards of Legislative Drafting*, previous reference, p. 139. See also this effect in general: *Principles of Legislative Drafting*, previous reference, pp. 63–64.

127. See this effect in general: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, p. 24.

Third Section: Methods for Addressing Defects in Drafting the Place of Arbitration

Introduction and Division:

Researchers in legislative drafting address various issues. Regarding the issue of addressing defects in drafting legal provisions, some adopt the method of presenting direct solutions to remedy these drafting defects after they occur, while others adopt the method of establishing standards that prevent the occurrence of these defects before the enactment of the regulation. There are also those who combine both approaches in addressing drafting defects.

Those who adopt the method of presenting direct solutions tend to list practical ways to correct drafting defects, whereas those who adopt the standards-based method focus on setting criteria for proper legislative drafting. Accordingly, this study divides the issue into preventive methods and remedial methods. These methods include training in sound drafting practices, preparing a legislative drafting guide to be used by legislative committees, and reviewing and auditing legal texts.

Those who follow the approach of setting standards for addressing drafting defects aim to establish criteria for drafting legal rules, and they divide these into three main sections:

First: General standards for the text, which include:

- Standards related to the wording of the text.
- Standards related to the users of the text.
- Standards related to the context of the text.

Second: Specific standards for the legal text, which include:

- Generality and abstraction.
- Regulation of behavior.
- Obligation and sanction.

Third: References and sources of the legal text, which include:

- Sharia rulings.
 - Established legal frameworks.
 - International agreements and treaties.
 - The general strategy of the state.
 - Social values.
 - Economic policies.
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128. See: *Defects of Legislative Drafting and Methods of Avoiding Them*, previous reference, pp. 27–30.

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...systems and laws of a local and foreign nature, developments in scientific and technical fields, judicial rulings and precedents, jurisprudential regulatory studies, and surveying the opinions of community groups and specialists regarding the draft regulatory text.

The researcher believes that combining both approaches is appropriate for the issue addressed in this study. Accordingly, the study is divided into two requirements as follows:

First Requirement: Amending the Regulatory Text under Study

The drafter of the regulatory provision has the authority to amend the regulatory text, whether by introducing a new provision that repeals the previous one, or by drafting a new provision that cancels everything inconsistent with it, or through another recognized legislative method.

Given the existence of defects in the regulatory text, it must be reconsidered by reviewing and refining its wording in full. This includes combining written review by legislative committees with oral review, where a qualified person reads the provision aloud to the drafter or the legislative committee.

Researchers emphasize the importance of combining these two methods, as written review alone may not be sufficient to identify all issues related to the regulatory text. There may be prior familiarity with the wording that obscures defects, whereas reading the text aloud helps reveal issues in phrasing and terminology.

At this stage, an evaluation can also be conducted...

129. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, pp. 27–41.
130. See: *Principles of Legislative Drafting*, previous reference, p. 149.
131. See: *Defects of Legislative Drafting and Methods of Avoiding Them*, previous reference, pp. 30–31.

The regulatory effect of amending the legal text is considered one of the fundamental techniques for ensuring that drafting aligns with reality and for assessing its impact. It is also a tool for improving the quality of legislation and making necessary amendments. This evaluation is divided according to its level into: an initial assessment, a partial assessment, and a comprehensive assessment. It is also divided according to timing into: a prior (ex ante) assessment and a subsequent (ex post) assessment.

It also requires mastering the skills necessary for legislative drafting, including: understanding the indication of general wording, specific wording, absolute wording, restricted wording, apparent wording, hidden wording, ambiguous wording, problematic wording, and understanding the operative meaning of the legal text, as well as the concept of the legal text.

It is also necessary to seek assistance from specialists in legislative drafting and law to review and refine the regulatory text. These include experts with competence in this field whose review helps identify areas of deficiency in the text. Such specialists include judges, senior Islamic scholars, and comparative law experts with experience in regulatory fields such as civil law, commercial law, and arbitration law.

Additionally, language specialists in Arabic should be involved to review and proofread the text linguistically and stylistically, ensuring clarity and accuracy.

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132. See: *Standards of Quality in Legislative Drafting*, by Badr Al-Din Diya' Al-Din Ramadan, pp. 134–140. Published in the Journal of Rights and Freedoms, Vol. 10, Issue 1, University of Mohamed Khider, Biskra, Algeria, Faculty of Law and Political Science, Laboratory of Rights and Freedoms in Comparative Systems, 2022.
133. See: *Principles of Legislative Drafting*, previous reference, pp. 46–59. See also: *Principles of Drafting Laws*, previous reference, pp. 171–199.

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...in foreign languages, so that they can be consulted in cases where the regulatory text relies on foreign laws and sources. It is preferable that these specialists are familiar with the language of the foreign law and its terminology, and ideally they should be experts in the relevant legal field and proficient in the foreign language concerned. It is also beneficial to consult individuals from other disciplines and with relevant expertise, with the aim of determining the clarity and ease of the regulatory text and ensuring that its intended meaning is properly conveyed.

Second Requirement: Applying Standards of Legislative Drafting

Legislative committees must apply general standards for drafting legal texts, which include:

First Type: Textual Standards

These standards aim to ensure that the legal text is coherent in wording and meaning. Linguistic coherence is achieved through structural consistency and visible organization within the text. This structural coherence is supported by tools such as punctuation marks, grammatical markers, and numbering.

Conceptual coherence is achieved by organizing the meanings within the legal text in a way that ensures logical connections, such as causation, elaboration after generalization, exception, and specification, among others.

134. See: *Defects of Legislative Drafting and Methods of Avoiding Them*, previous reference, p. 31. See also: *Quality Standards of Legislative Drafting*, previous reference, pp. 134–136. See also: *Principles of Drafting Laws*, previous reference, pp. 165–168.
135. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, pp. 27–28.
136. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, pp. 28–29. See also: *Principles of Drafting Laws*, previous reference, p. 165.

Also, clarity of expression is achieved by bringing related words closer together and ensuring proximity between the different parts of the sentence, such as the verb and the subject. This includes using short sentences, simple and clear expressions, and avoiding excessive or unnecessary wording that does not add meaning.

Sentences and words that contain too many details, making them difficult to understand or link together, should be avoided. The verb should precede the subject, and the subject should not be omitted. Sentences should be constructed in the active voice rather than the passive voice, and the subject should precede the predicate.

Mandatory forms should be used to indicate obligation within the legal rule, while prohibitive forms should be used to indicate prohibition. It is preferable to use singular terms when the meaning is clear and established, to avoid ambiguity and confusion, and to avoid material errors. Definitions and legal provisions should be clear, comprehensive, and precise, and unnecessary elaboration should be avoided.

The method of segmentation should be used to divide details into smaller parts, ensuring that each sentence expresses a single idea. Each paragraph and each part of the legal text should maintain unity of subject, so that more than one issue is not addressed within a single sentence or paragraph. This enhances conceptual coherence.

The regulatory text should be reviewed in full before and after amendment, and the amendment should be discussed in detail among specialists in legislative committees before publication. It is also essential to adhere to grammatical rules and to understand both the explicit and implicit linguistic meanings of the terms.

137. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, pp. 29–32. See also: *Principles of Legislative Drafting*, previous reference, pp. 62–63. See also: *Quality Standards of Legislative Drafting*, previous reference, p. 138. See also: *Principles of Drafting Laws*, previous reference, pp. 165–169.

Second Type: Standards Related to the User of the Text

These standards can be summarized as follows: the intended meaning that the drafter seeks to convey should be clear. This clarity is achieved by avoiding the use of inappropriate words that do not accurately reflect the intended meaning, ambiguous words, or words that are open to multiple interpretations—such as using an adjective with multiple possible meanings.

It also requires avoiding vague expressions, such as general terms, and ensuring consideration of the recipient of the text, so that what is written is acceptable and understandable to the addressee. The language should be direct and clear, without complexity or ambiguity.

Third Type: Standards Related to the Context of the Text

These standards include the requirement that the text must consider the reality of the situation intended to be regulated and take into account the conditions of the society concerned. The text should be consistent with other legal provisions, whether within the same law or in other laws or international agreements.

It should also align with the legislative framework prevailing in Saudi Arabia and not contradict the general legal context. This requires ensuring consistency between national laws, regulations, and international treaties, and avoiding conflicts between the provision under study and other legal texts.

Additionally, unnecessary cross-referencing within the text should be avoided, and clarity should be maintained without excessive reliance on external references.

138. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, pp. 33–34. See also: *Quality Standards of Legislative Drafting*, previous reference, pp. 135–136. See also: *Principles of Drafting Laws*, previous reference, pp. 168–169.

...another matter. This type of linkage requires examining related texts connected to the subject of the provision. References to other regulations should be avoided unless necessary, and when used, they must be clearly specified and explained.

Legislative committees are also required to apply specific standards for legal texts, in addition to the previously mentioned general standards. These include ensuring that the text is addressed to the public, is characterized by generality and abstraction, and that the legal rule aims to regulate behavior. The text should also include binding provisions and corresponding sanctions for non-compliance, without excluding the presence of supplementary rules within the legal text.

Legislative committees must also consider the references and general sources of the legal text, which should be taken into account during drafting. These include: Sharia principles and their sources, established constitutional and legal frameworks upon which the Saudi legal system is based, international treaties and agreements to which Saudi Arabia is a party, the state's general strategy, social values, and relevant social sciences.

Some scholars view law as part of the social sciences, interacting with politics, economics, and public policy. It is also connected to psychology, ethics, and society, as well as to local and foreign legal systems.

139. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, pp. 35–37. See also: *Principles of Legislative Drafting*, previous reference, p. 63. See also: *Quality Standards of Legislative Drafting*, previous reference, p. 134. See also: *Principles of Drafting Laws*, previous reference, pp. 131–209.
140. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, pp. 28–29. See also: *Principles of Drafting Laws*, previous reference, pp. 41–51.

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When relying on the laws of foreign countries, the circumstances and conditions of Saudi Arabia must be taken into consideration, along with scientific and technical developments, the realities intended to be regulated, judicial rulings and precedents for guidance, and jurisprudential regulatory studies for benefit. It is also important to survey the opinions of community groups, stakeholders, and specialists regarding such amendments whenever possible.

Adequate financial resources should be provided to legislative drafting committees, enabling them to access qualified human resources and appropriate logistical support. These committees should also be given sufficient time to study the essential elements involved in the legislative process. Rushing through this process leads to inadequate examination of the issue under consideration and its related legal frameworks.

Sufficient time must also be allocated for drafting the regulatory provision or law to be amended, so that the task of legislative drafting can be properly fulfilled. Some scholars argue that many laws have not been given adequate time for preparation, resulting in flawed outcomes.

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141. See: *Al-Wajiz al-Murshid ila al-Siyagha al-Qanuniyyah*, previous reference, pp. 40–41. See also: *Principles of Legislative Drafting*, previous reference, pp. 63–65. See also: *Quality Standards of Legislative Drafting*, previous reference, pp. 127–128. See also: *Principles of Drafting Laws*, previous reference, pp. 131–209.
142. See: *Principles of Legislative Drafting*, previous reference, pp. 64–65.

Conclusion

In conclusion, I praise Allah, the Almighty, for His guidance and success, and I ask Him for all goodness and ease of affairs.

The most prominent findings of this research are as follows:

1. The source of error and defects in drafting the phrase “*place of arbitration*” and the term “*place*” lies in the repeated use of the term with different meanings. This originates from reliance on Article (28) of the Saudi Arbitration Law, which states:
“The parties to arbitration may agree on the place of arbitration within or outside the Kingdom; and if no agreement exists, the arbitral tribunal shall determine the place of arbitration, taking into account the circumstances of the case and the suitability of the place for its parties. This does not prejudice the arbitral tribunal’s authority to meet in any place it deems appropriate for deliberation among its members, hearing witness statements or expert opinions, or examining the subject matter of the dispute, or reviewing documents.”

This error is derived from legal sources that contain similar drafting issues, particularly Article (20) of the UNCITRAL Model Law on International Commercial Arbitration, whether in its original English version or its Arabic translation. In the English version, the term “*Place*” is repeated, while in the Arabic version, the term “مكان” (place) is used repeatedly.

Similar patterns may also be found in the Egyptian Arbitration Law and the Jordanian Arbitration Law.

2. This conclusion is supported by the announcement of the United Nations Commission on International Trade Law (UNCITRAL) on its official website, which indicates that the UNCITRAL Model Law on International Commercial Arbitration aims to assist countries in reforming and modernizing their laws related to arbitration procedures.

...to take into account the characteristics and specific needs of international commercial arbitration. Accordingly, what appeared in the provision under study of defects, and what appeared in the corresponding provisions of arbitration laws in comparison of defects, resulted from full reliance on the drafting of the UNCITRAL Model Law, and it may have been combined with other laws.

3. The standards of legislative drafting were not fully applied in drafting the regulatory provision under study.
4. The quality of legislative drafting has deep practical effects, more than those perceived by practitioners of arbitration. Therefore, the involvement of many practitioners in the field addressed by the regulatory text is of great importance to avoid confusion and misapplication of the rules of the legal provision in practice.
5. The public interest requires amending the legislative drafting of Article (28) of the Saudi Arbitration Law.

As for the recommendations, they are as follows:

1. Legislative committees should be formed from all relevant specializations and qualified experts in drafting legal provisions with their various rulings. The diversity of expertise, according to the nature of each legal text, is essential. The research highlights the absence of certain expertise in drafting the provision under study, particularly expertise in legal English and Arabic language specialization, as well as experienced arbitrators with deep practical knowledge.

2. Legislative committees should diversify their sources of legal information and benefit from the drafting of various arbitration laws and rules.
3. The regulatory provision under study should be amended and redrafted so that, after amendment, it takes the following form:

“Seat of arbitration and place of arbitration sessions:”

4. The parties to arbitration may agree on the seat of arbitration within or outside the Kingdom; if no agreement exists, the arbitral tribunal shall determine the seat of arbitration, taking into account the circumstances of the case and the suitability of the seat for the parties.
5. The arbitral tribunal may meet in any physical place where arbitration sessions are held, and which it deems appropriate for deliberation among its members, hearing witness statements or expert opinions, examining the subject matter of the dispute, or reviewing documents.
6. Definitions should be added in the first article of the Arbitration Law, including the term **“seat of arbitration”** and the term **“place of arbitration sessions,”** with clear definitions distinguishing between them.

And peace and blessings be upon our Prophet Muhammad and all his companions.

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