

ANNOTATED LAWS OF PALESTINE

A STATEMENT OF THE STATUTE LAW
OF PALESTINE IN ALPHABETICAL ORDER
WITH CROSS-REFERENCES, ANNOTATIONS
TO DECIDED CASES, NOTES ON PRACTICE, ETC.

BY

A. M. APELBOM, LL. B.
BARRISTER AT LAW, ADVOCATE

EDITED BY

A. M. APELBOM
SUB EDITOR

DR. H. KITZINGER, Advocate

Vol. II

ANTIQUITIES / ARBITRATION

SPC
KMQ
1001.94
.P3
1944
v. 2.
P. 1.
RBK

S. BURSI, LAW PUBLISHER
20, AHAD HA'AM STREET, TEL-AVIV

1944

ANTIQUITIES

INTRODUCTORY NOTE.

Article 21 of the Mandate for Palestine required the Mandatory to secure the enactment, within a period of twelve months from the date of the Mandate, of a law of Antiquities to be based on certain rules set out in Article 21. The Mandatory was also required to "ensure the execution" of the Law.

In 1918 an Antiquities Proclamation was promulgated and this was followed by the Antiquities Ordinance 1920, enacted in 1921. Various Regulations and Instructions were issued under the Ordinance.

In 1929 a new Ordinance was enacted. It appears in this title together with amendments enacted in 1934 and 1943. New Regulations were also enacted in substitution for the Regulations made under the former legislation.

The object of the legislation is to preserve historical monuments and sites unimpaired and to facilitate opportunities for adding to and making use of the knowledge of Palestinian archaeology and history. The replacement of former legislation by the 1929 Ordinance was intended to carry out more completely the principles laid down in the Mandate of proceeding by way of encouragement rather than by threat⁽¹⁾.

In 1935, the Antiquities (Enclosures) Ordinance was enacted to provide for the regulation of the Palestine Archaeological Museum and Library and other premises occupied by the Department of Antiquities. Rules were also made under that Ordinance.

For titles on kindred subjects, see Guides, Holy Places and Wailing Wall.

⁽¹⁾ Report to the Council of the League of Nations on the Administration of Palestine and Trans-Jordan for the year 1929, p. 137.

SPC
KMQ
1001.94
.P3
1944
V.2
P.1.
RBK



132533

ENACTMENTS:

- Antiquities Ord., Cap. 5, as amended,*
Mandate for Palestine and Trans-Jordan, art. 21⁽²⁾.
Antiquities Rules,
Antiquities (Exemption) Rules,
Orders under the Ordinance and under the Rules,
Notices, Instructions, etc.,
Agreements relating to importation of antiquities,
Antiquities (Enclosures) Ord., No. 33 of 1935,
Antiquities (Palestine Archaeological Museum) Rules, 1937-9.

ANTIQUITIES ORDINANCE.

AN ORDINANCE TO PROVIDE FOR THE CONTROL OF ANTIQUITIES.

(Drayton, Cap. 5).

Short title.

1. This Ordinance may be cited as the Antiquities Ordinance.

PROMULGATION:

En 31.12.29; pro. O. G. Extraordinary of 31.12.29, p. 1190 (notice of pro. and Ord.). Notice of confirmation: 16.2.30; O. G. 253 of 16.2.30, p. 89. Draft dated 1.6.29, O. G. 236 of 1.6.29, p. 548.

AMENDMENTS:

1. The Statute Law Revision Ord., No. 30 of 1934 (Drayton, Vol. I, p. iv);
2. Revised Edition of the Laws Ord., (No. 2), No. 31 of 1934 (Drayton, Vol. I, p. XXVI);
3. Ord. No. 24 of 1934; en. 1.9.34, pro. P. G. 459 of 23.8.34 (notice, p. 779, Ord., sup. 1, p. 183). Notice of confirmation: 18.10.34; P. G. 472 of 18.10.34, p. 1043. Draft dated 31.5.34, P. G. 442 of 31.5.34, p. 476;
4. Ord. No. 30 of 1943; en. 10.12.43, pro. P. G. 1305 of 10.12.43, p. 57 (notice of pro. and Ord.). Notice of confirmation: 28.4.44; P. G. 1333 of 4.5.44, p. 425. Draft dated 27.8.32, P. G. 1296 of 28.10.43, p. 961.

See also the Revised Edition of the Laws Ord., No. 29 of 1934 (Drayton, Vol. I, p. I).

(The amendments are incorporated in the text of the Ordinance.)

PREVIOUS LEGISLATION:

1. Antiquities Proclamation No. 58 of 1.12.18, (repealed by Ord. No. 50 of 1920, see also Ord. No. 30 of 1934);

(²) Set out in the notes to sec. 1 of the Antiquities Ord.

2. Antiquities Ord. No. 50 of 1920, (repealed by Ord. No. 51 of 1929):

(The repealing section in the present Ordinance was omitted in Drayton on the authority of Ord. No. 31 of 1934.

TURKISH LEGISLATION:

Law of 29 *Safar*, 1324 (10th April, 1322) declared inapplicable by No. 58 of 1918.

SOURCE:

The text of Article 21 of the Mandate, on which the Ordinance is based, is set out in full:—

The Mandatory shall secure the enactment within twelve months from this date, and shall ensure the execution of a Law of Antiquities based on the following rules. This law shall ensure equality of treatment in the matter of excavations and archaeological research to the nations of all States Members of the League of Nations.

1) "Antiquity" means any construction or any product of human activity earlier than the year A. D. 1700.

2) The law for the protection of antiquities shall proceed by encouragement rather than by threat.

Any person who, having discovered an antiquity without being furnished with the authorisation referred to in paragraph 5, reports the same to an official of the competent Department, shall be rewarded according to the value of the discovery.

3) No antiquity may be disposed of except to the competent Department, unless this Department renounces the acquisition of any such antiquity.

No antiquity may leave the country without an export licence from the said Department.

4) Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.

5) No clearing of ground or digging with the object of finding antiquities shall be permitted, under penalty of fine, except to persons authorized by the competent Department.

6) Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archaeological interest.

7) Authorisation to excavate shall be granted to persons who show sufficient guarantees of archaeological experience. The Administration of Palestine shall not, in granting these authorisations, act in such a way as to exclude scholars of any nation without good grounds.

8) The proceeds of excavations may be divided between the excavator and the competent Department in a proportion fixed by that Department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find.

PART I. — INTERPRETATION.

Interpretation.

2. — (1) In this Ordinance, unless the context otherwise requires—

A certain amount of transportation and verbal alteration was made in this part of the Ord. on the authority of No. 29 of 1934.

“antiquity” includes an historical monument and means—

- (a) any object, whether movable or immovable or a part of the soil, which has been constructed, shaped, inscribed, erected, excavated or otherwise produced or modified by human agency earlier than the year 1700 A.D., together with any part thereof which has at a later date been added, reconstructed or restored;
- (b) human and animal remains of a date earlier than the year 600 A. D.; or
- (c) any building or construction of a date later than the year 1700 A.D., which the Director may, by order, declare to be an antiquity;

Cf. the definition of “Antiquity” in Art. 21(1) of the mandate, quoted in the notes to sec. 1, *supra*.

The word “order” in clause (c) was substituted by No. 30 of 1934, for the words “notice published in the Official Gazette”. (*Cf.* Schedule to No. 30 of 1934, Drayton I, of p. IX.).

An order under this clause, dated 5.7.33, was made in O. G. 374 of 13.7.33 in respect of:

1. The city walls surrounding the town of Acre.
2. The citadel of Acre, including the prison.
3. All sections of the aqueduct between El Kabri and Acre.

A further order under this clause, dated 7.11.39, was made in P. G. 963 of 16.11.39, sup. 2, p. 1274, in respect of:

The building known as Qasr esh Sheikh el Khalili in the grounds of the Palestine Archaeological Museum, Jerusalem.

“Board” means the Archæological Advisory Board established under section 23;

“Board”: This word was not defined in the original text of the Ordinance.

“dealer” means a person engaged in the business of buying and selling antiquities for the purpose of trade and “to deal in antiquities” means to engage in such business;

“Department” means the Department of Antiquities;

"Director" means the Director of the Department;

"historical site" means an area which the Director reasonably believes to contain antiquities or to be associated with important historical events.

(2) The decision of the Director whether any object is or is not an antiquity within the meaning of this Ordinance shall be final.

This sub-sec. appeared as sec. 4 in the original text of the Ordinance, with a marginal note reading "Recognition of antiquities".

PART II. — DISCOVERY OF, AND PROPERTY IN, ANTIQUITIES.

3. Any person who discovers an antiquity without being furnished with a licence to excavate in accordance with section 6 of this Ordinance shall forthwith give notice of his discovery to the nearest officer of the Department, or to the nearest District officer or assistant officer, and shall take any other action that may be prescribed.

Discovery of antiquities.

This section appeared as sec. 6 in the original text of the Ordinance. The words "by Regulation under this ordinance" which appeared at the end of the section were omitted in Drayton.

"Antiquity", "Department": These words are defined in sec. 2, *supra*.

See the following sections as to the compensation payable to the finder of antiquities and compare the second part of art. 21(2) of the mandate, quoted in the notes to sec. 1, *supra*.

Penalties: See sec. 22, *post*, for penalties in the case of infringements of this section.

4. — (1) The High Commissioner shall have the right to acquire on behalf of the Government, in accordance with the provisions of this Ordinance, any antiquity which may be discovered in Palestine after the date of the commencement of this Ordinance, and, until such right has been renounced in accordance with the provisions of subsection (2), it shall continue to exist, and no person shall enjoy any right or interest in such antiquity by reason of his being the owner of the land in which the antiquity is discovered or being the finder of the antiquity; nor shall any such person be entitled to dispose of the antiquity; and any person to whom such antiquity is transferred shall have no right or property therein.

Property in antiquities.

Sub-sec. (1) appeared as sec. 7(1) in the original text of the Ordinance. *Sub-sec. (2)* appeared as sub-sec. (4) of sec. 7, with the addition

of the following words which were omitted in Drayton: "but the right shall continue to exist until it has been so renounced".

"Antiquity", "Director": These words are defined in sec. 2, *supra*.

"Acquire on behalf of the Government": This phrase was substituted for the word "acquire", by No. 30 of 1934.

Compare art. 21(2) and (3) of the Mandate, quoted in notes to sec. 1, *supra*, and see secs. 3 and 5 hereof.

The right to acquire antiquities has been delegated to the Director by notice in P. G. 422 of 15.2.34, sup. 2, p. 140.

(2) The Director may in writing renounce the right of the High Commissioner to acquire an antiquity under this section.

5. — (1) Save as provided in subsection (3), the right of the High Commissioner to acquire an antiquity under section 4 shall be subject to the payment to the finder of the value thereof.

This section appeared as sec. 7(2) and (3) of the Ordinance. A certain amount of transposition and verbal alterations were made in the Revised Edition of the Laws.

"Antiquity", "Board", "Director": These words are defined in sec. 2, *supra*.

"By agreement between the Director and the finder or, in default of agreement": These words were substituted by No. 30 of 1934 for the words, "by agreement, or in case of dispute".

A number of other amendments made by No. 30 of 1934 have been remodelled in Drayton, owing to the re-arrangement of the sections.

See also secs. 3 and 4, *supra*, and compare art. 21(2), (3), (6) and (8) of the Mandate, quoted in notes to sec. 1, *supra*. See also sec. 8(c), 11 and 17 *infra*.

(2) Such value shall be fixed by agreement between the Director and the finder or, in default of agreement, by an arbitrator appointed by the Board, whose award shall be final.

(3) The High Commissioner shall not be liable to pay the value of the antiquity to the finder if—

(a) the discovery of the antiquity was made in contravention of any provision of this Ordinance; or

(b) the Director is of the opinion that the antiquity should be preserved in the place where it was found and includes the area within which it was found in the schedule of historical sites for which provision is made in section 17;

or

Compensation
to finder for
antiquities
acquired by
the High
Commissioner.

- (c) the antiquity is acquired as a result of a division made pursuant to section 8 (c) and section II.

PART III. — EXCAVATIONS.

6. No person shall dig or otherwise search for antiquities, whether on his own land or elsewhere, unless he has obtained a licence to excavate or to make soundings from the High Commissioner.

No search for antiquities except under licence.

This section appeared as sec. 9(1) in the original text of the Ordinance.

"Antiquities": This word is defined in sec. 2, *supra*.

Penalties: See sec. 22, *post*, for penalties in cases of infringements of this section.

Compare art. 21(5) of the Mandate, quoted in notes to sec. 1, *supra*.

The power to grant licences to excavate or to make soundings was delegated to the Director by notice dated 15.2.34 (P. G. 422, sup. 2, p. 140).

Sec. 8(1) (ii) of the Mining Ord. provides that no prospecting or exploration permit and no mining or quarrying licence under that Ordinance is to be taken as authorising the holder or lessee to prospect, mine or quarry within any area which comprises or is within one hundred metres of an historical site, except with the consent of the Director.

There is a corresponding provision in sec. 9(2)(b) of the Oil Mining Ord. See Antiquities Rules, *post*, r. 3.

For special facilities extended to licence holders, see notice, *post*, p. 21.

7. A licence to excavate shall be granted only to persons—

(a) who are, in the opinion of the Director, prepared to expend on the excavations proposed a sum of money sufficient to secure a result satisfactory on archaeological grounds; and

(b) whose scientific competence is reasonably assured by the guarantees of learned societies or institutions, or in other ways, to the satisfaction of the Director:

Persons to whom licences may be granted.

Provided that no discrimination shall be made on the grounds of nationality or creed in the grant of a licence to excavate.

This section appeared as sec. 9(2) in the original text of the Ordinance.

"Director": This word is defined in sec. 2, *supra*.

See art. 21(7) of the Mandate, quoted in the notes to sec. 1, *supra*.

See sec. 8, *infra*, for conditions which may be imposed in the licence, and sec. 9, *infra*, for suspension or cancellation of the licence. See notice *post*, p. 21 for special facilities extended to licence holders.

See also Antiquities Rules, *post*, r. 3.

Conditions of
licences.

8. In addition to any conditions which may be prescribed, every licence granted under this Part shall be subject to the following conditions—

- (a) if the land within which the licence is granted is private property, the holder of the licence shall arrange with the owner as to the terms upon which he may enter upon the land for purposes of excavation;
- (b) the holder of the licence shall take all reasonable measures for the preservation of the antiquities discovered by him;
- (c) at the close of the excavation or at such other times as the Director may require the holder of the licence shall afford an opportunity to the Director to divide, pursuant to section 11, the antiquities so found by exercising or renouncing the right of the High Commissioner to acquire such antiquities;
- (d) the holder of the licence shall, within a reasonable time, deposit with the Director any photographs, casts, squeezes or other reproductions, of objects falling to his share in such division which the Director may require;
- (e) the holder of the licence shall furnish plans of his excavations to the Director and shall, before the division takes place, furnish the Director with lists of all the antiquities discovered therein and any additional information relating thereto which the Director may require;
- (f) the holder of the licence, or the society or institution on whose behalf he acts, shall deposit with the Director two copies of any preliminary reports which he may publish relating to his excavations; and
- (g) the holder of the licence, or the society or institution on whose behalf he acts, shall produce, within a period of two years after the completion of his excavations (unless this period be extended by the Director), an adequate scientific publication of the results of his excavations and

shall deposit two copies of such publications with the Director.

This section appeared as sec. 9(3) in the original text of the Ordinance.

Verbal alterations were made by Ord. No. 30 of 1934 and the text of the section was remodelled by Ord. No. 29 of 1934.

"Antiquity", "Director": These words are defined in sec. 2, *supra*.

"Conditions which may be prescribed": See Antiquities Rules, *post*, r. 3.

See also sec. 7, *supra*, as to the conditions for the grant of a licence. See secs. 5(3)(c) and 11 for the division referred to in clause (c) hereof, and sec. 10 for authority to expropriate.

See notice, *post*, p. 21 for special facilities extended to licence holders.

Penalties: See sec. 22, *post*, for penalties which may be imposed for the infringement of some of the provisions of this section. In addition to the penalties, the licence may also be suspended or cancelled (sec. 9, *infra*).

9. In case of breach of any of the conditions upon which a licence to excavate is granted, the Director may forthwith suspend or cancel such licence.

Suspension or
cancellation
of licence.

This section appeared as sec. 9(3) (g) in the original text of the Ordinance.

See also sec. 22, *infra*, for penalties.

"Director": See definition in sec. 2, *supra*.

See notice *post*, p. 21 and Antiquities Rules, *post* r. 3.

10. — (1) If in the opinion of the High Commissioner negotiations for the agreement referred to in section 8 (a) upon reasonable terms have failed, the High Commissioner may, on behalf and at the cost of the holder of the licence, expropriate the land in whole or in part or obtain compulsorily a lease thereof in accordance with the provisions of the Land (Expropriation) Ordinance.

Compulsory
acquisition of
land comprised
in licence.

(2) In assessing the compensation to be paid to the owner the court shall be guided by the value of neighbouring land of a similar character.

This section appeared as sec. 9(3) (a) in the original text of the Ordinance. A certain amount of transposition was effected in Drayton.

See Antiquities Rules, *post*, r. 3.

Land (Expropriation) Ordinance: This is now replaced by the Land (Acquisition for Public Purposes) Ordinance.

See title *LAND*.

Division of
antiquities.

11. — (1) In making the division referred to in section 8 (c), the Director shall acquire for the High Commissioner all antiquities which are in his opinion indispensable for the scientific completeness of the Palestine Archaeological Museum or for the purpose of illustrating the history or art of Palestine.

(2) He shall then make a division of the remaining antiquities aiming as far as possible at giving the holder of the licence a fair share of the results of the excavation.

(3) In order to make such a division possible, the Director may supplement the share of the holder of the licence by objects which are the property of the Government.

(4) If such division is in the opinion of the Director impossible, the holder of the licence shall be granted such compensation as the Director, with the approval of the High Commissioner, may determine.

(5) The cost of transport to the Palestine Archaeological Museum of any antiquity which the High Commissioner may acquire in such division shall be borne by public funds.

This section appeared as part of sec. 9(3)(c) in the original text of the Ordinance. A number of verbal amendments were introduced by Ord. No. 30 of 1934, and the text of the section was remodelled by Ord. No. 29 of 1934. See sec. 5(3)(c), *supra*.

"Antiquities", "Director": These words are defined in sec. 2, *supra*.

See Antiquities Rules, *post*, r. 3.

PART IV. — EXPORTATION OF ANTIQUITIES.

Prohibition of
exportation of
antiquities
except under
licence.

12. No person shall export from Palestine any antiquity unless he has obtained a licence to export the same from the Director.

This section appeared as sec. 11(1) in the original text of the Ordinance.

See the second paragraph in art. 21(3) of the Mandate, quoted in the notes to sec. 1, *supra*.

"Antiquity", "Director": These words are defined in sec. 2, *supra*.

See sec. 13, *infra*, for exemption from fees.

Penalties: See sec. 22, *infra*, for penalties which may be imposed for the infringement of this section.

See also secs. 14-16, *infra*.

See Antiquities Rules, *post*, r. 5, for provisions relating to export licences, and see notice *post*, p. 21 heading CUSTOMS and notice *post*, p. 24 heading EXPORTATION.

13. No fee shall be charged on a licence to export in respect of—

Exemptions
from licence
fees.

- (a) antiquities purchased under section 26;
- (b) antiquities renounced by the Director in favour of, or granted to, a person holding a licence to excavate;
- (c) antiquities which the Director is satisfied were imported into Palestine subsequent to the thirty first day of December, 1900.
- (d) antiquities loaned or exchanged as provided in section 27;
- (e) antiquities which are proved to the satisfaction of the Director to be of religious use or devoted to a religious purpose and to be the property of a religious or ecclesiastical body.

This section appeared as sec. 11(2) in the original text of the Ordinance. It was amended by Ord. No. 30 of 1934 and rearranged in the Revised Edition. Clause (c) was re-enacted by the 1934 Amend. Ord.

See sec. 12, *supra*, and secs. 14-16 *infra* and notes.

"Antiquities", "Director": These words are defined in sec. 2, *supra*. See Antiquities Rules, *post*, r. 5.

See notice, *post*, p. 21 heading CUSTOMS and notice *post*, p. 24 heading EXPORTATION.

14. Any applicant for a licence to export an antiquity shall, if required by the Director, deposit such antiquity with the Director for the purpose of inspection, declare the value thereof and furnish any other particulars which the Director may require.

Production of
antiquity.

This section appeared as sec. 11(3) on the original text of the Ordinance.

For licences, see sec. 12 and 13, *supra* and see the following two sections.

"Antiquity", "Director": These words are defined in sec. 2, *supra*. See Antiquities Rules, *post*, r. 5.

See notice *post*, p. 21 heading CUSTOMS and notice *post*, p. 24 heading EXPORTATION.

15. A licence to export antiquities shall be produced by the holder to the Palestine Customs on demand.

Production
of licence.

This section appeared as sec. 11(4) in the original text of the Ordinance.

See secs. 12-14, sec. 16, sec. 2?

See Antiquities Rules, *post*, r. 5.

See last paragraph of note in preceding section.

Power of Director to prohibit export of antiquities.

16. The Director may prohibit the exportation from Palestine of any antiquity the retention of which in Palestine he considers to be necessary in the public interest:

Provided that he shall not prohibit the exportation of—

(a) antiquities which the Director is satisfied were imported into Palestine subsequent to the thirty first day of December, 1900;

(b) any antiquity of religious use or devoted to a religious purpose which is being exported by a religious or ecclesiastical body for a religious or ecclesiastical purpose.

This section appeared as sec. 11(5) in the original text of the Ordinance. Clause (a) was re-enacted by the 1934 Amend. Ord., *cf.* sec. 13(c) and (e), *supra*.

"Antiquity", "Director": These words are defined in sec. 2, *supra*.

See Antiquities Rules, *post*, r. 5.

PART V. — HISTORICAL MONUMENTS AND SITES.

Schedule of historical monuments and sites.

17.— (1) The Director shall publish in the *Gazette* a schedule of historical monuments and historical sites and may, from time to time, make additions or amendments thereto:

Provided that until such time as the Director shall exercise the power hereby conferred upon him, the Provisional Schedule of Historical Sites and Monuments, dated the fifteenth day of June, 1929, and published in the *Gazette Extraordinary* of that date shall be deemed to be a schedule of historical monuments and historical sites duly published by the Director hereunder.

(2) Copies of the relevant parts of the schedule shall be available for inspection in every District Office and Police Station in the sub-district in which an historical monument or historical site is situated.

(3) The Director shall have the power to determine the limits of an historical site.

This section appeared as sec. 12(1) and (2) in the original text of the Ordinance. Sub-secs. (1) and (2) were replaced by the 1934 Amend. Ord., and sub-sec. (2) was again re-enacted by the 1943 Amend. Ord. Under the former sub-sec. parts of the Schedule were exhibited only in post offices.

"Director", "Historical site": See definitions in sec. 2, *supra*.

Schedule of Historical Monuments: See sec. 5(3) (b), *supra*.

The Schedule of historical monuments and historical sites referred to in this section appeared in P. G. Extraordinary of 15.6.29, pp. 622—708 and was amended from time to time, the last amendment appearing in P. G. 1087 of 3.4.41, sup. 2, p. 510.

In P. G. Extraordinary No. 1375 of 24th November, 1944, a complete Schedule of Historical Monuments and Sites appeared in sup. 2., pp. 1219—1338, presumably in replacement of the former Schedule and amendments. The new Schedule does not explicitly repeal the former Schedule as amended.

The Schedule is preceded by the following notice:

"Additions to this Schedule will be published from time to time in the Palestine Gazette.

The omission of any historical site from this schedule, or part of such site from the description of it herein, does not exclude it from the provisions of the Antiquities Ordinance.

All antiquities in the immediate neighbourhood of an historical site or monument are deemed to be part of such site or monument."

(Abbreviations)

The map references are to the Survey of Palestine 1:100,000 series (1942 edition). Roman numerals indicate the sheet; the groups of figures give the coordinates. For details of the system of coordinates, see *Survey of Palestine, Maps and Publications*, 1936, pp. 21-24.

"Map references without sheet number are to the 1:250,000 Map of Palestine (South Sheet), published by the Survey of Palestine.

Place names are arranged alphabetically, the common prefixes Khirba, Khirab, Khurayib, Maghara, Rujm, Rujum, Tell, Tulul and Wadi being disregarded and printed after the name. The Arabic definite article is printed before the word it qualifies, but is disregarded in the alphabetic arrangement. Thus Tell el Mutasallim appears as el Mutasallim, Tell; Khirbat Abu Huweilan as Abu Huweilan, Kh.; etc."

See also Notice in P. G. 1197 of 28.5.1942. Sup. 2, p. 903, for an order under 17(3).

For an additional prohibition see sixth paragraph of notes to sec. 6, *supra*.

18. No person shall—

- (a) dig to a depth of more than one metre upon any historical site included in a schedule so published or any addition to or amendment of such schedule, unless he has obtained permission from the Director to do so;

Acts prohibited in regard to historical monuments and sites.

- (b) excavate, build, plant trees, quarry, irrigate, burn lime or do similar work or deposit earth or refuse, on or in the immediate neighbourhood of an historical monument or site, or establish a cemetery on an historical site, without the permission of the Director;
- (c) demolish an historical monument or pull down or remove any part thereof, without the permission of the Director;
- (d) make alterations, additions or repairs to any historical monument, without the permission of the Director;
- (e) erect buildings or walls abutting upon an historical monument, without the permission of the Director:

Provided that paragraphs (d) and (e) shall not apply to historical monuments of religious use or devoted to a religious purpose which are the property of a religious or ecclesiastical body.

This section appeared as sec. 12(3) - (7) in the original text of the Ordinance. The section is re-arranged in Drayton.

"Director", "Historical site": See definitions in sec. 2, *supra*.

Penalties: See sec. 22(6) *infra*.

Care of
historical
monuments
and sites.

19. — (1) Where any historical monument or historical site is registered in the land registers as private property, the Director may—

- (a) make arrangements with the owner for its preservation, inspection and maintenance and may make a contribution from public funds towards the cost of carrying out any works of repair or conservation which he deems necessary and which the owner may be willing to undertake:

Provided that where the Director so contributes towards the cost of carrying out such works they shall be performed subject to any conditions which he may impose; or

- (b) purchase or lease the site by private treaty; or
- (c) acquire the site or obtain compulsorily a lease thereof in accordance with the provisions of the Land (Expropriation) Ordinance; or

(d) in the case of an historical monument, remove the whole or any part thereof, making good any damage done to the site or to buildings thereon by such removal and paying compensation therefor:

Provided that the amount of such compensation shall be fixed by agreement or, in the case of dispute, by an arbitrator appointed by the Chief Justice; and

Provided that paragraphs (c) and (d) shall not apply to sites or historical monuments of religious use or devoted to a religious purpose which are the property of a religious or ecclesiastical body.

(2) Where the Director considers that it would be advantageous that a society or institution should undertake the maintenance or conservation of an historical monument or site, he may grant to the society or institution a licence to maintain or conserve such monument or site on such terms and conditions, including provision for the charge of a fee for admission thereto, as may be agreed:

Provided that, if the monument or site is wholly or partially private property, the powers bestowed upon the society or institution shall not exceed those bestowed herein upon the Director.

(3) In case of breach of any of the terms or conditions imposed in a licence granted under the preceding sub-section, the Director may forthwith suspend or cancel such licence.

This section appeared as sec. 13(1) and (3) in the Original text of the Ordinance. Verbal alterations were made by Ord. No. 30 of 1934 and the section was re-arranged in Drayton.

Land (Expropriation) Ordinance: See this note under sec. 10, *supra* p. 9.
"Director", *"Historical site"*: See definitions in sec. 2, *supra*.

20. Where an historical site is not registered in the land registers as private property, it may be registered at any time in the name of the High Commissioner if in the opinion of the Director such registration is necessary on archaeological grounds:

Provided that the person claiming to be the owner thereof may, subject to the provisions of the Land (Settlement of Title) Ordinance, institute proceedings at any time for the rectification of the register; and

Registration of
unregistered
historical
sites.

Provided further that this section shall not apply to historical sites of religious use or devoted to a religious purpose which are the property of a religious or ecclesiastical body.

This section appeared as sec. 13(2) in the original text of the Ordinance. See title *LAND SETTLEMENT*.

"Director", "Historical site": See definitions in sec. 2. *supra*.

Inspection of
historical
sites.

21. The owner of an historical site shall at all reasonable times permit any officer of the Department, and any other person on behalf of the Director, to enter upon the site to inspect and study the monuments and to make drawings, photographs or reproductions thereof by the making of casts or by any other method, and to carry out any necessary work for the maintenance or conservation thereof.

This section appeared as sec. 13(4) in the original text of the Ordinance.

Penalties: cf. sec. 22(2), infra, which deals with antiquities but not specifically with historical sites.

"Department", "Director", "Historical site": These expressions are defined in sec. 2, *supra*.

PART VI. — PENALTIES.

Penalties.

22. — (1) Any person who, being the finder of any antiquity, fails to report the antiquity or to take action to protect it or to state the circumstances of the discovery or the origin of the antiquity, or wilfully makes a false statement of such circumstances or such origin, is guilty of an offence and is liable to imprisonment for one month or a fine of twenty pounds.

(2) Any person who fails to give reasonable facilities to an officer of the Government to inspect, copy or study an antiquity, where the duty to give such facilities is imposed under this Ordinance, is guilty of an offence and is liable to a fine of twenty pounds.

(3) Any person who, not being the holder of a licence to excavate granted under section 6, digs for antiquities or demolishes any ancient walls or other structures or objects which are antiquities within the meaning of this Ordinance, whether above or below the ground, even though these acts are done upon land of which he is the owner, is guilty of an offence and is liable to a fine of two hundred pounds.

(4) Any person who, not being the holder of a licence to export granted under section 12, exports or attempts to export any antiquity is guilty of an offence and is liable to imprisonment for six months or a fine of one hundred pounds or both such penalties.

(5) Any person who exports or attempts to export an antiquity of which the exportation has been prohibited in accordance with section 16 is guilty of an offence and is liable to imprisonment for six months or a fine of one thousand pounds or the value of the antiquity whichever is the greater sum.

(6) Any person who commits an offence against any of the provisions of section 18 is guilty of an offence and is liable to a fine of two hundred pounds.

(7) Any person who, not being the holder of a licence granted under section 25, deals in antiquities is guilty of an offence and is liable to imprisonment for six months or a fine of one hundred pounds or both such penalties.

(8) Any person who maliciously or negligently destroys, injures, defaces or disfigures any antiquity is guilty of an offence and is liable to imprisonment for twelve months or a fine of one hundred pounds or both such penalties.

(9) Any person who wilfully deceives or attempts to deceive a purchaser or any officer of the Government by any description, statement or other indication as to the genuineness or antiquity of any object of archæological interest is guilty of an offence and is liable to imprisonment for one year or a fine of one hundred pounds or both such penalties.

This section appeared as sec. 14 in the original text of the Ordinance.

See also sec. 9, *supra*, for the additional sanctions of suspension or cancellation of a licence.

"Antiquity" is defined in sec. 2, *supra*.

PART VII. — MISCELLANEOUS.

23. — (1) The High Commissioner shall, by order, establish an Archæological Advisory Board consisting of the Director, who shall be *ex officio* chairman thereof, and such members as the High Commissioner may nominate to represent archaeological interests.

Advisory
Board.

جامعة بيروت
معهـد الحقـوق
مكتبة مونتسكيو

(2) The Director shall not be bound by the advice of the Board.

This section appeared as sec. 5(1) in the original text of the Ordinance. The section was re-arranged in Drayton and sub-sec. (2) added.

See Antiquities Rules, *post*, r. 2.

Members of the Board are nominated every year, in the month of January. The appointments are not gazetted. The first appointment was gazetted in P. G. 232 of 1.4.29, p. 269.

The following are the present members of the Board:

R. W. Hamilton, Director of Antiquities.

Dr. Nelson Glueck, Director, American School of Oriental Research.

Adel Effendi Jabre.

The Rev. Father K. Karapiperis.

G. E. Kirk, Esq., Director, British School of Archaeology in Jerusalem.

Professor L. A. Mayer.

Mrs. B. V. Shaw.

Professor E. L. Sukenik.

The Rev. Father R. de Vaux.

P. H. Winter, Esq.

Right to
inspect
antiquities.

24. Every person in possession of an antiquity shall, at the request of the Director, permit the same to be inspected and studied at all reasonable times by an officer of the Department or other person on his behalf, and shall give to him all reasonable facilities to make drawings, photographs or reproductions thereof by the making of casts or by any other means:

Provided that any such drawings, photographs or reproductions shall not be sold without the consent of the person in possession of the antiquity.

This section appeared as sec. 8 in the original text of the Ordinance.

See sec. 22(2) for penalties in the case of infringements of this section.

"Antiquity", "Department", "Director": These words are defined in sec. 2, *supra*.

Dealers.

25. No person shall deal in antiquities unless he is in possession of a dealer's licence granted by the Director.

This section appeared as sec. 10(1) in the original text of the Ordinance. The word "Director" defined in sec. 2, *supra*, was substituted for "High Commissioner" by Ord. No. 30 of 1934.

Before this substitution the power to grant dealers' licences had already been delegated to the Director by notice in P. G. 422 of 15.2.34, sup. 2, p. 140.

Penalties: See sec. 22(7), *supra*.

See Antiquities Rules, *post*, sec. 4 for particulars relating to the grant of dealer's licences.

26. The High Commissioner may authorise the sale of antiquities which, being the property of the Government, are, in the opinion of the Director and the Board, not required for the Palestine Archæological Museum.

Authorisation for sale of Government antiquities.

This section appeared as sec. 15 in the original text of the Ordinance. Verbal alterations were made by Ord. No. 30 of 1934.

"Antiquity", "Board", "Director": These words are defined in sec. 2, *supra*.

See sec. 13(a), *supra*.

The High Commissioner's powers under this section have been delegated to the Director by notice in P. G. 422 of 15.2.34, *supra*, p. 140.

27. — (1) The Director, with the approval of the High Commissioner, may make loans or exchanges of any antiquities belonging to the Government to or with learned societies or museums and may authorise the exportation of such antiquities from Palestine for the purpose.

Loan of Government antiquities.

(2) An agreement for a loan under the preceding sub-section shall contain adequate provisions for the preservation, assurance and return of the antiquities by and at cost of the learned society or museum to whom the antiquities are lent.

This section appeared as sec. 16 in the original text of the Ordinance, and was divided into sub-sections in Drayton.

"Antiquities", "Director": These words are defined in sec. 2, *supra*.

See sec. 13(d), *supra*.

28. — (1) Where it appears that adequate provision is made by the law of any neighbouring territory to prevent the importation of antiquities from Palestine otherwise than under licence of the Department, the High Commissioner may issue an order forbidding the import of antiquities from such territory into Palestine otherwise than under a licence granted by the Department of Antiquities in that territory.

Reciprocity as to importation of antiquities from neighbouring territories.

(2) Any antiquities seized on account of the contravention of such an order shall be returned to the government of the territory from which the importation has been attempted.

This section appeared as sec. 17 in the original text of the Ordinance. Verbal alterations were made by Ord. No. 30 of 1934 and the section was divided into sub-sections in Drayton.

"Antiquities", "Director": These words are defined in sec. 2, *supra*.

See the notice regarding the importation and exportation of antiquities appearing under INSTRUCTIONS, *post*, which was made pursuant to the AGREEMENT WITH SYRIA AS TO THE IMPORTATION OF ANTIQUITIES (O. G. 161 of 16.4.26, p. 207). See also Palestine-Syria Customs Agreement in *INTERNATIONAL AGREEMENTS AND CONVENTIONS*.

See also Antiquities Rules, *post*, r. 6.

Delegation
of powers.

29. The Director may, with the approval of the High Commissioner, delegate the exercise of any powers possessed by him under this Ordinance to any other officer of the Department.

This section appeared as sec. 19 in the original text of the Ordinance. "Department", "Director": These words are defined in sec. 2, *supra*. No delegation of the Director's powers has been promulgated.

PART VIII. — RULES.

Rules.

30. The High Commissioner may make rules—

(a) excluding any class of antiquities from the operation of this Ordinance or any part thereof;

See Antiquities (Exemption) Rules, *post*, and others thereunder.

(b) determining the composition and procedure of the Board, the term during which members shall hold office and the matters upon which the Board shall be consulted by the Director;

See Antiquities Rules, *post*, r. 2.

(c) determining the conditions upon which licences to excavate shall be granted;

See Antiquities Rules, *post*, r. 3.

(d) determining the conditions upon which licences may be granted to, and held by, dealers and prescribing the fees to be paid therefor;

See Antiquities Rules, *post*, r. 4.

(e) governing the grant of licences to export antiquities and, subject to the provisions of section 13, the fees to be paid therefor; and

See Antiquities Rules, *post*, r. 5.

(f) generally, for giving effect to this Ordinance.

The provisions of this section appeared in various parts of the original ordinance. Verbal amendments were made by Ord. No. 30 of 1934, and the section was re-arranged in the Revised Edition.

For the rules in force, see *post*.

RULES

RULES IN FORCE.

1. Antiquities Rules dated 21.1.30; 29.1.32; 20.7.32; consolidated in Drayton, Vol. III, p. 1650.
2. Antiquities (Exemption) Rules of 29.11.33; Drayton, Vol. III, p. 1653.

ORDERS, ETC.

1. ORDERS: Orders under sec. 2(1)(c) — incorporated in the notes to the sec. *supra*.
2. SCHEDULE OF HISTORICAL SITES: See notes to sec. 17 of the Ord., *supra*.
3. ANTIQUITIES (EXEMPTION) ORDER.
See notes to that order, *post*.
4. INSTRUCTIONS: The following instructions relating to the importation and exportation of antiquities, appeared in P. G. 802 of 28.7.38, p. 851.

NOTICE.

The High Commissioner directs that the following Schedule of the privileges, facilities and concessions to be granted to Archaeological Expeditions be published for general information.

The privileges, facilities and concessions enumerated below will be granted by the Palestine Government to all Archaeological Expeditions in possession of a valid licence to excavate in Palestine or Trans-Jordan, in accordance with the provisions of the Antiquities Ordinance or of the Trans-Jordan Antiquities Law.

Under each heading will be found a direction as to the procedure to be followed by holders of licences who wish to avail themselves of those privileges, facilities and concessions.

As a preliminary to the grant of any of the said privileges, facilities and concessions, it will be necessary for the holder of a licence to produce to the Government Department concerned a statement by the Director of Antiquities to the effect that the Expedition has been approved by the High Commissioner for the purpose of the grant of the same.

The privileges, facilities and concessions described below will come into effect on the 29th July, 1938.

The notice setting out the privileges, facilities and concessions to be granted to Archaeological Expeditions, dated 28th March, 1930, and published in the Gazette of 1st April, 1930, is hereby revoked with effect from the 29th July, 1938.

I. CUSTOMS.

- (i) *Remission of Export Fee on Antiquities allotted to the Holder of a Licence as a Result of the Division with the Director of Antiquities in Palestine or Trans-Jordan of the Objects found.*

Whenever the holder of a licence desires to export his share of the antiquities discovered by his expedition he should apply to the Director of A

tiquities in Palestine for a permit to export free of fee. His application should be accompanied by a statement showing the number of the packages included in the consignment which require sealing, and in the case of antiquities excavated in Trans-Jordan a certificate from the Director of Antiquities in Trans-Jordan that the antiquities contained in the packages to be sealed have been allotted to the holder of the licence.

- (ii) *Remission of Customs Import Duty on Instruments and Scientific Appliances needed for the purpose of Excavation and Archaeological Study, and on Camp and Household Equipment and Technical Apparatus imported for the Use of the Expedition.*

The holder of a licence to excavate should furnish the Director of Customs, Excise and Trade with the following documents:

- (a) a completed declaration in the form of which a model is scheduled hereto;
- (b) the original invoice or, failing that, other original documents detailing the contents of the packages;
- (c) the Bill of Lading or Railway Policy or Despatch Note, according as the articles are consigned by sea, air, rail or parcel post, respectively.

In order to avoid delays and inconveniences to themselves, holders of licences are advised to submit these documents to the Director of Customs, Excise and Trade before the arrival of the goods.

In cases of urgency, it will be open to the holder of a licence, if he so desires, to withdraw the articles by paying the Customs duty on the deposit basis, subject to his obtaining a refund by application subsequently on the completion of the formalities laid down above.

2. RAILWAYS.

- (i) *Reduction of Fares to all Members of the Personnel of the Expedition, on the basis of 2nd Class Fares for 1st Class Tickets and 3rd Class Fares for 2nd Class Tickets.*

The holder of a licence should furnish the Director of Antiquities with a statement of the names of the intending travellers and of the station from which and the station to which they propose to travel. On receipt of this statement, the Director of Antiquities will issue the necessary vouchers, stating the dates within which such vouchers are valid, for presentation by the travellers at the Railway booking-office. In the case of expeditions stationed in localities which are not within easy reach of Jerusalem, the Director of Antiquities may at his discretion furnish the holder of a licence with an appropriate number of blank vouchers to be filled in by the holder of the licence as occasion arises.

In such cases, the holder of the licence will be held liable for the loss or misuse of any blank voucher which may have been issued to him.

- (ii) *Half-Fare Reduction on 3rd Class Fares to all Skilled Labourers engaged in Palestine or in Trans-Jordan or in Egypt for Purposes of Excavation in Palestine or Trans-Jordan.*

The holder of a licence should furnish the Director of Antiquities with a statement of the names of the labourers engaged and of the stations from

which and to which it is intended that they should travel. On receipt of this statement, the Director of Antiquities will issue the necessary vouchers for presentation by the travellers at the booking-office of the station of departure.

It should be understood, however, that this concession will not be granted in respect of skilled labourers engaged in Egypt unless the Director of Antiquities is satisfied that suitable labour is not available in Palestine or Trans-Jordan.

In the case of labourers engaged in Egypt, the half-fare reduction will operate from Kantara East to any station in Palestine.

(iii) *Reduction of Freight in respect of Antiquities discovered in the Course of the Excavation and of Archaeological Equipment, on the Basis of one-half the full Rates on Consignments by Passenger Train, and Class 6 rates (without increase) on Consignments by Goods Train.*

The holder of a licence should furnish the Director of Antiquities in advance with a statement of the packages and their contents, of the station from which and the station to which it is proposed to consign them, and of the category of train, (passenger or baggage) by which it is proposed to consign them. On receipt of this statement, the Director of Antiquities will issue the necessary vouchers.

3. IMMIGRATION.

Procedure for Obtaining Permission for Scientific Members of Expeditions to remain in Palestine for more than Three Months and for the Importation of such Labourers as cannot be engaged in Palestine.

The holder of a licence who wishes to have the passports of scientific members of his staff endorsed on entry into the country with permission to stay for a period longer than three months, should instruct them to produce at the Frontier Controls a certificate issued by the Director of Antiquities that they are scientific members of a licensed expedition.

Holders of licences should therefore arrange, in good time before the arrival of their staff, to furnish the Director of Antiquities with a list of the names of those scientific members for whom they wish to claim the concession in question.

Holders of licences who wish to import such skilled labourers as cannot be engaged in Palestine should furnish the Commissioner for Migration and Statistics with a statement giving their names, ages and nationalities, the capacity in which each will be employed in the excavations, the port or place and the probable date of their arrival in Palestine. On receipt of this statement the Commissioner for Migration and Statistics will issue the necessary visa authority to the Consular Authority concerned.

Scientific members of expeditions will be exempted from payment of immigration fees so long as they are engaged in archaeological work. No remission of immigration fees will be granted for other members or for labourers.

(b) No antiquity shall be permitted to enter Palestine from Syria or the Grand Lebanon unless its exportation has been sanctioned by a licence issued by the competent authority in the territory of export⁽¹⁾.

(c) Antiquities of Syrian origin accompanied by a certificate from the Syrian Customs Authorities to that effect, and antiquities not of Syrian origin, which are imported into Palestine accompanied by a certificate from the Syrian Customs Authorities stating that the Customs duties on the antiquities have been credited to the Palestine Customs Administration, will be admitted into Palestine free of Import Duty⁽¹⁾.

(d) Antiquities not accompanied by either of such certificates are subject to Import Duty at the appropriate rate, according to the Customs Tariff in force from time to time.

RE-IMPORTATION.

4. Antiquities exported from Palestine and subsequently re-imported will be admitted free of duty provided that re-importation takes place within one year from the date of exportation and that the licence to export issued by the Department of Antiquities on their previous exportation is produced, together with such other information as the Customs Authorities may require for identification of the antiquities.

EXPORTATION.

5. (a) The exportation of antiquities from Palestine is governed by Section 11⁽²⁾ of the Antiquities Ordinance, 1929, and the Regulations made thereunder.

(b) Under the Ordinance, no person shall export from Palestine any antiquity unless he has obtained a licence to export it from the Director, Department of Antiquities:—

(c) Application for a licence to export antiquities shall be made in writing to the Director, Department of Antiquities, Jerusalem, giving the following particulars.

- (i) a list of the antiquities, containing a description of each object sufficient for identification;
- (ii) a declaration of the value of each object;
- (iii) any other information regarding the antiquities that the Director may require.

(d) Before a licence to export antiquities is granted, the applicant for such licence shall pay to the Department of Antiquities an export fee at the rate of 10% on the value of the antiquities, unless exempted under the Ordinance.

(e) All antiquities must be declared, and the licence to export exhibited, to the Customs Authorities on departure from Palestine, but packages of antiquities sealed with the seal of the Department of Antiquities and bearing within the official stamp of that Department the number and date of the licence relating to them may be exempted from further examination at the discretion of the Customs Authorities.

⁽¹⁾ See notes to sec. 28 of the Ordinance, *ante*.

⁽²⁾ Now Part IV, secs. 12-16.

RE-EXPORTATION.

6. Antiquities upon which Import Duty has been originally collected, if re-exported within six months from the date of importation, must be accompanied by a licence to export. The Customs Authorities will refund the Import Duty originally collected, less 10% in accordance with Section 155 of the Customs Ordinance, 1929, provided that they are satisfied by the production either of a certificate of import for purposes of re-exportation or of other documents that Import Duty was originally collected.

7. The Instructions regarding the Importation and Exportation of Antiquities which were published in the Official Gazette of the 16th October, 1926, are cancelled.

5. NOTICE RELATING TO THE CONSTITUTION OF THE BOARD: See notes to sec. 23, *ante*.

6. NOTICES OF DELEGATION OF POWERS: See notes to secs. 4, 6, 25, 26 of the Ordinance, *ante*.

REPEALED RULES.

Regulations dated 25.2.21,

Rules dated 19.3.24; 17.10.28.

See also rules following the Antiquities (Enclosures) Ordinance and made thereunder (*post*).

ANTIQUITIES RULES.

Short title.

Archaeological
Advisory
Board.

1. These rules may be cited as the Antiquities Rules.

2. — (1) The Archæological Advisory Board shall be composed of the chairman and nine members.

See sec. 23 of the Ordinance, *ante*, and last paragraph of notes thereto.

(2) The members of the Board shall hold office for one year upon nomination which will be made annually by the High Commissioner.

(3) The secretary of the Board shall be an officer appointed by the Director.

(4) The Director may convene the Board by notice in writing posted to each member not less than seven days before the date of meeting.

(5) The chairman and three members shall form a quorum.

(6) the minutes of each meeting shall be circulated to all members by the secretary, and may be published, in whole or in part, at the discretion of the High Commissioner.

(7) (i) The Director may, at his discretion, consult the Board on any matter of archæological or historical importance or interest and shall consult the Board on the following matters—

- (a) applications for licences to excavate;
- (b) proposals to sell antiquities which are the property of the Government;
- (c) projects for the conservation of historical monuments;
- (d) proposed amendments to, or alterations of, the Antiquities Ordinance.

(ii) Only archæological, historical and technical matters shall be within the purview of the Board.

See *ante*, p. 18 for the constitution of the Board.

3. — (1) A licence to excavate shall be valid only until the 31st December of the year in which it is issued, unless it is otherwise specially endorsed by the Director.

Licences
to conduct
archæological
excavations.

See Part III of the Ordinance, *ante*, secs. 6-11 and notes.

(2) The holders of licences to excavate who desire to continue their excavation after their licences become invalid shall apply for the renewal of their licences.

(3) An application for a licence to excavate or a renewal of such licence shall be made in writing to the Director at least one month before the licence or the renewal is required.

(4) Licences to excavate shall be produced on demand to any district or police officer and to any officer of the Department.

(5) A licence to excavate shall be subject to the following conditions, in addition to those prescribed in Part III of the Antiquities Ordinance, and to any special conditions contained in the licence,—

- (a) the antiquities found in the course of excavation shall be divided between the Department and the holder of a licence at the end of each season's work;
- (b) the holder of the licence shall inform the Department in writing of the date on which he desires the division to be made, not later than fourteen days prior to that date, and shall submit at the same time—
 - (i) a complete list of all the antiquities discovered, sufficiently descriptive to make it possible to identify each object and showing the number allotted to each by the

excavator, such number being legibly written on the object or on a label securely attached to it; and

(ii) a note explaining the excavator's system of numbering, accompanied by such sketch plans, sections and other information as will provide a record of all architectural remains and of the circumstances attending the discovery of each object, such as position in the excavation, and associated objects;

(c) no division shall take place until the information prescribed above has been given, and no licence to export antiquities shall be granted until a division is made:

Provided that, if in the opinion of the Director it is necessary for scientific or other reasons to postpone the division, such licence may be granted before the division is made;

(d) the information will not be communicated or published by the Department without the consent of the excavator until a period of two years has elapsed after the close of his excavations;

(e) the excavator shall not subject antiquities discovered by him in the course of his excavations to any chemical or electrolytic process of cleaning unless he has previously obtained permission in writing to do so from the Director:

Provided that the excavator may employ preservative measures, such as the use of paraffin wax, to consolidate objects.

Rules dated
20.7.32.

Dealers'
licences.

4. — (1) Applications for licences to deal in antiquities, and for the renewal of licences to deal in antiquities, shall be made in writing to the Director, stating the full name of the applicant and his business address.

See sec. 25 of the Ordinance, *ante*.

(2) A licence to deal in antiquities shall not be granted for a period exceeding one year and shall expire upon the 1st April for whatever period it may have been originally granted.

(3) A fee of two pounds shall be payable for a licence.

(4) A licence to deal in antiquities shall be available only for the person to whom it was granted:

Provided that, upon notification to the Department of the death of the licensee and of the names of his heirs or representatives,

Rules dated
29.1.32

such heirs or representatives may continue to act under the licence for a period not exceeding one month from the date of the death of the licensee.

(5) A licence to deal in antiquities shall authorise the sale of antiquities only at a place specified in the licence.

(6) Any officer of the Department may, at all reasonable times, inspect the premises with reference to which a dealer's licence has been granted, and the licensee shall give him all facilities for examining his entire stock of antiquities and shall furnish any information which he may require concerning such antiquities.

(7) The licensee shall, at all times upon demand, produce his licence to deal in antiquities to any officer of the Department.

(8) If the exportation of an antiquity is prohibited under section 16 of the Antiquities Ordinance, and such antiquity is the property of a licensed dealer he shall—

- (a) inform any purchaser concerning this prohibition, and
- (b) communicate to the Director the purchaser's full name and address in Palestine on the day of the sale.

(9) A licensed dealer shall inform every purchaser of antiquities that it is necessary to obtain a licence to export antiquities and shall exhibit prominently at his place of business, and draw the attention of purchasers to, any notice relating to the exportation of antiquities which the Director may supply for the purpose.

(10) A licence to deal in antiquities shall be revocable at the discretion of the Director if in his opinion the licensee has failed to comply with the terms of these rules or has otherwise shown himself to be unfit to be a holder of such licence.

5. — (1) Application for a licence to export antiquities shall be made in writing to the Director, giving the following particulars—

See Part IV of the Ordinance, *ante*, secs. 12-16 and notes.

- (a) a list of the antiquities, containing a description of each object sufficient for identification;
- (b) a declaration of the value of each object.

(2) An applicant for a licence to export antiquities shall give any further information regarding such antiquities that the Director may require.

(3) Before a licence to export antiquities is granted, an applicant for such licence shall pay to the Department an export fee on the value of the antiquities, at the rate in force from time to time.

Licence
to export
antiquities
and export
fee.

(4) The fee on the exportation of antiquities shall be at the rate of ten per cent on the declared value of the antiquities, or if the Director disputes the declared value, then at the value to be fixed by an independent appraiser appointed by the Board.

Prohibition on the import of antiquities from Syria save under licence.

6. No antiquity shall be permitted to enter Palestine from Syria or the Grand Lebanon unless its exportation has been sanctioned by a licence issued by the competent authority in the country of export.

See sec. 28 of the Ordinance, *ante*, and notes.

ANTIQUITIES (EXEMPTIONS) RULES.

Short title.

1. These rules may be cited as the Antiquities (Exemptions) Rules.

Exemption of certain antiquities from the operation of the Ordinance.

2. Any antiquity the preservation of which shall be certified by the High Commissioner to be incompatible with the carrying out of the provisions of a concession granted by the Turkish Government shall be exempt from the operation of the Ordinance.

A certificate was given by the High Commissioner on 29.11.33 (P. G. 406 of 7.12.33) that the preservation of the antiquity described in the Schedule to the certificate was incompatible with the carrying of the provisions of the Concession for the drainage of Lake Huleh and the adjacent marshes.

THE SCHEDULE: The Jisr Banat Ya'qub Bridge situated in the Sub-District and Safad and included in the Schedule of Historical Sites and Monuments published under sec. 17 of the Antiquities Ord.

ANTIQUITIES (ENCLOSURES) ORDINANCE.

No. 33 of 1935.

AN ORDINANCE TO REGULATE CERTAIN PREMISES OCCUPIED BY THE DEPARTMENT OF ANTIQUITIES.

BE IT ENACTED by the High Commissioner for Palestine with the advice of the Advisory Council thereof:-

Short title.

1. This Ordinance may be cited as the Antiquities (Enclosures) Ordinance, 1935.

PROMULGATION: En. 8.8.35; prom. P. G. 530 of 15.8.43; (notice p. 723; P. G. 530; ord. sup. 1, p. 147). Notice of confirmation; 30.9.35; P. G. 542 of 10.10.35, p. 897. The draft ord., dated 12.6.35, appeared in P. G. 519 of 20.6.35.

Application of Ordinance.

2. This Ordinance shall apply:-

(a) to offices and other premises occupied by the Department of Antiquities, including the Palestine Archaeological

Museum and Library, together with the grounds thereof, and any building, camp, enclosure or area occupied by the said Department either temporarily or permanently, and (b) to any historical monument or historical site set out in the schedule of Historical Monuments and Historical Sites published under section 12 of the Antiquities Ordinance, 1929.

3. The High Commissioner in Council may make rules for all or any of the following purposes relating to all or any of the places referred to in section 2 of this Ordinance, that is to say:-

Power of High Commissioner in Council to make rules.

- (a) for regulating the use of the same and of the contents thereof and for protecting the same and the fittings, furniture and contents thereof from injury, destruction or misuse;
- (b) for requiring from any person using the same any entrance fee or any guarantee or security against the loss of, or injury to, any book or other article;
- (c) for enabling any guard, museum and library attendant or any other person employed by the Department of Antiquities or any Police officer to exclude or remove therefrom persons committing any of the offences in section 4 of this Ordinance or against the rules;
- (d) for enabling any guard, museum and library attendant or any other person employed by the Department of Antiquities or any Police officer, to arrest or detain without a warrant any person found stealing or doing damage, or reasonably suspected of having stolen or having done any damage to any antiquity, furniture or equipment or any other thing within any place referred to in section 2 of this Ordinance:

Provided that any person arrested or detained by any guard, museum and library attendant or any other person employed by the Department of Antiquities shall be handed over as soon as possible to a Police officer.

For rules made under this section see Antiquities (Palestine Archaeological Museum) Rules, *post*.

Offences.

4. Any person who in any place referred to in section 2 of this Ordinance:-

- (a) behaves in a disorderly manner;
- (b) uses violent, abusive, or obscene language;
- (c) bets or gambles;
- (d) fails to comply with any rules made under section 3 of this Ordinance;
- (e) or who, after having been ordered to leave such place pursuant to rules made under section 3 of this Ordinance, persists in remaining therein;

shall, notwithstanding his exclusion or removal from such place, be liable on conviction to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding six months, or to both.

A. G. WAUCHOPE

8th August, 1935.

High Commissioner.

ANTIQUITIES (PALESTINE ARCHAEOLOGICAL MUSEUM) RULES.

Citation.

1. These rules may be cited as the Antiquities (Palestine Archaeological Museum) Rules, 1937.

1. Antiquities (Palestine Archaeological Museum) Rules dated 29.11.37; P. G. of 9.12.37, sup. 2, p. 1240.

2. *Id.* Amend.: Rules, dated 17.10.39; P. G. 958 of 26.10.39, sup. 2, p. 1150.

Interpretation.

2. In these rules, unless the context otherwise requires—

“Department” means the Department of Antiquities;

“Director” means the Director of the Department;

“museum” means the building known as the Palestine Archaeological Museum and includes all grounds and premises occupied by the Département;

“exhibition galleries” and “students’ galleries” mean the public exhibition galleries and the students’ galleries of the Palestine Archaeological Museum, respectively;

“library” means the library of the Department;

“reading room” means the reading room of the library.

3. Subject to the provisions of these rules, the exhibition galleries, students' galleries and reading room shall be open to members of the public at such times as may be fixed from time to time by the Director by notice exhibited at the entrance to the museum.

Times at which museum open.

4. An entrance fee of 10 mils shall be payable by any person desiring to visit the exhibition galleries:

Entrance fee.

Provided that the Director may in his discretion exempt any particular persons or classes of persons from the payment of such fee or of any portion thereof.

As replaced by the 1939 Amend. Rules.

5. Children under the age of twelve years shall not be admitted to the exhibition galleries unless in charge of an adult.

Admission of children.

6. Visitors shall not touch any antiquity displayed in the exhibition galleries.

Prohibition.

7. — (1) Any archæologist or student desirous of having access to any of the objects kept in the students' galleries or to any object forming part of the reserve collections kept therein, for the purpose of study, may apply to the Director for permission: any person who has been granted permission as aforesaid shall not take any objects from or return the same to their place except through an official of the Department.

Admission to students' galleries.

(2) The students' galleries may be visited by the general public except when in use by archæologists or students.

8. — (1) Any person desirous of being admitted to the reading room may make application to the Director in form "A" in the schedule hereto and such application shall be supported by a recommendation in form "B" in the schedule hereto.

Admission to reading room.

(2) Every such application must be received at least two days before the date on which admission is desired.

(3) The Director may, in his absolute discretion, approve or reject any such application as aforesaid or at any time suspend or withdraw any approval so given.

(4) Except in special cases, the Director will not authorise the admission to the reading room of any person under the age of eighteen years.

(5) If the Director approve of any application, the Director shall issue a ticket authorising the admission of the applicant to the

reading room. Such ticket shall not be transferable and shall be produced to any official of the Department on demand; it shall be valid for the period endorsed thereon, but may be renewed upon application to the Director.

Provision to be observed in reading room.

9. — (1) The following provisions shall be observed by persons who have been granted admission to the reading room:—

- (a) No person shall write upon, damage, or make any mark upon any printed book, manuscript or map belonging to the library or turn over the leaves of any such book by moistening the fingers;
- (b) No person shall lay the paper on which he may be writing on any book, manuscript or map belonging to the library;
- (c) No tracing or photograph may be made except with the permission of the Librarian;
- (d) Silence shall be observed in the reading room;
- (e) Books belonging to the library may not be borrowed;
- (f) Books taken from the shelves in the reading room shall, after use, be left on the tables therein.

(2) Any person who has been granted admission to the reading room who is desirous of obtaining from the library any book which is not kept in the reading room may apply for such book to the Assistant Librarian by means of a ticket obtainable from that official.

(3) Before leaving the reading room, readers shall restore to the Assistant Librarian all books, manuscripts or maps which they have received by ticket and shall require the return to them of the tickets by which they obtained such books, manuscripts or maps: readers will be held responsible for such books, manuscripts or maps until the return to them of the said tickets.

Copying, etc. of antiquities in museum.

10. Any antiquity exhibited in the museum may be copied or sketched or may be photographed by means of hand cameras: any person desiring to use an easel shall obtain a permit to do so from the Museum Keeper.

Cloakroom.

11. Visitors to the Palestine Archæological Museum shall deposit in the cloakroom, which may be used free of charge, any sticks, umbrellas or parcels which they may be carrying at the time of the visit.

12. No person shall —

Prohibition.

(a) smoke in any part of the Palestine Archæological Museum; or

(b) bring any dog into the Palestine Archæological Museum.

13. — (1) Any guard or attendant of the museum or library or laboratory or photographic room or arranging room of the Department or any police officer, may exclude or remove from the museum or the grounds thereof any person committing any of the offences set out in section 4 (a), (b) or (c) of the Antiquities (Enclosures) Ordinance, 1935, or contravening any of the provisions of these rules.

Power of certain officers.

No. 33 of 1935.

(2) Any guard or attendant of the museum or library or laboratory or photographic room or arranging room of the Department or any police officer, may arrest or detain without a warrant any person found stealing or doing damage, or reasonably suspected of having stolen or having done any damage to any antiquity, furniture or equipment or any other thing within the museum or upon the grounds thereof: Provided that any person arrested or detained by any such guard or attendant shall be handed over as soon as possible to a police officer.

14. Any person contravening any of these rules may, in addition to any penalty to which he may be liable, be refused further admission to the museum.

Penalty.

THE SCHEDULE.

(Rule 7).

FORM "A".

To

THE DIRECTOR OF THE DEPARTMENT OF ANTIQUITIES,
Jerusalem.

Sir,

I hereby make application for admission to the Reading Room of the Library of the Department of Antiquities.

I AM EIGHTEEN YEARS OF AGE.

Subject(s) of reading for which admission is desired:—

.....

I am, Sir,

Your obedient servant.

.....

Name

Address

Profession }
or Occupation }

Dated

NOTE.

Admission is not granted to persons under eighteen years of age unless it can be shown that they are engaged in literary work requiring research. Study for examinations is not considered as a ground for the relaxation of this rule.

The use of the Reading Room is restricted to research and reference which cannot be carried on elsewhere, and applicants should give assurances (with particulars) that the works they desire to consult cannot be obtained at other available libraries.

FORM 'B'.

To

THE DIRECTOR OF THE DEPARTMENT OF ANTIQUITIES,
Jerusalem.

Sir,

From personal knowledge I recommend

Applicant's name
in full, and address,
to be inserted.

as a fit and proper person to be admitted to the Reading Room of the Library of the Department of Antiquities.

I am, Sir,

Your obedient servant.

Name in full

Address

Profession or }
Occupation }

Date 19.....

APPROPRIATION

Appropriation Ordinances Omitted .

ARBITRATION

INTRODUCTORY NOTE

The Arbitration Ordinance was enacted in 1926, replacing arts. 1841—1851 of the Mejlle. It was based on the Arbitration Act, 1889, but also included provisions intended to give effect to the International Protocol on Arbitration Clauses in Commercial Agreements. The application of the Protocol to Palestine, in 1926, made local legislation on foreign submissions necessary and the opportunity was taken to recast the entire subject on the model of the English Act. The innovation was not so much one of substance as of form: Arbitrations had been prevalent in Palestine before the enactment of the Ordinance and the law did not greatly differ from English legislation save as regards the remedies available. The Courts had also freely borrowed from English sources in interpreting and applying the local law.

A number of local enactments, both Turkish and Ordinances enacted by the Administration, made reference to arbitration. These laws have remained unaffected by the Ordinance save for the alteration of references from the Mejlle to the Arbitration Ordinance¹).

The Ordinance has undergone a number of minor amendments since the date of its enactment. It is to be regretted that no effect was given in Palestine to the recommendations of the MacKinnon Committee (1927) which led, in England, to the enactment of the Arbitration Act of 1934.

Although Arbitration Rules have been enacted, the procedure in matters to which the Ordinance applies is regulated principally by the Civil Procedure Rules applying in the case of ordinary actions.

STATUTORY REFERENCES:

A list of enactments providing for the compulsory or optional reference of specified disputes to arbitration is set out in the notes to sec. 2 of the Ordinance. The terms of these enactments should in all cases be scrutinized in order to determine the extent to which the

¹ Either expressly, as in the case of art. 60 of the Ottoman Code of Civil Procedure which was referred to in sec. 21 of the Ordinance, or impliedly, as in the case of the Land Courts Ordinance.

provisions of the Arbitration Ordinance are made to apply, if at all, to such references.

The view expressed in this title is that there is no local equivalent to references by order of the Court as known to English Law (notes to sec. 2).

PROTOCOL ON ARBITRATION CLAUSES:

Sec. 20 of the Ordinance gives local effect to the provisions of the 1923 Protocol on Arbitration Clauses. Reference should be made to the note Historical, in sec. 20, for further particulars on this subject.

CONVENTION ON FOREIGN AWARDS:

The 1927 Convention on Foreign Awards, which was a comment to the 1924 Protocol on Arbitration Clauses, was applied to Palestine in 1931 by Order in Council. The provisions of the Convention and of the English Act applying to the convention were embodied in sec. 34) in the Arbitration (Foreign Awards) Ordinance which is set out in this title. Further particulars on this subject are set out in the notes to that Ordinance.

CONTENTS:

A detailed list of contents is set out at the beginning of the title to facilitate reference.

ENACTMENTS:

Arbitration Ordinance, Cap. 6, as amended.

Arbitration Rules, 1937.

Court Fees Rules, 1935 as amended, items 7—11.

Arbitration Clauses (Protocol) Act, 1924.

Arbitration (Foreign Awards) Ordinance, No. 17 of 1934.

Arbitration (Foreign Awards) Act, 1930.

Arbitration (Foreign Awards) (No. 2) Order, 1931.

CONTENTS

ARBITRATION ORDINANCE (CAP. 6).

Sec. 1. — *Short Title.*

PROMULGATION

AMENDMENTS

PREVIOUS OTTOMAN LEGISLATION

SOURCE, INTERPRETATION

CONSTRUCTION

Sec. 2. — *Interpretation.*

“Unless the context otherwise requires”

COURT

Source

Material Jurisdiction

Lack of Jurisdiction

Particular Cases:

(Action on the Award)

(Admiralty)

(Arbitrator's Fees)

(Ecclesiastical Courts)

(Eviction)

(Land Purchase)

(Workmen's Compensation)

Meaning of “Court” in Statutory References

JUDGE

SUBMISSION

Source

The Submission

Implied Submissions

Estoppel

Forms of Submission

Parties to a Submission

Effect of Submission

Who may submit

Privity

Who may be appointed

Statutory References

Effect of Statutory References

References under specified statutes:

(Ain Fara Spring)

- (Air Navigation)
- (Antiquities)
- (Companies)
- (Co-operative Societies)
- (Copyright)
- (Dead Sea Concession)
- (Electricity Concessions)
- (Land Courts)
- (Land Settlement)
- (Mining)
- (Oil Mining)
- (Town Planning)
- (Trade Disputes)
- (Treaty of Peace with Turkey)
- (Urtas Springs)
- (Village Administration)
- (Workmen's Compensation)
- (Wrecks and Salvage)

Reference by Order of Court

What may be referred

Particular Cases:

- (Criminal Offences)
- (Estates of deceased Persons)
- (Eviction)
- (Illegal Transactions)
- (Lands)
- (Partition)
- (Partnership)
- (Point of Law)
- (Previous Claim)
- (Separate Disputes)
- (Settlement of Accounts)
- (Workmen's Compensation)

Construction of Submission

Submissions not within the scope of the Ordinance

- Void and invalid Submissions
- Severability
- Stamping the Submission
- Termination of Submission
- "Submission" in different Contexts
- Foreign Submissions
- Sec. 3. — *Submission to be irrevocable.*
 - Source
 - Court
 - Submission
 - Order of Court
 - Procedure
 - Evidence
 - Fees
 - Costs
 - Revocation
 - Appeals
- Sec. 4. — *Provisions implied in submission.*
 - Source
 - Submission
 - Implied Terms
 - Powers
 - Qualifications
 - Authority
 - Jurisdiction
 - Procedure
 - Time
 - Only One Award
 - Unanimous Award
 - Signature
 - Duties of Arbitrators
 - Cross-References
 - Forms of Award
- Sec. 5. — *Proceedings contrary to submission may be stayed.*
 - Source

Court
Judge
Submission
Construction
Procedure
Evidence
Fees
Costs
Discretion
Statutory References
"Any person claiming through or under."
Powers of the Court
Counterclaim
Parties
Effect of Stay; Ancillary Remedies
Stay under International Protocol on Arbitration Clauses
Crown Actions
Appeals

Sec. 6. — *Power of Court to appoint arbitrator, etc.*

Source
Cross-Reference
Effect of divergence in Texts
Summary
Court
Judge, Submission
Procedure
Evidence
Fees
Costs
Powers of the Court
Sub-sec. (1) (a)
Sub-sec. (1) (b)
"Additional arbitrator"
Third Arbitrator, Umpire
The Notice in writing

- Sub-sec. (2). - The notice
- "Who shall have the like powers etc."
- Sec. 7 compared
- Appeals
- Sec. 7. — *Power to supply vacancy.*
 - Source
 - Cross-Reference
 - Divergence in Texts
 - Summary
 - Court
 - Submission
 - Procedure
 - Evidence
 - Fees
 - Costs
 - Powers of the Court
 - "If any of the appointed arbitrators"
 - "Served a notice"
 - "Two arbitrators, one appointed by each party"
 - "Unless the submission expresses a contrary intention"
 - "Who shall have the like powers etc." sec. 6 compared
 - Appeals
- Sec. 8. — *Powers of arbitrator and duty of arbitrator to state a case.*
 - Source of sub-sec. (1)
 - Divergence in Texts
 - Source of sub-sec. (2)
 - Sec. 8 (1) (b) and 8 (2) compared
 - Administration of Oaths, etc. (sub-sec. (1) (a))
 - Correction of Errors, etc. (sub-sec. (1) (c))
 - Reserving a Question of law, Stating a Case
 - Sub-sec. (2)
 - Court
 - Judge
 - Applications to Court
 - Time to apply

Who may apply
 Evidence
 Fees
 Costs
 Powers of the Court
 Workmen's Compensation Cases
 Appeals

Sec. 9. — *Witnesses may be summoned, etc.*

Source:

(Sub-sec. (1))

(Sub-sec. (2))

(Sub-sec. (3))

Sub-sec. (1):

Court

Submission

Procedure

Fees

Costs

Appeals

Summons (sub-secs. (1), (2))

Workmen's Compensation

Sub-sec. (2)

Sub-sec. (3) — False Evidence

Sec. 10. — *Enlargement of time for making an award.*

Source

Court

Procedure

Fees

Costs

Discretion

Length of Time

Practice

Powers of the Court

Extension of Time by Arbitrators

Appeals

Sec. 11. — *Removal of Arbitrator for Misconduct or Neglect.*

Source
Effect of divergence in Texts
Court
Submission
Procedure
Evidence
Fees
Costs
Misconduct
Neglect
Powers of Court
Particular Cases
Insufficient Misconduct
Effect of removal of Arbitrator
Appeals

Sec. 12. — *Power to remit award.*

Source
"In all cases of reference"
Court
Procedure
Consolidation of Applications
Evidence
Fees
Costs
Powers of the Court
How the Court is seized
When the Court will remit:
 (Award in the Alternative)
 (Award not final)
 (Failure to hear Evidence)
 (Failure to keep Record of Proceedings)
 (Failure to sign)
 (Failure to state a case)

(Misconduct)
 (Misdescription)
 (Nullity)
 (Technical Misconduct)

Procedure after remittal
 Appeal from Order of remittal
 Remittal in Land Court References
 Remittal in Land Settlement References

Sec. 13. — *Power to set aside award.*

Source
 Court
 Applications to Court
 Consolidation
 Powers of the Court
 Costs
 Time to apply to the Court
 Fees
 Evidence

GROUND FOR SETTING ASIDE AWARD.

I. MISCONDUCT

Meaning of Misconduct
 Delegation of Powers
 Failure to state a case
 Hearing the Evidence
 Improper communications with a Party
 Irregular conduct of the Proceedings
 Misapplication of the Law
 Partiality
 Proceeding *ex parte*
Res judicata

II. IMPROPER PROCUREMENT OF AWARD.

III. INHERENT JURISDICTION.

Absence of Submission
 Ambiguous Award

Arbitrator *functus officio*
Award delivered out of Time
Award in favour of a Third Party
Award not signed
Award unreasonable and uncertain on the face
of it.

Chose jugée, Res Judicata

Conditional Award

Error patent on face of the Award

Excess of Jurisdiction

Failure to decide all Questions

Illegality of Transaction

Nullity

Insufficient Ground for setting aside Awards

(Award by Consent)

(Award insufficiently stamped)

(Failure to give Reasons)

(Improper Record)

(No miscarriage of Justice)

Acquiescence, Estoppel, Waiver

Severability

Effect of setting aside Award

Contracting out Appeals

Land Court References

Land Settlement References

Workmen's Compensation References

Sec. 14. — *Enforcement of award.*

Source

Effect of divergence in the Texts

Court

Applications to Court

Evidence

Costs

Who may apply

Consolidation of Applications

- Action on the Award
- Jurisdiction of Court in Actions on Awards
- Foreign Awards
- Effect of Awards
- Presumption in favour of Award
- Applications to enforce the Award
- Fees
- Opposition to enforcement of Award
- Defences
- When the Award will not be enforced
- Award incapable of execution
- Verbal Awards
- Award not stamped
- Contracting out
- Unsuccessful grounds of Opposition
- Powers of the Court
- Lack of Jurisdiction
- Appeals
- Land Court References
- Land Settlement References
- Workmen's Compensation Awards
- Foreign Awards
- Sec. 15.—*Procedure.*
 - Sub-sec. (1)
 - Source
 - Court
 - Rules applicable
 - Form of Applications:
 - (Old Law)
 - (New Law)
 - Divergence between the Sub-section and the Rules
 - Evidence on Applications
 - Advocates
 - Fees
 - Costs

Remedies available
Unauthorised Tribunals, Conflict of Jurisdiction
Powers of the Court
Consolidation of Applications
Sub-sec. (2)
Court or Judge
"Shall be heard by the Court"
Court
Former Law
Sub-sec. (3)
English Law
Court
Former Law
Effect of New Law
"Decision", "Order"
"An Order", "The Order"
Applications for leave to appeal, by motion
Evidence
Procedure
Time
Review
Grant of leave to appeal
Magistrate's Court
District Court
Grounds of Appeal
Appeal from Order of Remittal
Ancillary Remedies, Powers of the Court
Fees
Costs
Appeals to the Privy Council
Appeals in Land Court References
Appeals in Land Settlement References
Appeals in Workmen's Compensation
Sub-sec. (4)
Former Law

- Production of signed copy of the Award
- Verbal Awards
- Stamping the Award
- Workmen's Compensation Cases
- Sec. 16. — *Rules concerning Jurisdiction.*
- Sec. 17. — *Fees.*
 - Former law
- Sec. 18. — *Costs.*
 - Source
 - "The Authority making the Order"
 - Costs
 - Other Terms
- Sec. 19. — *Application of Ordinance to Government.*
 - Position of Government
- Sec. 20. — *Staying of proceedings in respect of matters to be referred to arbitration under Protocol on Arbitration Clauses.*
 - Historical
 - Effect of Amendment
 - "Any party to such legal proceedings"
 - Submission
 - Court
 - Judge
 - Procedure
 - Evidence
 - Fees
 - Costs
 - Discretion
 - Cross-References
 - Marginal Notes
- Sec. 21. — *Repeals. (Omitted).*

THE SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS:

- Source of the Schedule
- Submission

Application of the Schedule

Statutory References

Cross-References

(a) *Reference to single Arbitrator.*

(b) *Appointment of Umpire.*

“May appoint”

Umpire, Additional Arbitrator

“At any time within the period.....”

Cross-References

(c) *Time for Award by Arbitrators.*

Months

Beginning of period

“Within three months.....”

Enlargement of time

Extension of Time by the Court

Consent, Estoppel

Verbal Awards

Signature

Single Arbitrator

Umpire.

(d) *Umpire's Authority.*

Umpire and Arbitrators.

(e) *Time for Award by Umpire.*

“..... has expired on or before”

Enlargement of Time

Appointment of new Umpire

Writing

Signature

(f) (g) *Evidence.*

Oath or Affirmation

False Evidence

Hearing the Evidence

“Subject to any legal objection”

“To do other things..... which the arbitrators may require”

Position of Government

(h) *The Award.*
 "Shall be final and binding".

(i) *Costs of the Reference.*

Divergence from English Text

Discretion

"Tax or settle"

Powers of the Court

Cross-References.

RULES

RULES IN FORCE

REPEALED RULES

AUTHORITY

ARBITRATION RULES

R. 1. — *Citation.*

R. 2. — *Local jurisdiction of Court.*

Clause (b) (ii)

Time to object

Land Court References

R. 3. — *Enforcement of Award.*

R. 4. — *Confirmation of Award.*

Extension of Time

R. 5. — *Fees payable.*

Court Fees Rules — Items 7-11, 1-6.

R. 6. — *Repeal.*

R. 7. — *Procedure.*

"Unless specifically otherwise provided for".

ARBITRATION CLAUSES (PROTOCOL) ACT, 1924.

Sec. 1. — *Staying of Court proceedings in respect of matters to be referred to arbitration under commercial agreements.*

Sec. 2. — *Short title.*

SCHEDULE: PROTOCOL ON ARBITRATION CLAUSES

Parties to the Protocol

ARBITRATION (FOREIGN AWARDS) ORDINANCE

(No. 17 of 1934).

Sec. 1. — *Short title.*

PROMULGATION

SOURCE

Sec. 2. — *Application.*Sec. 3. — *Effect of Foreign Awards.*

Enforceable Awards

Manner of enforcement

Court

Conditions for enforcement

Sec. 4. — *Conditions for enforcement of foreign awards.*

"District Court"

Sec. 5. — *Evidence.*Sec. 6. — *Meaning of "Final award".*Sec. 7. — *Saving.*Sec. 8. — *Amendment of sec. 20 of No. 9 of 1926.*FIRST SCHEDULE: CONVENTION ON THE EXECUTION OF FOREIGN
ARBITRAL AWARDS

SECOND SCHEDULE: PROTOCOL ON ARBITRATION CLAUSES.

ARBITRATION (FOREIGN AWARDS) ACT, 1930.

PART I. — ENFORCEMENT OF FOREIGN ARBITRAL AWARDS.

Sec. 1. — *Application of Part I.*Sec. 2. — *Effect of Foreign awards.*Sec. 3. — *Conditions for enforcement of foreign awards.*Sec. 4. — *Evidence.*Sec. 5. — *Meaning of "final award."*Sec. 6. — *Saving.*Sec. 7. — *Application to Scotland and Northern Ireland.*PART II. — AMENDMENT OF ARBITRATION CLAUSES.
(PROTOCOL); ACT 1944 AND SHORT TITLESec. 8. — *Amendment of s. 1 of 14 & 15 Geo. 5, c. 39.*Sec. 9. — *Short title.*SCHEDULE: CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL
AWARDS.

THE ARBITRATION (FOREIGN AWARDS) (No. 2) ORDER,
1931.
(Parties to the Convention)
SCHEDULE.

ARBITRATION ORDINANCE.

AN ORDINANCE TO PROVIDE FOR THE REFERENCE AND SUBMISSION OF
DISPUTES TO ARBITRATION, THE PROCEDURE OF ARBITRATION AND THE
EXECUTION OF ARBITRATION AWARDS.

(16th March, 1926)

Short title.

1. This Ordinance may be cited as the Arbitration Ordinance.

PROMULGATION:

En. 11.3.26; pro. O. G. 159 of 16.3.26 (notice p. 117; Ord., No. 9 of 1926, *ibid*). The draft Ord. appeared in O. G. 153 of 16.12.25, p. 622.

AMENDMENTS:

1). Ord. No. 14 of 1928; en. 15.7.28; pro. O. G. 215 of 16.7.28 (notice p. 392; Ord. *ibid*). Draft Ord., O. G. 212 of 1.6.28, p. 277. Notice of confirmation, O. G. 220 of 1.10.28, p. 595.

2). Arbitration (Foreign Awards) Ord., No. 17 of 1934.

3). Statute Law Revision Ord., No. 30 of 1934.

4). Ord. No. 45 of 1936; en. 11.6.36; pro. P. G. 602 of 11.6.36 (notice p. 672; Ord., sup. 1, p. 223). Draft of 7.3.36; P. G. 577 of 19.3.36, p. 304.

A number of verbal amendments were introduced by the Revised Edition of the Laws Ord. (No. 29 of 1934).

(The amendments are incorporated in the text of the Ordinance.)

PREVIOUS OTTOMAN LEGISLATION:

The following is the text of sec. 21 of the Ord. which was omitted from Drayton on the authority of sec. 4(a) (ii) of the Revised Edition of the Laws Ord. (*supra*):

21. The provisions of the Ottoman Civil Code, Articles 1841-1851 concerning arbitration, shall no longer have effect in Palestine. In article 60 of the Ottoman Code of Civil Procedure the reference to the book on arbitration in the *Mejelle* shall no longer apply, but arbitrators shall be appointed under that Article in accordance with the provisions of this Ordinance.

The words "shall no longer have effect" are usually employed when abrogating Turkish Imperial legislation: See title *INTERPRETATION*, *sub. tit. Repeals*. As regards arts. 60-61 of the Civil Procedure Code and art. 38 of the Code of Commercial Procedure, see note *Reference by Order of Court*, in notes to *Submission*, sec. 2. See the last paragraph of heading *Effect of Submission, ibid.*, for arts. 40-50 of the Ottoman Commercial Code, and Young, *Corps de Droit Ottoman*, Vol. 1, p. 213, arts. 24-28 for fees payable on awards, etc. under the Turkish Administration. Sec. 21 did not refer to any of the

ordinances, enacted before 1926, which provided for the reference of disputes to arbitration. These statutory provisions have remained unaffected by the enactment of the Arbitration Ordinance save that, as in the case of art. 60 of the Civil Procedure Code, the machinery provided by the *Mejelle* is now replaced by the provisions of the Ordinance. See e. g., C. A. 38/34 (1) mentioned in note (*Land Courts*), under *Statutory Submissions*, following the definition of "Submission", *infra*, sec 2.

SOURCE, INTERPRETATION:

The Ordinance is copied from the English Arbitration Act, 1889 (52 & 53 Vict., c. 49).

The question of the construction of local ordinances based on English Law is discussed at length under the title *INTERPRETATION* and *PALESTINE ORDER IN COUNCIL* (*q. v.*). For the purpose of this title the following comments are material:

The Arbitration Ordinance is based on English Law (C. L. A. 7/33)⁽²⁾ and English principles are applicable in the construction of the Ordinance, when they do not conflict with the terms thereof (C. A. 171/37⁽³⁾; C. A. 144/33⁽⁴⁾) both as regards the remedies granted (*vide ibidem*) and as regards rules of procedure (C. L. A. 10/27)⁽⁵⁾, when incorporated in the local law (*vide* C. A. 5/41)⁽⁶⁾. It was held that the powers of the Court in Palestine in remitting or setting aside awards are similar to the powers of the Court in England (C. A. 21/38)⁽⁷⁾.

English decisions and, when applicable in England, Irish (C. A. D. C., T. A. 40/41)⁽⁸⁾ or Dominion cases, are frequently relied upon in decided cases under the Ordinance. When the wording is the same in the two enactments, this is done as a matter of course. See e. g., C. D. C., T. A. 155/44⁽⁹⁾, Free use is also made of English text books, such as Russell, Hogg, or Halsbury's *Laws of England*.

In the case of English decisions delivered prior to the enactment of the Arbitration Act, these will apply under the Ordinance only so far as the Act or the Ordinance have not altered the old law. Thus, in C. A. 93/35⁽¹⁰⁾, it was argued that the case of *R. v. Hill* [1819] (7 Price 636), turning on a question of estoppel in arbitration proceedings, could not be applied as it had been decided prior to the enactment of the Arbitration Act. The Court held: "The Statute, however, does not exclude the Common Law principle of estoppel, and this argument cannot be sustained." A note of warning should also be sounded against reliance on recent decisions based on the English Law, as the Arbitration Act has been amended in 1934 and the new provisions inserted by the amending Act have not been applied to Palestine.

(1) 1937, S. C. J. (N. S.) 5.

(2) 2, P. L. R. 297; 1, R. 196; P. P. 9.5.34.

(3) 1937, S. C. J. (N. S.) 119; 2, Ct. L. R. 137.

(4) 2, P. L. R. 331; 4, R. 1572; 7, R. 41; P. P. 29.5.35.

(5) 1, R. p. 180. Preliminary ruling: The report is erroneously headed "Judgment".

(6) 8, P. L. R. 82; 1941, S. C. J. 71; 9, Ct. L. R. 71; P. P. 14.3.41

(7) 5, P. L. R. 152; 1938, 1 S. C. J. 144; 3 Ct. L. R. 101.

(8) 1941-2, T. A. 7.

(9) 1944, S. C. D. C. 321.

(10) 7, R. 48.

For example, C. A. D. C., Ja. 233/32⁽¹¹⁾, which decided that the death of a party avoids arbitration proceedings, is still good law in Palestine whilst, in England, the position differs in this respect since the amendment of the Act in 1934. C. A. 125/43⁽¹²⁾, affords a curious exception to this rule. It is quoted and discussed in the notes to sec. 15(1). This question, again, is dealt with in the title *INTERPRETATION*.

In order to facilitate accurate references by excluding English authorities which have no application in construing the terms of the Ordinance, any divergence between the text of the Ordinance and the English model is shown in the notes to the various sections. So also, where an amendment in the Ordinance has rendered local cases obsolete, a list of such cases is set out in the notes dealing with the effect of the amendment.

Care should be exercised in making use of Palestinian cases decided prior to the enactment of the Ordinance. Although they cannot always be considered to be inapplicable, it should be borne in mind that these cases are based on the provisions of the Turkish Law (*supra*). Such cases are, fortunately, few in number.

CONSTRUCTION:

The Courts in England have strictly construed the Statute and unless a case falls clearly within its provisions, no relief is granted (*per curiam*, C. A. D. C., T. A. 40/41, quoting *Yeates v. Caruth* [1895] 2 Ir. R. 146)⁽¹³⁾. See also note *Construction* in sec. 5. See *per contra* notes to sec. 15(1), under heading *Remedies available*.

A party cannot contract out of the protection which the Ordinance affords; and a clause in a submission which provides that the award should be incontestable, is void as being against public policy (C. D. C., T. A. 88/42, 139/42⁽¹⁴⁾), following *dictum* of Scrutton, L. J. in *Czarnikow v Roth, Schmidt & Co.* [1922] 127 L. T. at p. 829).

There is a presumption in favour of the validity of awards — see note *Presumption in favour of Award*, in notes to sec. 14.

INTERPRETATION:

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

“*Unless the context otherwise requires*”: The corresponding words in sec. 27 of the English Act are “unless the contrary intention appears”. The difference in wording does not appear to have any material effect.

As regards the words “Court” and “Judge”, the context does not require a reading different in any way from that defined. But, as is pointed out in the following paragraphs, the definition of *Court* applies only *ratione materiae* and reference should be made to r. 2 of the Arbitration Rules, *post*, for the jurisdiction of Courts *ratione loci*.

The context requires the word “Submission” to be read in one of two different meanings. See the penultimate note, “*Submission*” in *different Contexts*; following the definition of “Submission,” *infra*.

⁽¹¹⁾ 1, R. 193.

⁽¹²⁾ 10, P. L. R. 281; 1943, A. L. R. 301.

⁽¹³⁾ *Supra*, note 8.

⁽¹⁴⁾ *Not reported*.

"court" means:—

- (a) where the claim which is the subject of a submission does not exceed one hundred and fifty pounds, a magistrate's court;
- (b) where the claim which is the subject of a submission does not exceed two hundred and fifty pounds, a magistrate's court presided over by a British magistrate, and
- (c) in all other cases, a district court, or where any matter has been referred to arbitration by a land court, then such land court.

COURT:

Source: The definition of "Court" was substituted by the 1928 Amend. Ord. As the jurisdiction of the Magistrates Courts was altered in 1935, it was found necessary again to amend the definition and that part of the section was re-enacted by the 1936 Amend. Ord. Clauses (a) and (b) were worded somewhat differently in the draft of the 1936 Amendment. The last part of clause (c), beginning with the words "or where any matter", did not form part of the draft. C. A. 78/27⁽¹⁾ is now obsolete by reason of the amendment.

Note that the recent alteration (by Defence legislation) in the jurisdiction of local and British Magistrates⁽²⁾ has rendered an amendment of this definition again necessary: As the jurisdiction of all magistrates is now concurrent in civil matters, clause (b) should be made to apply in all claims up to L.P. 250 which are the subject of submissions, and clause (a) should be deleted.

In the definitions set out in sec. 27 of the Arbitration Act, 1889, "Court" means His Majesty's High Court of Justice.

Material Jurisdiction: The above definition provides for the material jurisdiction of the Courts in matters under the Ordinance, whilst the Arbitration Rules (r. 2, *post*) define the local jurisdiction.

The jurisdiction of the Court in all matters under the Ordinance depends on the amount of the claim which is the subject matter of the submission and not on the amount of the award⁽³⁾. When the reference is made during proceedings in a Court, that Court will normally have jurisdiction in matters connected with the arbitration, as the claim which became the subject matter of the submission was within the jurisdiction of the Court (C. A. D. C., T. A. 211/38⁽⁴⁾; C. A. D. C., T. A. 40/41⁽⁵⁾). But when, during the course of proceedings in a Magistrate's Court, a counter-claim is referred in addition to the claim before the Court, and the amount of the claim together with

⁽¹⁾ 1, P. L. R. 184; 1, R. 182.

⁽²⁾ Defence (Judicial) Regulations, 1943, P. G. 1291 of 30.9.43, sup. 2, p. 883, reg. 2.

⁽³⁾ This does not apply to actions on the award. See this heading in the notes to sec. 14. See notes to r. 5 of the Arbitration Rules, *post*.

⁽⁴⁾ 1938, T. A. 78.

⁽⁵⁾ 1941-2, T. A. 7.

the counter-claim exceed L.P. 250, the proper Court under the Ordinance is the District, not the Magistrate's Court (C. A. 42/39)⁽⁶⁾. It is for the arbitrator to ascertain beyond doubt what sum is claimed in the arbitration (C. A. D. C., T. A. 211/38)⁽⁷⁾.

Lack of Jurisdiction: The point that the Court has no material jurisdiction may in all cases be taken at any time, even on appeal (see *CIVIL PROCEDURE* and *CRIMINAL PROCEDURE*. For arbitration, see C. A. D. C., T. A. 322/37⁽⁸⁾; C. A. D. C., T. A. 88/40⁽⁹⁾). Compare the position regarding local jurisdiction, where the point must be taken at an early stage: See notes to r. 2 of the Arbitration Rules, *post*.

Particular Cases: In the following headings cases are listed dealing with particular questions which came before the Courts for determination, turning on the jurisdiction of the Courts (*ratione materiae*), mostly in petitions for the enforcement of awards under sec. 14 of the Ordinance. The definition of "Court" under sec. 2 applies, however, to that word wherever it appears in the Ordinance (*supra*) and the illustrations following may therefore be quoted as authorities in the case of proceedings in the Courts under any section of the Ordinance.

As to the meaning of *Court* for the purpose of foreign awards, see note to sec. 3 of the Foreign Awards Ordinance, *post*.

(*Action on the Award*): See this heading in notes to sec. 14.

(*Admiralty*): An action for the enforcement of an arbitration award, where the arbitration was held pursuant to a charter-party, is an ordinary Common Law claim and is not within the jurisdiction of the Admiralty Court (*The Beldis* [1936] P. 51, 154 L. T. 680, 52 T. L. R. 195, 106 L. J. (P.) 22 mentioned in Ad. 1/39)⁽¹⁰⁾.

(*Arbitrator's Fees*): A claim by the arbitrator for his fees is independent of the arbitration proceedings. In order to determine the Court which has jurisdiction for such claims, the amount of the claim before the Court should be considered; not the amount of the submission (C. A. D. C., T. A. 56/38)⁽¹¹⁾.

(*Ecclesiastical Courts*): An ecclesiastical Court is not competent to enforce an award of arbitrators (H. C. 82/28)⁽¹²⁾.

(*Eviction*): Although actions for eviction are within the jurisdiction of the Magistrates Courts, an award on a reference relating to the tenancy and eviction of a room cannot be enforced in the Magistrate's Court and the proper Court

⁽⁶⁾ 6, P. L. R. 229; 1939, S. C. J. 286; 5, Ct. L. R. 189; and see proceedings in the District Court, C. D. C., T. A. 237/38, reported in 1939, T. A. 12.

⁽⁷⁾ *Supra*, note 4.

⁽⁸⁾ 1937, T. A. 89.

⁽⁹⁾ *Not reported*. But note that the point was taken by the Court: See this case as discussed in note *Ancillary Remedies, Powers of Court* in sec. 15(3).

⁽¹⁰⁾ 6, P. L. R. 540; 1939, S. C. J. 537.

⁽¹¹⁾ 1938, T. A. 15.

⁽¹²⁾ 1, P. L. R. 334.

under the Ordinance is the District Court (C. A. D. C., T. A. 194/43⁽¹³⁾), following C. A. D. C., T. A. 32/44⁽¹⁴⁾). The reason lies in the difference between the definition of "Court" in this section and the jurisdiction of Courts as defined in other enactments relating thereto. See also *Land Purchase, infra*.

As to how far a claim for eviction may be referred, see note under this heading, *infra*, under definition of *Submission: What may be submitted*.

(*Land Purchase*): An action for the enforcement of an award is *sui generis* and although the subject matter may relate to purchase of land, the District Court has competence (C. A. 62/27)⁽¹⁵⁾, unless the reference was made in a Land Court, when only that Court is competent (C. D. C., Jm. 455/32)⁽¹⁶⁾. See also *Land Court* under heading *Statutory References*, and the opening paragraphs of that heading, *infra*, and see *Eviction, supra*.

(*Workmen's Compensation*): Arbitrations under this Ordinance are made pursuant to a statutory reference and therefore come within the jurisdiction of the District Court irrespectively of the amount involved. (C. B. M., T. A. 7635/40)⁽¹⁷⁾ and see next heading.

Meaning of "Court" in Statutory References: Special jurisdiction is conferred by statute on certain Courts or public officers or *ad hoc* tribunals in the case of reference to arbitration under the terms of the statute. Whether the tribunal is a Court (such as the Shipping Claims Tribunal and the General Claims Tribunal under the Compensation (Defence) Ord.), when the provisions of the Arbitration Ordinance do not apply, or an arbitration tribunal, in which case the remedies available under the Arbitration Ordinance may be invoked, is not always easy to distinguish. See, on this question *Race course Betting Control Board v. The Secretary of State for Air* [1943] 1 All E. R. 672. The particular Ordinances set out under the heading *Statutory References*, following the definition of "Submission", *infra*, should be examined. If no special Court is therein provided, the following remarks apply.

It will be noted that the definition of "Court" depends upon the amount of the submission. Where there is no submission, when the reference arises from a particular provision in the law and not from the agreement of the parties, the definition cannot apply and the District Court is competent, in virtue of its residuary jurisdiction, in matters under the Ordinance (C. B. M., T. A. 7635/40) (*supra*); See *Effect of Statutory References* under heading *Submission, infra*.

(13) 1944, S. C. D. C. 104.

(14) *Not reported*.

(15) 1, P. L. R. 177; 2, R. 496. But purchase of, as distinguished from title to, land is in any event within the jurisdiction of the District Court. *Quære* how far this case is an authority for the jurisdiction on the District Court in dealing with submission or awards dealing with title to land. See heading *What may be referred, Particular Cases: (Land), infra*.

(16) P. P. 25.6.33.

(17) P. P. 3.8.41. Not following C. A. D. C., Jm. 218/38 (*not reported*). The latter case was to the opposite effect but appears to have been decided *per incuriam*. The proceedings before the Magistrate's Court (C. B. M., Jm. 4971/38) appear in P. P. 11.9.38.

Certain matters, such as Crown Actions, which can only be brought in the District or Land Court, would presumably also exclude the jurisdiction of the Magistrate's Court in arbitration, irrespectively of the amount of the submission.

"judge" means the president or any other judge of a district court, if the matter is within the jurisdiction of a district court, or a magistrate if the matter is within the jurisdiction of a magistrate's court;

Judges: The definition appears as reenacted in the third Schedule to the Statute Law Revision Ordinance (No. 30 of 1934).

Under the Arbitration Act, 1889, a judge is defined (sec. 27) as "a Judge of His Majesty's High Court of Justice". Certain remedies may, under the Ordinance, be granted by a Court or Judge, whilst others may only be given by a Court. See *passim*. Compare the definition of *Court* or *Judge* in the Civil Procedure Rules (r. 2). R. S. C. O. LIV, r. 11A, in England, authorises a judge in chambers to exercise the powers of a Court.

"submission" means a written agreement to submit present or future differences to arbitration, whether a tribunal of arbitration or an arbitrator is named therein or not.

SUBMISSION.

Source: The definition is taken from sec. 27 of the Arbitration Act, 1889. The words "a tribunal of arbitrations or" do not appear in the Act and were not included in the draft. See, *infra*, notes relating to arbitration tribunals.

The Submission: The submission should be in writing, and signed by both parties (C. A. 365/43⁽¹⁸⁾), following English authorities; L. A. 15/31⁽¹⁹⁾ and stamped (C. A. D. C., Ja. 140/33)⁽²⁰⁾. It may also be made in Court, where it is recorded by the Judge (C. A. 171/37; C. B. M., Ja. 1601/37)⁽²¹⁾, but the requirements of signature and stamping should also be complied with in such cases (C. B. M., Ja. 1601/37; C. A. D. C. Ja. 140/33 (*supra*)⁽²²⁾). Such submissions may also be effected under sec. 6 of the Land Courts Ord. and sec. 27(5) of the Land (Settlement of Title) Ord. (*infra*). See also *Statutory References; References by Order of Court, infra*.

A submission regarding future differences may also be set out in a

⁽¹⁸⁾ 11, P. L. R. 318; 1944, A. L. R. 561, or by their agents (*ibid* & C. D. C.; T. A. 147, 299/41. 1941-2, T. A. 189 in *Hebrew*). In C. A. 230/23 (quoted in Hooper's *Civil Law of Palestine and Trans-Jordan*, Vol. II, pp. 129 & 132), a case decided prior to the enactment of the Ordinance, it had been held that a submission to arbitration was one of the documents customarily reduced to writing under art. 80 of the Ottoman Code of Civil Procedure.

⁽¹⁹⁾ *Not reported*.

⁽²⁰⁾ 8, R. 563. As an agreement, see *Stamping the Submission, infra*.

⁽²¹⁾ 1937, S. C. J. (N. S.) 119; 2, Ct. L. R. 137 and P. P. 51.38. Arts. 60-1 of the Ottoman Procedure Code made provision for such submissions. See note *Reference by Order of Court, infra*. See also C. D. C., T. A. 161/41, where a submission of a point of law was made during the course of arbitration proceedings. The case is discussed in the notes to sec. 13.

⁽²²⁾ But *cf.* C. A. 171/37, *supra*, where it does not appear that the record was signed by the parties and stamped.

contract (C. A. 63/36⁽²³⁾; C. D. C., T. A. 459/36⁽²⁴⁾) or in an insurance policy (C. A. 96/35⁽²⁵⁾; C. A. 60/37⁽²⁶⁾), or in the rules of a co-operative society (H. C. 96/42⁽²⁷⁾; see C. L. A. 6/36⁽²⁸⁾ and cases below). No separate submission is, in such cases, required (C. A. D. C., T. A. 65/39⁽²⁹⁾ C. A. D. C., T. A. 120/39⁽³⁰⁾), unless specifically provided for (C. A. D. C., T. A. 65/39) (*supra*), in which case it may also be waived by unconditional appearance before the arbitrator (*ibid.* and see *Estoppel, infra*). A person who has not been formally admitted as a member is not bound by such a submission (*vide* C. A. D. C., T. A. 239/39)⁽³¹⁾.

Such clauses, like any other submissions, are binding and irrevocable (C. A. 65/42)⁽³²⁾. They are construed according to intention (C. L. A. 6/36)⁽³³⁾. If the clause provides that disputes should be tried by the Courts or by arbitrators, either course may be followed by the parties (*ibid.*) and the clause does not actually amount to an agreement to refer. A written submission should therefore be drawn up in such cases and signed before the reference (C. D. C., T. A. 87/39)⁽³⁴⁾. But see *Estoppel, infra*. Again, when rules under sec. 52 of the Co-operative Societies Ord., providing for claims by members and past members to be submitted to arbitration are enacted by the society after a member has left, such rules do not bind the past member (H. C. 96/42)⁽³⁵⁾.

When a contract is void as regards its main objects, a submission clause therein is also void (C. A. 88/29⁽³⁶⁾; C. A. 105/32⁽³⁷⁾). So also where a contract is repudiated *in toto*, the arbitration clause therein cannot be relied upon by the party repudiating; but where the repudiation is made in reliance upon a

(23) 9, R. 724; 1, Ct. L. R. (N. S.) 158; 3, Ct. L. R. 4. In fact, most submissions to arbitration, as may be seen from reported cases, are set out in commercial contracts. In C. A. 17/32 (*not reported*) it was held that a clause contained in an agreement, authorising the Chief Rabbinate to distribute the estate of a deceased person, amounted to a submission to arbitration.

(24) 1938, T. A. 55.

(25) 1937, S. C. J. (N. S.) 60; 2, Ct. L. R. 30.

(26) 1937, S. C. J. (N. S.) 309; 2, Ct. L. R. 30.

(27) 9, P. L. R. 589; 1942, S. C. J. 618. See title *CO-OPERATIVE SOCIETIES*, sec. 52 of the Ordinance. Such submission are statutory (H. C. 96/42) *supra*.

(28) 1937, S. C. J. (N. S.) 71.

(29) 1939, T. A. 15. P. P. 28.11.39. See next foot-note. See also in C. A. D. C., T. A. 160/42 (1941-2, T. A. 156) (*in Hebrew*) an instance of a submission clause in an arbitration award. The award had, however, been set aside.

(30) 1940, T. A. 12. Both cases follow C. A. D. C., T. A. 63/36 (*not reported*). 65/39 refers, however, to C. A. 63/36 (*supra*). If this is not a misprint, the case quoted in the judgment is no authority for the proposition relied upon as that case was decided on estoppel: See *Estoppel, infra*.

(31) 1940, T. A. 131 (*in Hebrew*).

(32) 9, P. L. R. 392; 1942, S. C. J. 429.

(33) Note 28, *supra*.

(34) 1940, T. A. 30.

(35) Note 27 *supra*. See also the following headings: *Effect of Submission, infra* and *Absence of Submission, Award in favour of Third Party, Nullity*, in sec. 13, and the beginning of this heading, *supra*.

(36) 1, R. 188.

(37) 1, P. L. R. 810; 3, R. 1172; P. P. 14.12.32; 8.5.33. See in particular the judgment of Frumkin, J.

provision in the contract itself, the arbitration clause is not affected (C. A. 96/35⁽³⁸⁾ quoting English authorities).

A submission may also be constituted by a unilateral undertaking to refer, accepted by the other party, whether impliedly or in writing (C. A. D. C., T. A. 11/37)⁽³⁹⁾.

A submission sets out the terms of the agreement between the parties (C. A. D. C., T. A. 155/44)⁽⁴⁰⁾ and there is, of course, nothing to prevent the parties, from time to time, extending or altering the terms of the submission. Thus, if two arbitrators out of three resign, the parties may agree that a single arbitrator shall enter upon the reference (C. D. C., T. A. 161/41)⁽⁴¹⁾.

See also *Statutory Submissions, infra*.

Implied Submission: In C. A. 180/42⁽⁴²⁾, where the submission was endorsed, according to marginal notes thereon, with receipts and signatures; and included a written and signed prolongation of the period, the Court held that it was not essential that the submission itself be signed if it appeared from the document itself that there had actually been a submission to arbitration. C. A. 93/35⁽⁴³⁾ goes even further:

After holding that the conduct of the parties in appearing before the arbitrator, after the expiration of the time for making the award, amounted to consent on their part to an enlargement of the time, the Court went on to hold:

"The next question to which we must direct our attention is the limit of time we must allow for the making of the award after the implied extension... I am constrained to hold that *it must be considered as a new submission* ⁽⁴⁴⁾ and taken to be an enlargement for a further period of three months..." (Italics supplied).

Again, in C. D. C., T. A. 319/43⁽⁴⁵⁾ it was held that a party who had acted on a submission extended by consent was estopped from taking the point that the extension had not been stamped⁽⁴⁶⁾.

In C. A. 230/23⁽⁴⁷⁾, decided before the enactment of the Ordinance, the Court held that a party who had been summoned to appear before the Rabbinical Court, in the absence of a valid submission, without being told that the Court was acting as an arbitration tribunal, could not be bound by the award although he had signed the notes from time to time. See also

⁽³⁸⁾ Note 25, *supra*.

⁽³⁹⁾ 1937, T. A. 6.

⁽⁴⁰⁾ *Not reported*. Pending appeal.

⁽⁴¹⁾ 1941-2, T. A. 188 (*in Hebrew*). And see C. D. C., T. A. 88/42, 139/42 quoted in *Construction of Submissions, infra*.

⁽⁴²⁾ 9, P. L. R. 745; 1942, S. C. J. 788. Quashing C. A. D. C., T. A. 106/42, 1941-2, T. A. 172 (*in Hebrew*).

⁽⁴³⁾ 7, R. 48.

⁽⁴⁴⁾ But a submission should be in writing in virtue of the definition and see previous note. See note to this case in clause (c) of the Schedule (*post*), under the heading *Consent, Estoppel*.

⁽⁴⁵⁾ 1944, S. C. D. C. 276 - following C. A. 63/36 quoted in notes to sec. 13, heading *Acquiescence, Estoppel, Waiver* and mentioned in the next heading, *infra*.

⁽⁴⁶⁾ But the Court held that the submission had properly been stamped after execution.

⁽⁴⁷⁾ See note 18, *supra*.

note *Acquiescence, Estoppel, Waiver*, following sec. 13, and see cases in the concluding paragraphs of heading *Submission, supra*.

Estoppel: The insufficiency of stamps on the submission cannot be taken for the first time on appeal (C. A. 180/42)⁽⁴⁸⁾ or even in proceedings on the award if the submission has been acted upon (C. A. 63/36⁽⁴⁹⁾; C. D. C., T. A. 319/43⁽⁵⁰⁾). Nor may an award be challenged, in such circumstances, on the ground that the submission was not signed (C. A. D. C., T. A. 192/39⁽⁵¹⁾); (C. A. D. C., T. A. 65/39⁽⁵²⁾). The proper course to follow, where the submission is defective and it is intended to contest the validity of the award, is not to attend the proceedings, or to attend under protest. The authority of the arbitrators may then be challenged when the question of executing the award arises (H. C. 96/42)⁽⁵³⁾.

See also, in notes to sec. 13, heading *Acquiescence, Estoppel, Waiver* and cross-references therein.

Forms of Submission: For forms of submissions, see A. Liphshitz, *Law of Arbitration* (in Hebrew, Haifa, 1939), pp. 42, 43.

Parties to a submission: The submission as well as the award thereon are only binding on the parties (see *Effect of Submission, infra*). In C. A. 161/37⁽⁵⁴⁾, where one of the parties to the submission consisted of a number of persons, it was held that all the persons constituting such party had to join in the appointment of an arbitrator under sec. 7(b).

See also *who may submit, infra*.

Effect of Submission: No person may, of course, be compelled to go to arbitration unless there is a valid submission (C. A. D. C., T. A. 213/37⁽⁵⁵⁾) and an award may not be given against (L. A. 15/31⁽⁵⁶⁾) or in favour of a person who is not a party to the submission (C. A. 237/38⁽⁵⁷⁾); (C. A. D. C., T. A. 157/40⁽⁵⁸⁾). The award may, in such cases, be set aside (L. A. 15/31) (*supra*), but if it is severable (see notes to sec. 13), part will be enforced and the part dealing with the stranger, being a nullity (C. A. 237/38) (*supra*), may, on application, be set aside (*ibid.*). The proper course to be taken by a stranger to the submission who is summoned to the proceedings is either not to appear at all, or to appear under protest and then, if necessary, challenge the award in Court when the question of executing the award arises (H. C. 96/42)⁽⁵⁹⁾. As to the manner of challenging the award, see secs. 13 and 14.

⁽⁴⁸⁾ 9, P. L. R. 745; 1942, S. C. J. 788.

⁽⁴⁹⁾ 9, R. 724; 1, Ct. L. R. 158; 3, Ct. L. R. 4.

⁽⁵⁰⁾ 1944, S. C. D. C. 276. See notes 45 and 46 *supra*.

⁽⁵¹⁾ 1940, T. A. 12. and see *Acquiescence, Estoppel, Waiver* in notes to sec. 13.

⁽⁵²⁾ 1939, T. A. 15; P. P. 28.11.39.

⁽⁵³⁾ 9, P. L. R. 589; 1942, S. C. J. 618. See also *Effect of Submission, infra*.

⁽⁵⁴⁾ 1937, S. C. J. (N. S.) 331; 2, Ct. L. R. 113; P. P. 3.2.38.

⁽⁵⁵⁾ 1937, T. A. 36.

⁽⁵⁶⁾ Not reported.

⁽⁵⁷⁾ 6, P. L. R. 24; 1939, S. C. J. 12; 5, Ct. L. R. 33; P. P. 24.1.39.

⁽⁵⁸⁾ Not reported. (*In Hebrew*).

⁽⁵⁹⁾ 9, P. L. R. 589; 1942, S. C. J. 618. Application may also be made for an injunction to restrain the unauthorised arbitration. See note *Unauthorised Tribunals, Conflict of Jurisdiction*, following sec. 15(1).

If the appearance is made without protest and the stranger takes part in the proceedings, this may be taken as an agreement to submit (*cf.* C. A. 93/35)⁽⁶⁰⁾ and a waiver of irregularities (C. A. D. C., T. A. 65/39)⁽⁶¹⁾. See *Implied Submissions, Estoppel, supra* and *Acquiescence, Estoppel, Waiver* in the notes to sec. 13.

A submission does not authorise the arbitrators to deal with matters arising after they have entered on the reference, unless the parties specifically agree. Here again, the offending part, if severable, will be set aside and the rest of the award upheld (C. D. C., T. A. 137/39)⁽⁶²⁾; (C. D. C., T. A. 292/39)⁽⁶³⁾ and see notes to sec. 13). Nor may an arbitrator exercise powers under the submission before entering upon the reference (C. D. C., T. A. 363/43)⁽⁶⁴⁾.

The existence of a valid submission does not exclude the jurisdiction of the Courts and the parties are not necessarily compelled to go to arbitration unless one of them so wishes, in which case he should apply for stay of the Court proceedings under sec. 5 of the Ordinance (C. A. 90/39)⁽⁶⁵⁾.

But a submission may provide that the delivery of an award should be a condition precedent to a claim in Court (e. g., C. A. 60/37)⁽⁶⁶⁾ and the following case). Such submissions are valid (C. A. 96/35)⁽⁶⁷⁾. The effect of the submission is not to oust the jurisdiction of the Court but to hold the cause of action in suspense until the award has been delivered. Such clauses are usually inserted in insurance policies to provide for a valuation of the damage by arbitrators to be a condition precedent to a claim on the policy (*ibid*). For the defendant's remedy when an action is filed in violation of such a clause, see note to sec. 5, *Powers of the Court*.

Whilst a submission *per se* does not perhaps exclude the right to raise, in the arbitration proceedings, a defence available in a civil action filed in Court (*cf.* C. A. 63/28)⁽⁶⁸⁾, a party may sometimes, by agreeing to submit differences to arbitration, waive his right to rely on certain defences, such as the defence of estoppel (*vide* C. D. C., Ja. of 1929)⁽⁶⁹⁾.

Who may Submit: Capacity to submit to arbitration is co-extensive with capacity to contract. There is thus nothing to prevent the *mutawalli* of a *waqf* agreeing to submit to arbitration (L. A. 56/27)⁽⁷⁰⁾. But a *mukhtar* representing the inhabitants of his village under arts. 1645, 1646 of the *Me-*

⁽⁶⁰⁾ 7, R. 48.

⁽⁶¹⁾ Note 52, *supra*.

⁽⁶²⁾ 1940, T. A. 172. (*In Hebrew*).

⁽⁶³⁾ *Not reported.* (*In Hebrew*). The award provided for payment of interest after the date thereof.

⁽⁶⁴⁾ 1944, S. C. D. C. 192.

⁽⁶⁵⁾ 6, P. L. R. 458; 1939, S. C. J. 415; 6, Ct. L. R. 113.

⁽⁶⁶⁾ 1937, S. C. J. (N. S.) 309; 2, Ct. L. R. 30. On this and the following case see note 2 in the annotations of S. C. J. (N. S.) 309.

⁽⁶⁷⁾ 1937, S. C. J. (N. S.) 60. Following *Scott v Avery* [1856] 5 H. & C. 72; distinguishing *Jureidini v. National British & Irish Millers Insurance Co., Ltd.* [1915] A. C. 499; 84 L. J. K. B. 640; 112 L. T. 531. See also note 66 *supra*.

⁽⁶⁸⁾ 1, P. L. R. 389; 1, R. 183.

⁽⁶⁹⁾ 7, R. 38.

⁽⁷⁰⁾ 1, P. L. R. 341; 1, R. 182.

jelle, cannot submit a dispute to arbitration as these articles refer to proceedings in "an action", i. e. in Court, whilst an arbitration does not constitute such proceedings (C. A. 283/42⁽⁷¹⁾, cf. also C. A. 56/38⁽⁷²⁾),

An advocate may be authorised to submit a claim to arbitration (*vide* C. A. D. C., T. A. 223/38)⁽⁷³⁾. If the power of attorney of the advocate relates to a specific suit, the addition of authority to submit to arbitration does not make it general (*ibid.*). See *per contra* L. C. A., Ja. 230/35⁽⁷⁴⁾. A person authorised by general power of attorney, if the terms of the authority are sufficiently wide, may also sign a submission on behalf of the donor of the power (C. D. C., T. A. 147, 299/40)⁽⁷⁵⁾. On advocate's authority under powers of attorney see also the particulars set out in the notes to sec. 4 and note *Advocate* to sec. 15(1).

Government may be a party to a submission. See sec. 19 and notes. See also *Statutory References, infra*.

Sec. 53(6) of the Bankruptcy Ordinance authorises the trustee in bankruptcy, with the consent of the Committee of Inspection, or of the Official Receiver, to refer disputes to arbitration. Other statutory examples may be found in the various notes under the general heading of *Statutory References, infra*. A liquidator of a company may not (*semble*) submit to arbitration, as the words "action" and "legal proceedings" do not include arbitration (*vide* C. A. 283/42)⁽⁷⁶⁾.

Privity: A submission estops a party from pleading lack of privity in an action brought by the other party to the submission, arising out of the award (C. A. D. C., T. A. 44/39)⁽⁷⁷⁾.

See also notes to sec. 13.

Who may be appointed: Any person may be appointed arbitrator. Nor is there any limitation on the number of arbitrators who may be appointed. A judge may be so appointed (C. A. 63/28)⁽⁷⁸⁾ but he does not thereby constitute a Court, so that an appeal will not lie from his decision, to a superior Court (C. A. 198/22)⁽⁷⁹⁾. Other Government officers, such as Assistant District Commissioners (C. A. 243/37)⁽⁸⁰⁾ may also be appointed. The terms of their employment in Government service make it necessary for them to obtain the sanction of their administrative superior before accepting the appointment.

The holder of an office may be appointed and the person holding the

(71) 10, P. L. R. 44; 1943, A. L. R. 163.

(72) 1938, 1, S. C. J. 297; 3, Ct. L. R. 225a. But Court proceedings in connection with the award constitute an action (C. A. 352/43; 11, P. L. R. 275; 1944, A. L. R. 424). In H. C. 17/43 (1943, A. L. R. 190) the High Court held that a *mukhtar's* failure to execute an award was insufficient reason to dismiss him under sec. 5 of the *Mukhtars (Amend.) Ord., 1942*.

(73) 1938, T. A. 92.

(74) 7, R. 27.

(75) 1941-2, T. A. 189. (*In Hebrew*).

(76) 10, P. L. R. 44; 1943, A. L. R. 163.

(77) 1939, T. A. 125.

(78) 1, P. L. R. 389; 1, R. 183.

(79) 1, R. 178 *per* Chief Justice *arguendo*.

(80) 5, P. L. R. 107; 1938, 1, S. C. J. 101; 2, 237.

office at the time the difference arises is the arbitrator agreed. In the proceedings resulting in C. A. 374/43⁽⁸¹⁾ the President of a Chamber of Commerce was nominated in the agreement to refer.

When more than one arbitrator are appointed, and there is no provision to the contrary in the submission, the arbitrators should give a unanimous award (C. L. A. 7/33⁽⁸²⁾), and see notes to sec. 4 and Schedule, *post*).

In C. A. 513/20⁽⁸³⁾ the appointment of an arbitrator resident outside the jurisdiction of the Court was held to be invalid. The case was, however, based on the old law and relied on the Law of 13th *Safar*, 1284. It is doubtful whether the decision is still applicable. See *infra*.

Under English Law a reference to a foreign tribunal is deemed to be a reference to arbitration. This point, as far as applying in Palestine, was taken but left open in C. A. 8/39⁽⁸⁴⁾. An agreement to refer to a foreign tribunal will be enforced (C. A. 8/39 (*supra*) and C. A. 194/37⁽⁸⁵⁾) and will oust the jurisdiction of the local Court. Whether such a reference amounts to a submission to arbitration will depend on the relevant foreign law and determine whether the remedies available under the Arbitration Ordinance, such as sec. 5 thereof, are applicable. (C. A. 8/39) (*supra*). See also notes to sec. 20.

As regards local Courts, a distinction should be drawn between consent to the jurisdiction of a named Court and an agreement to submit to an arbitration tribunal. In C. D. C., T. A. 2/38⁽⁸⁶⁾, the Hebrew expression "*beit din*" was held to refer to a tribunal (*in casu* to an arbitration tribunal) and not to a Court.

It does not follow, however, that a Court can never act as an arbitration tribunal. Thus, the Rabbinical Court is frequently chosen by members of the Jewish Community as an arbitration tribunal in matters not coming within its exclusive or concurrent jurisdiction (*vide e. g.*, C. A. 17/32⁽⁸⁷⁾; C. A. D. C., Ja. 233/32⁽⁸⁸⁾; C. D. C., T. A. 201/38⁽⁸⁹⁾; C. A. 113/35⁽⁹⁰⁾). In these references the Court acts as an arbitration tribunal and not as a Court. The parties may agree as regards appeals by that Court in higher instance, as is done, e. g. in the case of the Jewish Peace Court C. A. 198/22 (*infra*). The Jewish Peace Court has issued rules of procedure which make provisions for appeals.

The Jewish Peace Court has for a long time been recognised as an arbitration tribunal (C. A. 19/27)⁽⁹¹⁾ and it was held in C. A. 198/22⁽⁹²⁾

⁽⁸¹⁾ *Not reported.*

⁽⁸²⁾ 2, P. L. R. 297; 1, R. 196; P. P. 9:5:34.

⁽⁸³⁾ 1, P. L. R. 3; 3, R. 935.

⁽⁸⁴⁾ 6, P. L. R. 106; 1939 S. C. J. 86; 5 Ct. L. R. 105; P. P. 21-2:3:39.

⁽⁸⁵⁾ 1937, S. C. J. (N. S.) 334; 3, Ct. L. R. 26.

⁽⁸⁶⁾ 1938, T. A. 19.

⁽⁸⁷⁾ *Not reported.*

⁽⁸⁸⁾ 1, R. 193.

⁽⁸⁹⁾ *Not reported.*

⁽⁹⁰⁾ 1937, S. C. J. (N. S.) 72.

⁽⁹¹⁾ Reported in Hebrew translation in *Hamishpat*, Vo. I, p. 182.

⁽⁹²⁾ 1, R. 178. Although based on the former law, the provisions relating to public policy have remained unaltered (art. 64 of the Ottoman Code

that there is nothing in the functioning of that Court which may be taken to be against public policy. Whether the Court, when acting as an arbitration tribunal, may still be called a Court, was held in C. A. 19/27 (*supra*) to be immaterial to the validity of the award. The recognition of the Jewish Peace Court may be supported by the wording in the definition of "Submission" (*supra*) which, as is pointed out in the notes following the definition, differs from the draft and from the English model⁽⁹³⁾.

In C. D. C., T. A. 215/39⁽⁹⁴⁾, an award was set aside, *inter alia*, on the ground that the arbitrator had delegated his functions to two other arbitrators.

As regards the appointment of advocates as arbitrators, to act as partisans of the parties who appointed them, see note *Partiality* under *Misconduct*, in the notes to sec. 13. When a layman is appointed arbitrator, a mistaken legal conclusion may, in certain circumstances, be upheld (*vide* C. A. 228/41⁽⁹⁵⁾) but *cf.* notes on this question under secs. 8 and 13. See also Mo. D. C., Jm. 465-479/43, as discussed in note *Revocation*, in sec. 3, and the passage from C. D. C., T. A. 319/43 quoted in the notes to sec. 4. See also C. A. D. C., T. A. 206/42 quoted in the notes to sec. 10.

An unauthorised tribunal may be restrained by the District Court proceeding with an arbitration (C. A. 154/41⁽⁹⁶⁾; C. A. 247/41⁽⁹⁷⁾; C. D. C., T. A. 2/42⁽⁹⁸⁾).

See also *Statutory References, passim infra*, for the competence of arbitration tribunals constituted *ad hoc*.

Statutory References: Under a number of ordinances certain matters may be settled only by arbitration, irrespectively of the will of the parties. These are called statutory arbitrations (H. C. 96/42⁽⁹⁹⁾; C. B. M., T. A. 7635/40⁽¹⁰⁰⁾). Provisions are often made, in such ordinances, for the appointment of the arbitrators and matters incidental thereto⁽¹⁰¹⁾. The provisions of the Arbitration Ordinance usually apply in such statutory submissions⁽¹⁰²⁾. The following enactments set out provisions relating to arbitration, which appear in various statutes.

Effect of Statutory References: The expression "statutory references" used in these notes and in the commentaries to other sections include all re-

of Civil Procedure). The decision (*semble*) is therefore still good law. C. D. C., T. A. 88/42, 139/42 (*not reported*) appears to assume that English Law is applicable in determining whether any matter under the Ordinance is against public policy.

⁽⁹³⁾ The draft was altered to the present form after representations had been made to the Attorney General by representatives of the Jewish Peace Court.

⁽⁹⁴⁾ 1940, T. A. 170. (*In Hebrew*).

⁽⁹⁵⁾ 8, P. L. R. 624; 1941, S. C. J. 570; 11, Ct. L. R. 222. For the history of these proceedings, see *What Price Justice*, a pamphlet privately published by advocate M. Machlis.

⁽⁹⁶⁾ 8, P. L. R. 375; 1941, S. C. J. 397; 10, Ct. L. R. 138. } Same

⁽⁹⁷⁾ 8, P. L. R. 618; 1941, S. C. J. 633; 10, Ct. L. R. 202. } proceedings.

⁽⁹⁸⁾ 1941-2, T. A. 16.

⁽⁹⁹⁾ 9, P. L. R. 589; 1942, S. C. J. 618.

⁽¹⁰⁰⁾ P. P. 3.8.41.

⁽¹⁰¹⁾ An arbitrator appointed under the authority of a statute does not thereby become a public officer; C. D. C., T. A. 2/42 (*supra* note 98).

⁽¹⁰²⁾ They are sometimes expressly excluded, as in the Cooperative Societies and the Trade Disputes references, see *infra*.

ferences in pursuance of statutory enactments, *i. e.* both compulsory references under a statute ("statutory arbitrations" (*supra*)) and permissive references, such as under sec. 6 of the Land Courts Ordinance. The test to determine whether the arbitration is statutory is that in such references the dispute is referred independently of the will of the parties (*vide* C. B. M., T. A. 7635/40) (*supra*).

The definition of Court does not apply to statutory references and the District Court is therefore competent in virtue of its residuary jurisdiction (C. B. M., T. A. 7635/40) (*supra*), unless a special *forum* is provided by the relevant enactment.

Cases decided in connection with arbitrations under one ordinance may not be applied to arbitrations under a different ordinance unless the wording on which the Court adjudicated is to the same effect in both enactments. Where two enactments are similar, cases under the one may be used to illustrate the other. See note SOURCE, INTERPRETATION in sec. 1 and title INTERPRETATION.

In addition to the cases set out in the notes to the following enactments, C. A. 102/25⁽¹⁰³⁾ illustrates the effect of a statutory reference as a condition precedent to a claim in Court.

The Court, in that case, dismissed an action which had been instituted prior to assessment of compensation under the now repealed sec. 5(c) of the Railways Lands Vesting Ord., 1924, which directed that compensation, in the absence of agreement, should be assessed by a permanent arbitration board constituted under the Acquisition of Land for the Army Ord., 1920.

See note *Submissions not within the Scope of the Ordinance, infra*, which also deals with references to valuation.

Arts. 40-50 of the Ottoman Commercial Code, which provided for differences between partners, etc., to be referred to arbitration, were repealed by the Partnership Ordinance.

For arts. 60-61 of the Ottoman Code of Civil Procedure, see note *Reference by Order of Court, infra*.

The exact terms of each enactment should be consulted in order to determine the extent to which the terms of the Ordinance are made applicable. A number of enactments completely preclude the application of the Ordinance. See foot-note (102). Others made the Ordinance applicable only so far as it does not conflict with the terms of the referring Ordinance. But it is only in the case of statutory references which can be read as incorporating the provisions of the Arbitration Ordinance by reference that all the remedies available under this Ordinance may be applied. In such cases, and only in such cases, the provisions of the Schedule apply as though there were a written submission to which sec. 4 of the Ordinance applied.

References under Ordinances:

(*Ain Fara Spring*): Any dispute arising between a licensee under the Ord. and any inhabitant of the neighbourhood of the Spring regarding the amount of water made available for the latter for drinking, domestic purposes, animals and irrigation; or regarding the amount of compensation pay-

⁽¹⁰³⁾ Not reported.

able to him for damage or loss in respect of entry and erection of works, or for the destruction of plants or crops, must be referred to a single arbitrator appointed by the District Commissioner, Jerusalem District⁽¹⁰⁴⁾. The award of such arbitrator is final. The award may, in certain cases, determine the specific quantity of water which a licensee is to make available for the use of the inhabitants. (Sec. 6).

See also (*Urtas Springs*) *infra*.

(*Air Navigation*): Any person who suffers direct injury or loss, owing to an order of the Secretary of State in case of emergency, is entitled to compensation, to be fixed, in default of agreement by an official arbitrator appointed under the Acquisition of Land (Assessment of Compensation) Act 1929. (Air Navigation Act, 1920, Sec. 7(3)).

(*Antiquities*): The value of an antiquity acquired by the High Commissioner from the finder thereof must, in default of agreement, be fixed by an arbitrator appointed by the Archaeological Advisory Board. The award is final (sec. 5(2)).

The amount of compensation payable by the Director of the Department of Antiquities for the removal of an historical monument, in default of agreement must be fixed by an arbitrator appointed by the Chief Justice (sec. 19(1)(d)).

(*Companies*): A Company may by writing agree to refer and may refer to arbitration any existing or future reference between itself and any other company or person (sec. 115). When a company is a party in arbitration proceedings, it may delegate to the arbitrator the powers of the company or directors to settle or determine any matter which it or they could settle or determine (sec. 116(1)). The provisions of the Arbitration Ordinance apply to arbitrations in which a company is a party (sec. 116(2)).

(*Co-operative Societies*): Co-operative societies may make provisions in the rules for the settlement of disputes touching the business of the society by reference to the Registrar of Co-operative Societies or otherwise (sec. 52(1)). The disputes may relate to claims by the society (*ibid.*). The Registrar, if he is named, may decide the dispute or, subject to the regulations, refer it to an arbitrator or arbitrators (sec. 52(2)). The Registrar may withdraw such reference and deal with the dispute himself (sec. 52(3)). The Registrar may approve the award of the arbitrator or arbitrators or may revise it or remit it for reconsideration, either on his own motion or if application is made to him by one of the parties within ten days of the date of the award (sec. 52(4)). A decision of the Registrar, whether he has dealt with the dispute himself or whether he has approved the award of arbitrators, has the force of a judgment of a District Court which is not subject to appeal and may be executed in the same manner (sec. 52(5)).

Detailed regulations dealing with these references were enacted under the Ordinance.

The Arbitration Ordinance is excluded (sec. 61).

⁽¹⁰⁴⁾ As regards such statutory appointments H. C. 98/34, (2, P. L. R. 231; 9, R. 922; P. P. 3.1.35) is of relevance.

These references are statutory (H. C. 96/42)⁽¹⁰⁵⁾.

(*Copyright*): The amount of the consideration for assignment of a right or interest and payment of royalties may, failing agreement, be determined by arbitration. (Copyright Act, 1911, applied to Palestine by Order in Council of 1924, sec. 24(1)(a)(i)(ii). See also secs. 19(4) and 24(b)).

(*Dead Sea Concession*): Differences, disputes or questions relating to chemical or engineering matters arising between the Government and the Company may, failing agreement, be referred by either party to an expert. Failing agreement, the expert is to be selected by the Secretary of State for the Colonies. The expert's fees must be borne by the Company. (Sched., cl. 35.). Differences connected with the laying of the railway must, failing agreement, be referred to a British Railways expert selected, if necessary, by the President of the Institution of Civil Engineers in Great Britain. The expenses of the reference are shared equally by the Government and the Company. (*ibid.* cl. 25 (viii)).

(*Electricity Concessions*): Dispute as to the amount of compensation payable for the expropriation of existing electrical undertakings, must be referred to the arbitration of a single arbitrator appointed by the Chief Justice (sec. 4)⁽¹⁰⁶⁾.

Any dispute, difference or question arising between the High Commissioner and the concessionaires which cannot be settled by mutual agreement must be referred to a Board of Arbitration with special constitution provided. The law applicable in such arbitrations is the Arbitration Act, 1889, with such modifications as may be necessary (Sched. Part I, cl. 50 and Part II, sec. 44).

See also Electricity Concession (Jerusalem) Ord., Sched., cl. 44 with slightly different terms.

(*Land Courts*): A Land Court may, with the consent of the parties, refer to arbitration any dispute arising before it in any matter (sec. 6(1)). The rest of the section, dealing with remitting, setting aside and authenticating the award is considered in the notes to secs. 12, 13 and 14 respectively.

These provisions were enacted in the Land Courts Ordinance prior to the Arbitration Ordinance. It was held in C. A. 38/34⁽¹⁰⁷⁾ that the enactment of the Arbitration Ordinance did not affect the powers of the Land Court under sec. 6 of the Land Courts Ordinance.

These submissions, being voluntary, are not "statutory arbitrations" (see heading *Statutory Submissions, supra*) and do not differ very materially from references by submission (*vide cf.* C. A. 196/37)⁽¹⁰⁸⁾. They may be compared to references under art. 60 of the Ottoman Code of Civil Procedure. See *Reference by Order of Court, infra*.

Matters within the jurisdiction of a Land Court may also be referred by ordinary submission, independently of the Land Courts Ordinance (See note (*Land*) under *What may be submitted, infra*). Reference should also be

⁽¹⁰⁵⁾ Note 99, *supra*.

⁽¹⁰⁶⁾ As regards such statutory appointments, see H. C. 98/34 (Note 104, *supra*).

⁽¹⁰⁷⁾ 1937, S. C. J. (N. S.) 5.

⁽¹⁰⁸⁾ 1937, S. C. J. (N. S.) 335; 2, Ct. L. R. 187. See also L. A. 92/26 (5, R. 1777) for the manner in which the matter was referred there.

made to the same heading in secs. 12 (remittal), 13 (setting aside), 14 (enforcing) and 15(3) (appeals).

See also *Court (supra)* for jurisdiction *ratione materiae* and Arbitration Rules, r. 2. (*post*) for jurisdiction *ratione loci*.

(*Land Settlement*): Settlement Officers may, with the consent of the parties, refer to arbitration any dispute arising out of a claim in settlement (sec. 27(5)). The remaining provisions relating to authenticating, remitting and setting aside awards are dealt with under secs. 14, 12 and 13 respectively. See also note on stamping such awards in *Reference by Order of Court, infra*.

As this provision is similar to Land Court references (*supra*), the cases quoted in the latter references apply to sec. 27(5) of this Ordinance.

(*Mining*): In cases of compulsory acquisition of privately owned surface rights, the price to be paid to the owner or occupier is determinable in default of agreement, by arbitration (sec. 54).

On surrender of a lease, the price of surface works which may be acquired by the Government of Palestine is determined, in default of agreement, by arbitration. (sec. 65(1)).

Reference to arbitration under this Ordinance is to be decided by a Board which consists of one arbitrator nominated by each of the parties together with a third agreed between the other two arbitrators, or failing agreement, nominated by the Chief Justice of Palestine, such arbitration to be in accordance with the provisions of any Ordinance concerning arbitration in force from time to time in Palestine and, failing such Ordinance, in accordance with the provisions of the arbitration Act 1889 (sec. 107).

Certain questions are also referred to the controller, subject to an appeal to the High Commissioner (sec. 8(2)).

(*Oil Mining*): Similar provisions are contained in the Oil Mining Ord. See secs. 10(b) 13(1), 37 thereof, and Schedule, sec. 24.

(*Town Planning*): The provisions of the Arbitration Ordinance apply to references to arbitration under the Town Planning Ordinance as though the parties had entered into a submission to submit the question, matter or dispute to the arbitration of a single arbitrator (sec. 37).

The Town Planning Ordinance provides for reference to arbitration of the following differences:

a) where an owner refuses to accept land offered in exchange for expropriated land, the question whether he ought or ought not to be compelled to accept the land so offered (sec. 26(3));

b) where expropriation is postponed, the question as to the amount of interest on the value to which the owner is entitled, failing an agreement between the Local commission and the owner (sec. 28(a));

c) in case of resale of property acquired under the scheme, the question of value of additions (sec. 30);

d) in case of disputes as to whether any property is increased in value by reason of a scheme or the amount of such increase (sec. 32(3)(4));

e) where no agreement can be reached between the local commission and an injured owner in respect of claim for compensation for injuries caused by a scheme (34(1)(b)).

(*Trade Disputes*): The High Commissioner was empowered by reg. 46 A of the Defence Regulations to establish a Board for the settlement of trade disputes and to make provision for regulating the procedure of the Board. The Arbitration Ordinance was made inapplicable to references under any such order. A Board was constituted by the Defence (Trade Disputes) Order, 1942 (sec. 7) which also made provision for the procedure to be followed by the Board and for other incidental matters. In H. C. 25/44⁽¹⁰⁹⁾ an application was made to the High Court to set aside an award made under the Order. The decision held, *inter alia*, that such awards do not create precedents and that an award cannot be defeated by a member of the Board leaving the meeting after a decision is reached but before it is incorporated in the award.

Provisions on arbitration in other Defence or Emergency Regulations are not noted as they have not come before the Courts.

(*Treaty of Peace (Turkey)*): All decisions of the Mixed Arbitral Tribunal constituted under the Treaty, if within the jurisdiction of that Tribunal, are final and conclusive and binding in all courts. Any award of the Mixed Tribunal may be enforced in the principal civil court of original jurisdiction of the place where the money or other property is situated in the same manner as a decree obtained in that court to the same effect. For the purpose of enforcing attendance of witnesses and production of documents before the Mixed Arbitral Tribunal, the Chief Secretary has the power to issue orders which have the like effect as if the proceedings before the Tribunal were an action in a civil court. Disobedience to any order are punishable as contempt of court under the Contempt of Courts Ordinance. (Sec. 2(c)(d)).

(*Urtas Springs*): Disputes between the Board and any of the inhabitants of Urtas Village regarding the amount of water made available for him for certain purposes or the amount of compensation payable under the Ordinance must be referred to a single arbitrator appointed by the High Commissioner. The award is final. The arbitrator must, in certain cases, determine the specific quantity of water which the Board is to make available for the use of the villagers, and not award a money payment (sec. 5).

It was held in P. C. 98/25⁽¹¹⁰⁾ that the arbitration clause did not constitute an ouster of the jurisdiction of the Courts and that it was not *ultra vires* art. 2 of the Mandate.

(*Village Administration*): A Village Council may appoint a committee of not less than three for the settlement by arbitration of disputes or classes of disputes between parties ordinarily resident within the village area (sec. 31(1)); and an Administrative Officer may authorise a committee of any number of persons to settle by arbitration certain disputes or classes of disputes involving villagers from one or more villages (sec. 32(1)). Awards must be delivered in writing and are effective only when confirmed in writing by the District

⁽¹⁰⁹⁾, 11, P. L. R. 187; 1944, A. L. R. 266. See also the following cases: H. C. 147/42 (10, P. L. R. 7; 1943, A. L. R. 35) - *application to restrain the Board from determining a dispute*; H. C. 26/44 (1944, A. L. R. 483) - *meaning of Trade Dispute*.

⁽¹¹⁰⁾ 1, P. L. R. 71; 5, R. 1828, quashing the judgment of the Supreme Court (H. C. 27/25, 5, R. 1818).

Commissioner, when they become final and binding on all parties to the dispute and may be enforced and executed like judgments of a Magistrate's Court with local jurisdiction not subject to appeal (sec. 32(2))(111).

No matter may be so arbitrated unless approved or belonging to a class of matters approved by the District Commissioner as suitable for arbitration on the ground, in either such case, that matters of that class have customarily been submitted to arbitration (sec. 33(a)) and unless a statement of the issues involved has been drawn up in writing and signed by all the parties to the dispute and by the Administrative Officer (sec. 33(b)).

Sec. 35 provides an indemnity for acts lawfully done in execution of an order for the enforcement of an award.

(*Workmen's Compensation Ord.*): If any question arises in any proceedings under the Workmen's Compensation Ord. as to the liability to pay compensation, including any question as to whether the person injured is a workman to whom the Ordinance applies, or as to the amount of compensation; the question, if not settled by agreement(112), must be referred to arbitration (sec. 3(3)). The following questions arising under that Ordinance must be settled by arbitration:(113).

The right to, and amount of indemnity payable to an employer under sec. 5 (sec. 5(2)) or sec. 7 (sec. 7(b)); the amount payable to a partial dependant (2nd Schedule, sec. 1(a)(3)); the question as to who is a dependant (*ibid.*, sec. 8) and the amount of compensation payable on review (*ibid.*, sec. 12(1)). The amount payable in redemption of weekly payments *may* also be settled by arbitration "as in any other case" (*ibid.*, sec. 13)

Such arbitrations may be conducted by arbitral committees, when appointed under sec. 9 of the Ord. (3rd Sched., sec. 1). If there is no such committee or if the committee decide to refer the dispute to arbitration in lieu of accepting the reference, or if they fail to settle the matter within three months from the date of the claim, the matter must be settled by a single arbitrator who may be agreed upon (*ibid.*, sec. 2(1)). If the parties fail to agree on a single arbitrator (*ibid.*), or if a single arbitrator agreed upon by the parties dies, or refuses or is unable to act (*ibid.*, sec. 5), a magistrate having local jurisdiction must, on application, act as arbitrator (*ibid.*, sec. 2(1))(114). Any

(111) It probably does not thereby become an order of the Court. See H. C. 100/30 on a similar context in Workmen's Compensation. (Note (116) *infra*).

(112) The parties may agree to submit to arbitration outside the provisions of the Ordinance a dispute arising under the Ordinance and this constitutes "a settlement by agreement within the meaning of sec. 3(3) of the Ordinance". (C. A. 30/29; 5, R. 1873). On the other hand, in C. D. C., Ja. 5/33 (P. P. 11.9.33), where the parties submitted to arbitration a workman's claim *for damages* independently of the provisions of the Ordinance, and the workman waived his claims under the Ordinance, it was held that sec. 3(1) prohibited contracting out, that the submission was void and that the award thereon did not prevent the workman from claiming again under the Ordinance.

(113) The existence of a dispute is a condition precedent to the arbitration: C. B. M., T. A. 4562/41 (*not reported*) quoting Willis on Workmen's Compensation, 33rd ed., p. 487.

(114) Prior to the 1943 amendment of the W. C. Ord., an arbitrator had to be appointed in such cases by the Chief Secretary. H. C. 98/34 (2, P. L. R. 231; 9, R. 922; P. P. 3.1.35) is obsolete in this respect.

party may apply that such magistrate be a British Magistrate (*ibid.*). A committee or arbitrator may submit certain questions arising in the course of the arbitration to a medical referee (*ibid.*, sec. 1), and when the arbitrator is a magistrate, he has the same powers as a District Court of procuring the attendance of witnesses and the production of documents (*ibid.*, sec. 2(2)). He may also summon a medical referee to sit with him as an assessor (*ibid.*).

A Committee or an arbitrator may, if they or he think fit, and must, at the instance of either party to the arbitration, submit any question of law for the decision of the President of the District Court whose decision is final unless he grants leave to appeal to the Court of Appeal (*ibid.*, sec. 3)⁽¹¹⁵⁾. The costs of and incidental to the arbitration and proceedings connected therewith are in the discretion of the committee, arbitrator or President of the District Court (*ibid.*, sec. 4), and the agent of the person claiming compensation is not authorised to deduct his own costs without special leave (*ibid.*, sec. 9). No court fees are payable by any party in respect of any proceedings by or against a workman in the court prior to the award (*ibid.*, sec. 8)⁽¹¹⁶⁾.

Once the award is delivered a memorandum thereof is sent by the committee or arbitrator or by the party interested to the Chief Registrar of the Supreme Court for registration (*ibid.*, sec. 6)⁽¹¹⁷⁾. This is effected if the Chief Registrar is satisfied as to the genuineness of the memorandum (*ibid.*)⁽¹¹⁸⁾. No fees are chargeable on registration (*ibid.*). Before recording the memorandum, the parties are given seven days notice (*ibid.*, sec. 6(a)). Special provisions are made in sec. 6(b) and (c) of the 3rd Schedule for recording a memorandum on terms, where the workman has resumed his work, and for correction of the register of memoranda by the District Court⁽¹¹⁹⁾.

An injunction may be granted to restrain a successful party from registering the award when an application is pending to set it aside (C. A. 29/41)⁽¹²⁰⁾. But see notes to sec. 13 *Workmen's Compensation References*.

Once the memorandum is recorded it becomes, for all purposes, enforceable as a judgment (*ibid.*, sec. 6)⁽¹²¹⁾.

⁽¹¹⁵⁾ This provision was considered by the Court of Appeal in C. A. 33/36 (9, R. at 934; P. P. 5, 7.2.37, *Interlocutory Order*). Instructions were issued a number of years ago, by the P. D. C., Jaffa, on the manner and forms to be used by arbitrators in stating a case under the Ord. See title *WORKMEN'S COMPENSATION*.

⁽¹¹⁶⁾ But after registration of the award fees are payable on certified copies and on execution of the award (H. C. 100/30, 1, P. L. R. 540; 1, R. 82).

⁽¹¹⁷⁾ See also Workmen's Compensation (Memoranda Recording) Rules, 1944.

⁽¹¹⁸⁾ C. D. C., Ja. 5/33 (P. P. 11.9.33) refers to a refusal by the Superintendent of Courts (now the Chief Registrar) to record a memorandum based on a voluntary submission. See also note 112, *supra*.

⁽¹¹⁹⁾ This does not constitute "arbitration proceedings" within the meaning of sec. 2 of the 3rd Schedule, *infra*, to which the Arbitration Ord. applies. Appeals from the District Court on orders of rectification do not, therefore come under sec. 15(3) of the Arbitration Ord. and are appealable without leave (C. A. 138/32, *Interlocutory Order* 5, R. 1877; P. P. 13.8.33).

⁽¹²⁰⁾ 8, P. L. R. 113; 1941, S. C. J. 90; 9, Ct. L. R. 127. See also C. D. C., T. A. 265/41 (1941-2, T. A. 41).

⁽¹²¹⁾ But it does not become an Order of the Court (H. C. 100/30. Note 116 *supra*). A certified copy of the award may be used for execution (*ibid.*).

Subject to the above provisions of the 3rd Schedule, the Arbitration Ordinance applies to proceedings under the Workmen's Compensation Ordinance⁽¹²²⁾.

In addition to the limited safeguards that a memorandum of award will not be recorded unless the Chief Registrar is satisfied as to its genuineness and that the District Court may rectify the register of awards (*supra*), a party who is dissatisfied with an award may take the usual steps under the Arbitration Ordinance to have the award set aside (C. A. 138/32)⁽¹²³⁾. See heading *Workmen's Compensation References*, in notes to sec. 13. But the proper Court, irrespectively of the amount involved in the submission, is the District Court (C. B. M., T. A. 7635/40)⁽¹²⁴⁾.

Workmen's Compensation References are also discussed in the notes to the various sections *passim*.

(*Wreck and Salvage Ord.*): On the application of the salvor or of the owner, disputes as to the amount of salvage and as to the distribution thereof, if not settled by agreement, must be referred to the arbitration of, and be determined by, a board of arbitration. (Sec. 20). The Board consists of one arbitrator nominated by each of the parties to the dispute together with a third arbitrator agreed between the other two arbitrators, or failing agreement, nominated by the Chief Justice.

The decision of the arbitrators has, for the purpose of execution, the effect of a judgment of the Magistrate's Court.

Any person aggrieved by the decision of a board of arbitration may, where the amount involved exceeds fifty pounds, apply within twenty days after the date of the award to the President of the District Court of the District in which the salvage was effected for leave to appeal. (sec. 20(3) and (4)).

Reference by Order of Court: The Arbitration Ordinance makes no provision for reference to arbitration by order of Court, such as were made in secs. 13 and 14 of the English Act. (125). A reference by the Court, with the consent of the parties, such as described in the opening paragraph of the note *The Submission, supra*, is a reference by submission and not by order of the Court (C.B.M., Ja. 1601/37)⁽¹²⁶⁾. In the words of Russell, "the consent of the parties is the submission". Arts. 60 and 61 of the Ottoman Code of Civil Procedure contemplate such a form of reference⁽¹²⁷⁾; whilst the procedure set out in art. 38 of the Ottoman Code of Commercial Procedure was more akin to references in England by order of Court⁽¹²⁸⁾. The references under

(122) See note 119, *supra*.

(123) Quoted in note 119, *supra*.

(124) P. P. 3,8.41. Not following C. A. D. C., Jm. 218/38 (*not reported*) decided *per incuriam*.

(125) Replaced by secs. 88 *sqq.* of the Judicature Act, 1925.

(126) P. P. 5.1.38.

(127) On the application of the Code to Magistrates Court see title *ADVOCATES*, vol. 1, p. 185, note (1).

(128) It does not appear that art. 38 has ever been replaced or abrogated: See note 1 to Young's edition of the Code (*Corps de Droit Ottoman*, Vol. VII, p. 159) and p. lxx of Drayton, Vol. 1, heading *Commercial Procedure*. It has, however, fallen into disuse.

sec. 6 of the Land Courts Ordinance and sec. 27 of the Land (Settlement of Title) Ordinance are also, from the context (see *Statutory References, supra*, items (*Land Court*), (*Land Settlement*)), references by consent under the Arbitration Ordinance. It is respectfully submitted that the following view set out at p. 377 of Messrs. Goadby and Doukhan's *Land Law of Palestine* is not tenable:

"Arbitrations directed under this section (sec. 6 of the Land Courts Ord.) are not *semble* submissions under the Arbitration Ordinance, 1926 and the provisions of that Ordinance are consequently not applicable"⁽¹²⁹⁾.

The obscure *dictum* in C. A. 230/23⁽¹³⁰⁾ that "Arts. 60 and 61 of the Civil Procedure Code have to do, as Mr. Sacher points out, to (*sic*) reference to arbitration by Courts of Justice" does not shed any light on this question.

When the Stamp Duty Ordinance was enacted, a year after the enactment of the Arbitration Ordinance, too close an adherence to the English Stamp Act caused the draftsman to provide for the stamping of awards of arbitrators "appointed otherwise than by order of a court", although all awards under the Arbitration Ordinance could be made only by consent. The words quoted could not refer to an arbitrator, under a submission, appointed by the Court under secs. 6 or 7 of the Arbitration Ordinance as sec. 6 (2) assimilates the powers of such arbitrators to the powers exercisable by an arbitrator appointed by the parties, whilst an arbitrator appointed under sec. 7 must act together with the remaining arbitrators. That such was not the intention of the legislator is also clear by a comparison of the English Act as read in the light of English case law⁽¹³¹⁾.

Statutory references are not exempted from duty under the Stamp Duty Ordinance and should therefore be stamped. A single exception is provided by sec. 27 (5) of the Land (Settlement of Title) Ordinance under which an award given in a reference by the Settlement Officer with the consent of the parties, is deemed, when authenticated by him, to be for the purpose of the Stamp Duty Ordinance, an award of an arbitrator appointed by the Court. The wording of this sub-section may be criticized as it implies that it is for the Settlement Officer to stamp the award, whereas this should, but for the exemption in the sub-section, be done by the arbitrators before the award is brought to the Settlement Officer for authentication.

The question of stamping awards is dealt with in the notes to sec. 15 (4).

What may be referred: Any dispute or difference, if the subject-matter thereof is not tainted with illegality, may be referred to arbitration, (see *Void and invalid Submissions, infra*).

⁽¹²⁹⁾ This view would be correct if such submissions were made by Order of Court, see note 131 *infra*.

⁽¹³⁰⁾ Partly reported in Hooper. See note *supra*.

⁽¹³¹⁾ In the last edition of Russell on *Arbitration and Awards*, for instance, references by Order of Court are not dealt with at all as they do not pertain to arbitration. See, in this connection, the remarks of Messrs. Goadby and Doukhan, quoted at *supra*. It is submitted that rr. 221 and 222 of the Civil Procedure Rules do not contemplate references by the Court similar to those contemplated by secs. 88 *sqq.* of the Judicature Act. This question is discussed again in note *Effect of divergence in Texts*, sec. 14.

Particular Cases:

(*Criminal Offences*): Criminal offences may be referred (*vide* C. A. 237/38) ⁽¹³²⁾ if they do not involve public rights and if a complaint has not been lodged (C. A. 135/37) ⁽¹³³⁾.

(*Estates of deceased Persons*): The distribution of such estates may be referred to arbitration (*vide* C. A. 17/32) ⁽¹³⁴⁾.

(*Eviction*): *Quære* whether a claim for eviction may be submitted (as in C. A. D. C., T. A. 194/43) ⁽¹³⁵⁾ but, if so, the arbitrator cannot adjudicate beyond the limits imposed by the Rent Restriction legislation (*ibid*).

(*Illegal Transactions*): See note (*Criminal Offences*) *supra*, and (*Lands*) *infra*. See also *Void and invalid Submissions, infra*.

(*Lands*): Disputes as to ownership of land may be submitted (C. A. 62/27) ⁽¹³⁶⁾ even if the land is outside the jurisdiction (C.D.C., T.A. 157/37) ⁽¹³⁷⁾. But not if relating to a disposition contrary to sec. 11 of the Land Transfer Ordinance, as illegality avoids the submission (C. A. 88/29) ⁽¹³⁸⁾. Nor can arbitrators be invested with powers which belong only to a land Court or which involve issuing orders to the Land Registry (C.D.C., T.A. 280/43) ⁽¹³⁹⁾.

(*Partition*): Partition of land, being a matter of a judicial nature (C. A. 121/37) ⁽¹⁴⁰⁾, may be referred, (*ibid*, and C. A. 113/35) ⁽¹⁴¹⁾. In such cases the award should accurately describe the boundaries (C. A. 113/35 *supra*). A provision for compensation to be paid by one party to another, after valuation, does not invalidate the award (*ibid*).

(*Partnership*): A question of dissolving a partnership may be referred and the arbitrators may make an award accordingly (C.A.D.C., T.A. 25/40) ⁽¹⁴²⁾, C. D., T. A. 9/41 ⁽¹⁴³⁾).

(*Point of Law*): A pure question of law may be referred (C. D. C., T. A. 161/41) ⁽¹⁴⁴⁾. An arbitrator, even if a layman, may be called upon to decide legal questions, as "it is not unusual that persons who are appointed

⁽¹³²⁾ 6, P. L. R. 24; 1939, S. C. J. 12; 5 Ct. L. R. 33; P. P. 24.1.39.

⁽¹³³⁾ 1937, S. C. J. (N. S.) 115; 2, Ct. L. R. 104. Too much reliance should not be placed on this case which is based on the Ottoman Penal Code, now superseded by the Criminal Code Ordinance. Reference should be made to English decisions. These are to the effect that certain types of offences may be referred to arbitration.

⁽¹³⁴⁾ *Not reported*.

⁽¹³⁵⁾ 1944, S. C. D. C. 104, which does not decide the point.

⁽¹³⁶⁾ 1, P. L. R. 177; 2, R. 496. *Quære* how far L. A. 180/22 (1, R. 177) is affected by this decision.

⁽¹³⁷⁾ 1937, T. A. 74.

⁽¹³⁸⁾ 1, R. 188.

⁽¹³⁹⁾ *Not reported*. In this case, however, the Court relied on L. A. 180/22 and on C. A. 88/29 but it does not appear that C. A. 62/27 was quoted to the Court. See foot-notes 136 and 138 *supra*.

⁽¹⁴⁰⁾ 1937, S. C. J. (N. S.) 75.

⁽¹⁴¹⁾ *Ibid*. 72.

⁽¹⁴²⁾ 1940, T. A. 168 (*in Hebrew*).

⁽¹⁴³⁾ 1941-2, T. A. 230 (*in Hebrew*).

⁽¹⁴⁴⁾ 1941-2, T. A. 188 (*in Hebrew*). Note that the reference was made during arbitration proceedings by special consent.

as arbitrators sometimes have a better legal knowledge than advocates" (C. D. C., Ja. 234/34) ⁽¹⁴⁵⁾, but see notes to sec. 8, 10 and 13.

(*Previous Claim*): A claim which has already been the subject-matter of an arbitration and on which an award has been issued may also be referred (C. A. 198/22) ⁽¹⁴⁶⁾. See, however, note *Effect of Award* following sec. 14.

(*Separate Disputes*): Separate disputes referred to the same arbitrator under different submissions may, by consent, be heard together and no separate claims are required (C. A. 117/39) ⁽¹⁴⁷⁾.

(*Settlement of Accounts*): This may also be referred (*vide* C. D. C., Ja. 133/43, 147/43) ⁽¹⁴⁸⁾.

(*Workmen's Compensation*): A workman or employer cannot contract out of the provisions of that Ordinance relating to arbitration and a submission made otherwise than according to the terms provided by the Ordinance is invalid (C. D. C., Ja. 5/33) ⁽¹⁴⁹⁾.

Construction of Submission: The arbitrators are bound by the terms of the reference, as set out in the submission or as implied there in (see sec. 4 and notes). They may not adjudicate beyond the matters referred *vide* C. A. 237/38 ⁽¹⁵⁰⁾. A submission authorising an arbitrator not to be bound by the law (C. A. 135/37) ⁽¹⁵¹⁾ or entitling him to decide the dispute according to his notions of fairness as applied to the parties and independently of strict rules of law (C. D. C., T. A. 88/42, 139/42) ⁽¹⁵²⁾ is not in itself bad and the award will be upheld if the arbitrator is not guilty of misconduct (C. A. 135/37) (*supra*). It does not authorise the arbitrator to commit misconduct, such as by excluding a party from the hearing or from the right to cross-examine witnesses (*vide* C. D. C., T. A. 155/44) ⁽¹⁵³⁾; or to exceed his authority by calling witnesses against the wishes of the parties (*ibid.*).

Nor can an arbitrator follow procedure which is now inapplicable in Palestine (C. D. C., T. A. 215/39) ⁽¹⁵⁴⁾, or base his award on some vague moral principle which is not enforceable in the Civil Court (C. D. C., T. A. 201/38) ⁽¹⁵⁵⁾. Provisions of the law based on public policy, such as the Usurious Loans Ordinance, may not be waived by the submission (C. D. C., T. A. 141/39) ⁽¹⁵⁶⁾. It is doubtful in any event whether the rules of evidence

⁽¹⁴⁵⁾ Quoted in the judgment on appeal (C. A. 93/35, 7, R. at p. 51), overruled on another point. See note *Who may be appointed, ante penultimate para.*

⁽¹⁴⁶⁾ 1, R. 178.

⁽¹⁴⁷⁾ 7, P. L. R. 47; 1940, S. C. J. 50; 8, Ct. L. R. 129.

⁽¹⁴⁸⁾ 1944, S. C. D. C. 309.

⁽¹⁴⁹⁾ See *supra* p. 72, note 112.

⁽¹⁵⁰⁾ 6, P. L. R. 24; 1939, S. C. J. 12; 5 Ct. L. R. 33; P. P. 24.1.39.

⁽¹⁵¹⁾ 1937, S. C. J. (N. S.) 115; 2, Ct. L. R. 104.

⁽¹⁵²⁾ *Not reported.*

⁽¹⁵³⁾ 1944, S. C. D. C. 321.

⁽¹⁵⁴⁾ 1940, T. A. 170 (*in Hebrew*.) This decision referred to an award of the Rabbinical Court whose procedure is, however, normally accepted by the Civil Courts. In C. A. 126/42 (1942, S. C. J. 621) it was held that there was no reason why arbitrators should not be bound by art 106 of the Ottoman Code of Civil Procedure.

⁽¹⁵⁵⁾ *Not reported.*

⁽¹⁵⁶⁾ 1940, T. A. 174 (*in Hebrew*).

may be waived (*ibid.*) But see cases cited at the beginning of this heading. See also *infra*, and see C. L. A. 2/33 and note thereto in sec. 13 under the heading *Hearing the Evidence*.

See also C. D. C., T. A. 88/42, 139/42 as quoted under the two following headings, for the construction of the submission there.

C. D. C., T. A. 363/43 (157) deals with a submission which invested the arbitrator with authority to appoint an interim receiver, or to appoint himself as such. The validity of the submission was not gone into.

In C. D. C., T. A. 155/44 (158), where the submission relieved the arbitrators from the rules of procedure and evidence, the Court held that the rule that a mistaken conclusion as to the admissibility of evidence should be condoned (*Hogger v. Baker* [1845] 14 L. J. Ex. 227), applied a *fortiori*.

A submission which relies on the professional knowledge of the arbitrator is not within the scope of the Ordinance. See the next heading. See also headings *Void and invalid Submissions; Severability, infra*.

Submissions not within the scope of the Ordinance: A submission, or an arbitration clause in a contract may sometimes operate not only as an agreement to refer but also as a condition precedent to a claim (*vide* C. D. C., T. A. 459/36; C. A. D. C., T. A. 45/41 (159)). The same may also apply in the case of statutory reference (C. A. 102/25) (160). So far as these references or agreements to refer constitute a condition precedent, they do not fall under the provisions of the Ordinance, but are dealt with in accordance with ordinary rules obtaining in the case of other agreements or statutory conditions limiting proceedings. See notes to sec. 5.

A submission, or statutory reference, may sometimes constitute a reference to a valuer (161) or to an advocate. Insurance policies frequently contain an arbitration clause which operates both as a condition precedent to a claim under the policy and to an agreement to refer certain questions to a valuer.

The test to be applied in order to determine whether a reference to a valuer or to an advocate is within the scope of the Ordinance, is whether semi-judicial proceedings are contemplated. Thus, if the person appointed is to determine the question referred to him from his own professional knowledge, without hearing arguments, the reference is outside the provisions of the Arbitration Ordinance (C. D. C., T. A. 88/42, 139/42) (162). In the admittedly "exceptional circumstances" of the above case, a number of hearings had taken place before an arbitrator who was an advocate and evidence had been led. When these proceedings proved abortive, the parties signed a new submission, agreeing that the arbitrator should give an award, from his own knowledge, within two days; and that he should not be forced to hear any evidence or give reasons for his findings. The Court construed the words "from his own know-

(157) 1944, S. C. D. C. 192.

(158) Note 153 *supra*.

(159) 1938, T. A. 55 and 1941-2, T. A. 212 (*in Hebrew*).

(160) *Not reported*.

(161) This question was raised, but not dealt with in C. A. 208/38 (1938, 2, S. C. J. 106; 4, Ct. L. R. 145; P. P. 11,11,38).

(162) *Not reported*. See also C. A. D. C., T. A. 45/41 (1941-2, T. A. 212 (*in Hebrew*)).

ledge" in the submission, as referring to the arbitrator's knowledge of the case from the previous proceedings and not to his professional knowledge or skill. The award given by the arbitrator on that submission was held to be a judicial decision enforceable (subject to any defences) under sec. 14 of the Ordinance. The Court pointed out from the recital in the award that the arbitrator had relied, in addition to his own knowledge of the case, on documents submitted to him ⁽¹⁶³⁾.

A reference to a referee on a question of price (C. A. 132/43) ⁽¹⁶⁴⁾ or to an advocate on a point of law (C. D. C., T. A. 161/41) ⁽¹⁶⁵⁾ may be made during the course of the arbitration proceedings.

For provisions implied in the submission, duties and powers of arbitrators, and for further particulars as to the construction of submissions, see notes to sec. 4, and heading *Void and invalid Submissions, infra*.

As to the difference between a submission and an agreement to submit, see sec. 3 and notes.

See also *Who may be appointed* and last paragraph of heading *Who may submit, supra*. And see notes to sec. 14, heading *Effect of Award*.

Void and invalid Submissions: A submission which relates to an illegality is void (C. A. 88/29) ⁽¹⁶⁶⁾. So also, when a submission is included in a contract which is void as regards its main objects, the submission is void (*(ibid.)*; C. A. 105/32; C. A. 37/34) ⁽¹⁶⁷⁾.

A submission which purports to exclude the remedies available under the Ordinance, by providing that an award made on the submission should be incontestable, is void as being against public policy (C. D. C., T. A. 88/42, 139/42 following *Czarnikow v. Roth Schmidt & Co.* [1922] 127 L. T. 844; 92 L. J. K. B. 81, not following *Tullis v. Jackson* [1892] 67 L. T. 340) ⁽¹⁶⁸⁾. Not so a submission which makes the delivery of an award a condition precedent to a claim in Court - the provision is valid. (See C. A. 96/35, C. A. 60/37 *supra* p. 64 and notes to sec. 5.

Severability: A clause which is severable from the rest of the submission, such as the provision considered in C. D. C., T. A. 88/42, 139/42 (*supra*) may be ignored or removed, leaving the remainder of the submission valid (*ibid.*). This was done in the ruling given in the above case, on a preliminary point that the award could not be enforced as there was no submission.

Stamping the Submission: A submission, like any other written agreement ⁽¹⁶⁹⁾, should be stamped ⁽¹⁷⁰⁾ with an adhesive stamp of 100 mils ⁽¹⁷¹⁾. A variation, or extension of the submission should be stamped afresh as it consti-

⁽¹⁶³⁾ It was not clear whether before or after the second submission.

⁽¹⁶⁴⁾ 1943, A. L. R. 790.

⁽¹⁶⁵⁾ 1941-2, T. A. 188 (*in Hebrew*). Particulars of this case appear in the notes to sec. 13, under the heading *Improper delegation of Powers*.

⁽¹⁶⁶⁾ 1, R. 188.

⁽¹⁶⁷⁾ 1, P. L. R. 810; 3, R. 1172; P. P. 14.12. 32; 8.5.33.

⁽¹⁶⁸⁾ *Not reported*.

⁽¹⁶⁹⁾ See definition of submission in the text of sec. 2: "a written agreement to submit..."

⁽¹⁷⁰⁾ *Ante*, p. 60.

⁽¹⁷¹⁾ Stamp Duty Ord. sec. 21 and Schedule, item No. 1, as amended. The Stamps must be adhesive (*ibid.*).

The delay in the publication of this part is regretted. It was mainly due to the fact that two important decisions on arbitration, delivered by the District Court of Tël Aviv, necessitated the re-writing of certain chapters.

The law is as on 21.12.44 and includes case law reported as follows:

- 11 P.L.R., July, 1944.
- 1944, A.L.R., part 40.
- 1937, S.C.J. (N.S) part 6.
- 1944, S.C.D.C., part 6.

BZU/LIB Institute of Law



132533

M. Shoham's Press, Tel-Aviv, Phone 2239.