Judicial Review of Arbitral Awards: England, United States, and Philippine Law Compared

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I. INTRODUCTION

> *I have never taken the view that arbitration is a kind of annex, appendix or poor relation to court proceedings. I have always wished to see arbitration, as far as possible, and subject to statutory guidelines no doubt, regarded as a freestanding system, free to settle its own procedure and free to develop its own substantive law — yes, its substantive law.*
>
> — *Lord Wilberforce*[1]

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Arbitration, as an independent proceeding from the judicial process, is threatened by the expansion of judicial review of arbitral awards on the merits by means of contractual agreement and by the creation of judicial non-statutory grounds. This Article shall examine these legal issues in arbitration by first looking at the legal development of arbitration in England. The discussion shall be followed by an examination of the arbitration laws of the United States (U.S.) and the Philippines. Thereafter, lessons from the English experience will be discussed in light of the observed weaknesses of the U.S. and Philippine arbitration laws. The aim of the Article is to propose legal reforms gained from one jurisdiction that would be beneficial to the others.

Historically, commercial arbitration in England appeared in the 12th century during mercantile activity in trade fairs[2] where trading communities relied on special tribunals to solve controversies arising in the world of trade.[3] By the mid-16th century, the common law courts developed a general remedy in contract and obtained jurisdiction over causes involving foreign elements.[4] The Parliament also gave statutory recognition to the preference of the business community to have merchants settle disputes among themselves by developing a system of arbitration law.[5]

During the 18th century, judicial intervention in arbitration began to expand.[6] It was not until the end of that century, however, that appellate review for mistake of law became completely established.[7] In the 19th century, trade disputes increased as legal institutions of commerce proliferated.[8] Commercial arbitration was then made subject to Arbitration Act 1889, which amended and consolidated previous practices.[9] Nevertheless, the lack of provisions for speedy trials and the ignorance of many judges on commercial matters left merchants dissatisfied. Parliament and courts were forced to consider other modes to expedite commercial

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1. Lesotho Highlands Development Authority v. Impregilo SpA and others [2005] UKHL 43, at 231 (citing Hansard (HL Debates), Jan. 18, 1996, Col 778).
2. 1 MARTIN DOMKE & GABRIEL WILNER, DOMKE ON COMMERCIAL ARBITRATION (THE LAW AND PRACTICE OF COMMERCIAL ARBITRATION) § 2:4 2-8 (Larry E. Edmonson ed., 3d ed. 2007).
3. *Id.* at 6-7.
4. LORD PARKER OF WADDINGTON, THE HISTORY AND DEVELOPMENT OF COMMERCIAL ARBITRATION: RECENT DEVELOPMENTS IN THE SUPERVISORY POWERS OF THE COURTS OVER INFERIOR TRIBUNALS 10 (1959).
5. *Id.* at 12.
6. *Id.*
7. *Id.* at 15-16.
8. *Id.* at 19.
9. LORD PARKER OF WADDINGTON, *supra* note 4, at 19.

disputes.[10] Hence, in 1895, the rules for commercial causes were published, which provided for a judge well-versed in commercial law to sit in Commercial Court.[11] Thus, since 1900, the norm was that a commercial dispute can be speedily and efficiently determined in the courts as well as in arbitration.[12]

The foregoing brief history in England presents the seeming insistence by the court to carve a role in commercial dispute settlement and its determination to maintain the same. The history of arbitration in the U.S. and the Philippines, as shall be discussed below, also bears the varying extent of court intervention in arbitration, particularly in judicial review of arbitral awards. This Article will examine whether court intervention in these jurisdictions renders ineffectual the finality of arbitral awards.

It is understandable why companies engaged in international business prefer arbitration as a mode of dispute settlement. Arbitration of disputes bears the advantages of speed, economy, reduction of expenses,[13] assurance of privacy, efficiency, and the expert knowledge of arbitrators,[14] with the concept of finality of arbitral award at its cornerstone.[15] It is thus argued that judicial review of arbitral awards harms arbitration by lengthening the process of dispute resolution and making it more expensive.[16] Moreover, judicial review is inconsistent with submitting a dispute to arbitration and runs counter to the principle of finality in arbitration.[17]

It is also argued that the idea that decisions of arbitral tribunals would be clear and legally accurate is not true in practice.[18] This results in the conflicting goals of the finality of an arbitral award on one hand and its

10. *Id.* at 19-20.

11. *Id.* at 23.

12. *Id.* at 24.

13. *See* Clifford Larsen, *International Commercial Arbitration*, ASIL INSIGHTS, 5-6 (1997) (This states that whether international arbitration is cheaper than international litigation is a hotly-debated issue, and depends upon a number of factors.).

14. DOMKE & WILNER, *supra* note 2, at 8.

15. Taner Dedezade, *Are You In? Or Are You Out? An Analysis of Section 69 of the English Arbitration Act 1996 — Appeals on a Question of Law*, 9 (2) INT. A.L.R. 56, 60 (2006).

16. Marianne Roth & Tobias Brinkmann, *New Arbitral Legislation: The English Arbitration Act 1996 — A Comparative Assessment*, 5 CROAT. ARB. Y.B. 49, 69 (1998).

17. *Id.*

18. JONATHAN HILL, INTERNATIONAL COMMERCIAL DISPUTES IN ENGLISH COURTS 640 (3d ed. 2005).

legality on the other hand.[19] The goal of finality is to reduce the events of judicial review of arbitral awards;[20] whereas, the goal of legality is to allow a party to appeal to the courts on issues not limited to procedure but also of substance.[21] The real problem then is how to strike a balance between finality and legality.[22]

II. ENGLAND'S RULE ON JUDICIAL REVIEW OF ARBITRAL AWARDS

A. History of English Arbitration Laws

Arbitration in England is a widely accepted mode of dispute resolution, which can be traced back to the medieval times.[23] Arbitration Act 1950[24] eventually consolidated the previously controlling Acts of 1889[25] and 1934.[26] A few years after, the Convention for the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) was made in New York on June 1958 but the United Kingdom only acceded to it in 1977.[27] The New York Convention led to the enactment of Arbitration Act 1975,[28] which had a profound effect on English arbitration laws.[29] The Act introduced the Convention award as the new category of arbitration award recognized and enforced under the New York Convention, except on opposition on specified and limited grounds.[30] The policy shift towards party autonomy in arbitration proceedings away from court intervention came with the enactment of Arbitration Act 1975.[31]

The subject of judicial review of arbitration awards was further examined by the Commercial Court Committee in 1978.[32] In particular, the Committee considered the two forms of review conducted by the High Court. The first was known as "error on the face of the award" and the

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. Roth & Brinkmann, *supra* note 16, at 49.

24. Arbitration Act 1950, 1950, c. 27 (U.K.).

25. Arbitration Act 1889, 1889, c. 49 (U.K.).

26. ENID A. MARSHALL, GILL: THE LAW OF ARBITRATION 2 (4th ed. 2001).

27. *Id.* at 19.

28. Arbitration Act 1975, 1975, c. 3 (U.K.).

29. RUSSELL ON ARBITRATION 19 (David St. John Sutton, et al., eds., 21st ed. 1997).

30. *Id.* at 20.

31. *Id.*

32. *Id.*

second as "the stated case procedure." The Committee later recommended that these two forms of review be replaced by a new right of appeal confined to questions of law, leaving decisions on questions of fact to the arbitral tribunal.[33]

Hence, Arbitration Act 1979[34] was enacted to implement the recommendations of the Commercial Court Committee. The Act granted the High Court a new appellate jurisdiction limited to questions of law arising in the course of the proceeding and out of an award, provided that certain conditions were fulfilled; it also allowed the parties at any time to exclude an appeal from any arbitration award.[35]

In 1985, the United Nations made another outstanding contribution to international arbitration when the United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on International Commercial Arbitration (Model Law), which in turn influenced the development of the English law.[36] In 1987, the Department of Industry Advisory Committee (DAC) was established to consider the Model Law and to examine the operation of the Arbitration Acts 1950–1979 in light thereof.[37]

In 1989, the DAC recommended that the Model Law should not be adopted in England, contending that England already had an extremely sophisticated and highly developed body of arbitration law, based on statute, case law, writings, and usages.[38] Nonetheless, DAC did recommend that English arbitration law should be amended in certain respects and that its form should be altered to be clearer and less ambiguous through a more logical explanation.[39] In addition, any new statute should have the same structure and language as the Model Law.[40]

As a result, the Arbitration Act 1996[41] was enacted and enforced on 31 January 1997.[42] It replaced the Arbitration Acts 1950–1979, as amended,[43]

33. *Id.* at 20–21.

34. Arbitration Act 1979, 1979, c. 16 (U.K.).

35. RUSSELL ON ARBITRATION, *supra* note 29, at 21.

36. *Id.*

37. *Id.*

38. HILL, *supra* note 18, at 628.

39. *Id.*

40. *Id.* at 628–29 (citing Departmental Advisory Committee on Arbitration Law, *A Report on the UNCITRAL Model Law on International Commercial Arbitration* ¶ 108 (7), at 34 (1989)).

41. Arbitration Act 1996, 1996, c. 23 (Eng., W. & N.I.).

42. RUSSELL ON ARBITRATION, *supra* note 29, at 2.

and became the principal English arbitration law, which also defined and curtailed the court's powers of intervention.[44] It further depicted the modern view that the role of the court is to support rather than to displace the arbitral process.[45]

B. Scope of Judicial Review of Arbitral Awards Under the English Arbitration Act 1996

The Arbitration Act 1996 states as a general principle that "the court should not intervene except as provided."[46] While the English courts have traditionally strong supervisory powers in relation to arbitration, the current Act limits said supervision by providing a complete enumeration of the courts' intervention powers.[47] The parties and their advisers are, therefore, free from fear of unexpected intervention from the court based on some principle derived from common law.[48]

The powers of the court in relation to arbitration award under the Act are provided in Sections 66 to 71, particularly on: (a) enforcement of the award; (b) challenging the award; and (c) appeal on a point of law.[49] Furthermore, Part III of the Act deals with the enforcement of Geneva Convention[50] awards and the recognition and enforcement of New York Convention awards.[51]

1. Refusal of Enforcement of the Arbitral Award

a. Domestic Arbitral Awards and Non-Convention Foreign Awards

Under Arbitration Act 1996, an award, unless otherwise agreed upon by the parties, is final and binding both on the parties and on third persons claiming through or under them, making the award immediately enforceable.[52] The parties may implement the award voluntarily, but if they do not, then the

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43. *Id.* at 18.

44. *Id.* at 23.

45. HILL, *supra* note 18, at 630 (citing Departmental Advisory Committee, *Report on the Arbitration Bill* ¶ 22, at 11(1996)).

46. Arbitration Act 1996, § 1 (c).

47. *Id.*

48. *Id.*

49. MARSHALL, *supra* note 26, at 65.

50. Convention on the Execution of Foreign Arbitral Awards, 92 L.N.T.S. 2096 (1929).

51. *Id.* at 80.

52. MARSHALL, *supra* note 26, at 65. *See* Arbitration Act 1996, § 58.

provisions of Section 66[53] of the Act is applicable. Section 66 applies even if the seat of arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined, pursuant to Section 2[54] of the Act.

Enforcement may be sought in one of two ways: (1) the creditor may bring a claim on the award based on the debtor's breach of the implied obligation to comply with the terms of the award;[55] or (2) the creditor may make an application with the court.[56] The first action is based on common law, which Section 66 of the Act preserved.[57] An action on the award would be necessary if the arbitration agreement, in respect of which the award has been made, does not satisfy the requirements for an arbitration agreement specified in Sections 5[58] and 6[59] of the Act, yet contains an implied obligation to perform the award.[60] This is based on the premise that the failure to perform the award would be a breach of the arbitration agreement for which the successful party could bring an action for the breach and obtain a judgment in terms of the award.[61]

The other manner by which enforcement may be sought is through a summary procedure under Section 66.[62] Leave of court is needed and the summary procedure to obtain it is straightforward.[63] The application for leave is made *ex parte* supported by an affidavit with the attached arbitration agreement and award or copies thereof.[64] The court may not grant leave to enforce an award in instances where the person against whom the award is sought from shows that the tribunal lacked substantive jurisdiction to make the award.[65] Moreover, even if the issue of jurisdiction is not raised, the court has the discretion to deny an award summarily, such as where the award is so defective in form or substance that it is incapable of enforcement

53. Arbitration Act 1996, § 66.

54. *Id.* § 2.

55. HILL, *supra* note 18, at 701-02 (This refers to § 66 (1) and (2) of Arbitration Act 1996.).

56. *Id.* (This refers to § 66 (4) of Arbitration Act 1996.).

57. MARSHALL, *supra* note 26, at 66.

58. Arbitration Act 1996, § 5.

59. *Id.* § 6.

60. MARSHALL, *supra* note 26, at 66.

61. *Id.*

62. RUSSELL ON ARBITRATION, *supra* note 29, at 395.

63. *Id.*

64. *Id.*

65. Arbitration Act 1996, § 66 (3).

or its enforcement would be contrary to public policy.[66] The court may also refuse to enforce an award which decided matters not capable of resolution by arbitration.[67] Likewise, the court may also refuse to enforce an award granting relief which would improperly affect the rights of persons other than the parties to the arbitration agreement.[68] Note, however, that these are exceptional cases; otherwise, the court will give effect to the award by granting leave to enforce it wherever possible.[69]

b. Foreign Arbitral Awards

The United Kingdom, where England belongs, has ratified several conventions concerning the recognition and enforcement of foreign arbitral awards.[70] As previously mentioned, Part III of Arbitration Act 1996 deals with awards to which the New York Convention applies, and it also mentions that Part II of Arbitration Act 1950 continues to be enforced in relation to the Geneva Convention awards which are not New York Convention awards.[71] Hence, arbitral awards made abroad may be enforceable in England under one or more conventions if the United Kingdom and the State where the award was made have ratified them, pursuant, of course, to the terms of the conventions.[72] This Section will only discuss the enforcement of awards under the Geneva and New York Conventions, pursuant to Part III of the Act.

The Geneva Convention is the forerunner of the New York Convention.[73] Yet, there are countries that have acceded to the Geneva Convention but have not yet acceded to the New York Convention.[74] The Geneva Convention provides that a foreign award is not enforceable unless it has become final in the country in which it was made.[75] Thus, the burden is placed on the party seeking to rely on an award to show that the award is final. In practice, however, enforcement of a foreign award under the Geneva Convention depends on the party seeking to rely on the award obtaining a double *exequatur,* that is, an order for enforcement from the courts of the country of origin and an order for enforcement from the court

66. RUSSELL ON ARBITRATION, *supra* note 29, at 395-96.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* at 401.

71. *Id.*

72. *Id.*

73. HILL, *supra* note 18, at 715.

74. RUSSELL ON ARBITRATION, *supra* note 29, at 410.

75. HILL, *supra* note 18, at 715.

of the country addressed.[76] Awards covered by Part II of Arbitration Act 1950 are enforceable in England also in two ways: (1) summarily; or (2) by action.[77] The grant of recognition and enforcement requires that it must not be contrary to public policy or to the principles of the law of the country in which it is sought to be relied upon.[78]

The Arbitration Act 1996 re-enacts with some amendments the provisions of the Arbitration Act 1975, which implemented the New York Convention.[79] The application for enforcement of a New York Convention award can be made by applying for leave of court in the same manner as a judgment or order of the High Court or a County Court or, alternatively, judgment may be entered in terms of the award.[80] Arbitration Act 1996 provides that the court has no discretion but to recognize and enforce a New York Convention award, unless ground for refusal falls within the terms of Section 103 of the Act.[81]

Furthermore, recognition or enforcement of the award may be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy.[82] All the foregoing grounds of refusal are exhaustive.[83] Moreover, "as a general rule, there can be no review of a New York Convention award on the merits by the court addressed, even if the arbitrator has manifestly erred on questions of fact or law."[84]

2. Challenging the Arbitral Award

Under Sections 67 and 68 of the Arbitration Act 1996, a party to the arbitral proceedings may apply to the court to challenge an award on two grounds: (1) that the award or that the arbitral tribunal had no substantive jurisdiction; or (2) that serious irregularity affecting the tribunal, the proceedings, or the award exists.[85] These actions are limited by the mandatory restrictions stated in Section 70 of the Act providing that an application or appeal may not be brought if the applicant or appellant has not first exhausted any available

76. *Id.*

77. RUSSELL ON ARBITRATION, *supra* note 29, at 410.

78. MARSHALL, *supra* note 26, at 82.

79. *Id.*

80. RUSSELL ON ARBITRATION, *supra* note 29, at 402 (This refers to §§ 101 (2), 105 (1), and 101 (3) of the Arbitration Act 1996.).

81. Arbitration Act 1996, § 103 (2).

82. *Id.* § 103 (3).

83. RUSSELL ON ARBITRATION, *supra* note 29, at 404.

84. HILL, *supra* note 18, at 722.

85. RUSSELL ON ARBITRATION, *supra* note 29, at 412.

arbitral process of appeal or review and any available recourse under Section 57 within 28 days of the date of the award.[86] If there has been any arbitral process of appeal or review, the application or appeal must be brought within 28 days of the date when the applicant or appellant was notified of the result of that process.[87]

On the first ground, Section 67 of the Act provides that a party to the arbitral proceedings may, upon notice to the other parties and to the tribunal, apply to the court: (a) challenging any award of the arbitral tribunal as to its substantive jurisdiction; or (b) for an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.[88] This right to challenge recognizes that the arbitral tribunal's jurisdiction is derived from the arbitration agreement and that the award should not be enforceable if the arbitration agreement is invalid, or even if valid the tribunal has determined disputes beyond the scope of that agreement or submission to arbitration.[89]

On the ground of serious irregularity, Section 68 of the Act provides the meaning thereof as one or more of the following kinds, which the court considers has caused or will cause substantial injustice to the applicant:

> (a) failure by the tribunal to comply with Section 33 (general duty of tribunal);
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> (b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction);
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> (c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
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> (d) failure by the tribunal to deal with all the issues that were put to it;
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> (e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;
>
> (f) uncertainty or ambiguity as to the effect of the award;
>
> (g) the award being obtained by fraud or the award or the way in which it was procured being contrary to the public policy;
>
> (h) failure to comply with the requirements as to the form of the award; or
>
> (i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or

86. Arbitration Act 1996, §§ 57 and 70.

87. *Id.* § 70 (2) and (3).

88. *Id.* § 67 (1).

89. RUSSELL ON ARBITRATION, *supra* note 29, at 413.

> other institution or person vested by the parties with powers in relation to the proceedings or the award.[90]

The enumeration is exclusive and the courts have no power whatsoever to exceed it. This limitation of the court's power extinguishes the parties' fear of court intervention based on a common law rule.[91] It must be noted that although Section 68 of the Act is mandatory, the court will not grant the application unless it considers that the irregularity has caused or will cause substantial injustice to the applicant.[92]

3. Appeal on a Point of Law

The DAC, during the preparation of its report, received a number of responses in its consultation to abolish the right of appeal on substantive issues in arbitration.[93] The DAC, however, decided not to be swayed by the abolitionists.[94] The DAC opined that if the parties have agreed on a given system of law, they should be entitled to expect that law to be applied properly by their chosen arbitrator.[95] It is viewed that the failure to apply the law properly would do a disservice to the parties and would not achieve the result contemplated in the arbitration agreement.[96]

The main rationale of the DAC in its chosen policy, it seems, is that there are a number of non-lawyers acting as arbitrators, and it is those individuals who may misapply the law so the courts should provide a means to remedy such.[97] The other main argument in support of the retention of appeals on a question of law is that it enables the courts to allow precedents to develop in the area of commercial law, particularly on matters of public interest.[98]

The appeal on a question of law presents the historical oddity which helped make English Commercial law the most useful and popular system of law in world trade.[99] It has proved a most effective instrument in the development of English commercial law, with a degree of certainty that

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90. Arbitration Act 1996, § 68 (2).

91. Roth & Brinkmann, *supra* note 16, at 66-67.

92. RUSSELL ON ARBITRATION, *supra* note 29, at 415-16.

93. Dedezade, *supra* note 15, at 58.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. Dedezade, *supra* note 15, at 59 (citing V.V. Veeder QC in Ch. 14 of COMMERCIAL LAW PERSPECTIVES AND PRACTICE (John Lowry & Loukas Mistelis, eds., 2006)).

made the popular choice to govern commercial contracts even though they have no territorial connection with England.[100] Thus, the DAC proposed what they considered to be a limited right of appeal with safeguards that would still be consistent with the fact that the parties have chosen to take their disputes to arbitration as opposed to the courts.[101]

England's Arbitration Act 1996 allows the appeal of legal merits of an arbitration award, domestic or international, before local courts.[102] Section 69 of this Act is not mandatory; thus, the parties can agree to exclude an appeal to the court.[103] Another method to exclude the court's jurisdiction is by agreeing to dispense with the reasons for the tribunal's award.[104] It is worthy to mention that under the Act of 1979, maritime, insurance, and commodity contracts could not be excluded from the court's jurisdiction.[105] This is no longer the case under Arbitration Act 1996, which allows exclusion even for those contracts.[106]

The right to appeal on question of law may not, however, be brought if the applicant or appellant has not first exhausted any available arbitral process of appeal or review, and any available recourse under Section 57[107] of the Act on correction of award or additional award.[108]

Thus, an appeal shall not be brought except with the agreement of all the other parties, or with leave of the court.[109] Guidelines on appeals held by the House of Lords in *Pioneer Shipping Ltd. v. B.T.P Tioxide Ltd. (Nema)*[110] and *Antaios Cia Navierra S.A. v. Salen Raderierna A.B.*[111] on the Act of 1979 are said to be incorporated in Section 69.[112] Hence, the Section provides that leave to appeal shall be given only if the court is satisfied:

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100. *Id.* at 58.

101. *Id.* at 59.

102. Stewart R. Shackleton, *Annual Review of English Judicial Decisions on Arbitration — 2002*, 6 (6) INT. A.L.R. 220, 233 (2003); Arbitration Act 1996, § 69 (1).

103. RUSSELL ON ARBITRATION, *supra* note 29, at 425.

104. Arbitration Act 1996, § 69 (1).

105. MARSHALL, *supra* note 26, at 71.

106. *Id.*

107. Arbitration Act 1996, § 57.

108. *Id.* § 70 (2).

109. *Id.* § 69 (2).

110. Pioneer Shipping Ltd. v. B.T.P Tioxide Ltd., [1982] 1 A.C. 724 (Eng.).

111. Antaios Cia Navierra S.A. v. Salen Raderierna A.B, [1984] 3 W.L.R. 592 (Eng.).

112. MARSHALL, *supra* note 26, at 71.

> (a) That the determination of the question will substantially affect the rights of one or more of the parties;
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> (b) That the question is one which the tribunal was asked to determine;
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> (c) That, on the basis of the findings of fact in the award —
>
> (i) The decision of the tribunal on the question is obviously wrong,
>
> (ii) The question is one of general public importance and the decision of the tribunal is at least open to serious doubt; and
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> (d) That, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.[113]

On appeal, the court may, by order: (a) confirm the award; (b) vary the award; (c) remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court's determination; or (d) set aside the award in whole or in part.[114] The court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.[115] The court's decision on an appeal shall be treated as a judgment of the court for purposes of further appeal.[116]

There are two possible means of appeal to the Court of Appeal from the deciding court.[117] The first is against a grant or refusal of leave to appeal, and the second is against any decision of the court that hears an appeal on a question of law.[118] In both cases, leave of the court making the decision is required, and furthermore, in the second case, the court must consider that the question is of general importance or is one which for some other special reason should be considered by the Court of Appeal.[119] Leave will not be given if the court decides that the appeal does not meet the tests and denies referral to the Court of Appeal.[120] Thus, there can no longer be any appeal to the Court of Appeal either on the substantive issues or on the court's refusal to grant leave.[121]

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113. Arbitration Act 1996, § 69 (3).

114. *Id.* § 69 (7).

115. *Id.*

116. *Id.* § 69 (8).

117. RUSSELL ON ARBITRATION, *supra* note 29, at 434.

118. *Id.*

119. *Id.*

120. *Id.* at 434-35.

121. *Id.* at 435.

Upon appeal, when the award of the tribunal is varied, the variation has effect as part of the tribunal's award.[122] Where the award is remitted to the tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within three months of the date of the order for remission or such longer or shorter period as the court may direct.[123] Finally, when the award is set aside or declared to be of no effect, in whole or in part, the court may also order that any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, is of no effect as regards the subject matter of the award or, as the case may be, the relevant part of the award.[124]

It is important to emphasize that the appeal to the court under Section 69 can only be made on a question of law arising out of an award made in the proceedings and not on the tribunal's findings of fact, which are considered conclusive.[125]

C. Jurisprudence on the Scope of Judicial Review of Arbitral Awards

It had been a concern that prior to Arbitration Act 1996, arbitration law in England allowed excessive court intervention in the arbitral process.[126] Until 1979, the courts could require an arbitrator to state a case on a question of law or fact for the opinion of the court where the arbitrator believed to have made an error.[127] This was referred to as the "case stated" procedure.[128] However, with the drafting of Arbitration Act 1996, the DAC resolved to limit the rights of appeal against arbitral awards and, accordingly, cement London's position as a global center of international arbitration.[129]

On one hand the Arbitration Act 1996 permits court intervention, unless otherwise excluded by the parties, to consider a question of law arising from the award by agreement of the parties or upon leave of court.[130] The Model

122. Arbitration Act 1996, § 71 (2).

123. *Id.* § 71 (3).

124. *Id.* § 71 (4).

125. RUSSELL ON ARBITRATION, *supra* note 29, at 426.

126. Duncan Speller & Jonathan Fly, *The Arbitration Act Ten Years On — A Paragon of Party Autonomy?, in* INTERNATIONAL COMPARATIVE LEGAL GUIDE TO: INTERNATIONAL ARBITRATION 2007 1 (2007).

127. *Id.* at 2.

128. *Id.*

129. *Id.* at 1.

130. Speller & Fly, *supra* note 125, at 2.

Law, on the other hand, does not contain any general right to appeal an arbitral award for substantive error of law.[131]

The review of English courts' judicial pronouncements in this Section will be limited to the matter of appeal on a point of law, particularly the development of the judicial test to grant leave to appeal, because it is this scope of judicial review which is the most controversial in the English system.[132]

Nema provided guidelines in which permission to appeal to the High Court from the decision of the arbitration should be given under the Act of 1979.[133] Lord Diplock distinguished the guidelines to be used to appeal the construction of a "one-off" clause and a standard clause. The former clause requires a showing that the arbitrator is "obviously wrong,"[134] while in the latter clause, it must be shown that "the question would add significantly to the clarity and certainty of English commercial law"[135] and that "a strong *prima facie* case had been made out that the arbitrator had been wrong in his construction."[136]

Three years later, in *Antaios,* Lord Diplock revisited his previous ruling and took the opportunity to add to the guidelines by stating that if there are conflicting dicta on the construction of a standard term, not decisions, then the arbitrator must accede to an appeal to the High Court.[137]

Thereafter, Arbitration Act 1996 was passed into law, with Section 69 heavily influenced by the *Nema* guidelines.[138] Nevertheless, it should be made clear that the statutory criteria under Arbitration Act 1996 do not entirely follow *Nema.*[139] Lord Phillips pronounced that the "[statutory criteria] open the door a little more widely to the granting of permission to appeal than the crack that was left by Lord Diplock."[140]

10 years after the enactment of Arbitration Act 1996, a private committee, the Commercial Court Users' Committee (CCC), was established to undertake a survey to review the Act and determine whether

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131. *Id.*

132. Roth & Brinkmann, *supra* note 16, at 67.

133. CMA CGM SA v. Beteiligungs-KG MS "Northern Pioneer" Schiffahrtsgesellschaft mbH & Co [2003] EWCA Civ. 1878 (Eng.).

134. *Id.* at 742.

135. *Id.* at 743.

136. *Id.*

137. *Id.* at 600.

138. Dedezade, *supra* note 15, at 64.

139. *CMA CGM SA*, [2003] EWCA Civ. 1878 at 11 (Eng.).

140. *Id.*

any revision might usefully be proposed to it in light of the 10-year experience.[141] Prior to the survey, there was an apparent feeling, especially those concerned with shipping, of considerable dissatisfaction with courts' approach to giving leave to appeal.[142] This was based on the perception that it had become so difficult to obtain leave, and as such, the English contract law was being starved of nourishment, resulting in its hindered development.[143] Yet, the survey shows that 57% of the respondents thought that there should be no change in the tests for getting leave.[144]

Meanwhile, the minority, who thought that the basis for appealing on a point of law and that the tests for obtaining leave should be changed, believes that Section 69 of the Act is too narrow at present.[145] Some of the suggestions for change were the idea that "obviously wrong" in Subsection (3) (c) (i) of Section 69 should be "open to serious doubt," which is aligned with the test in Subsection (3) (c) (ii).[146] In addition, it is suggested that courts should be more ready to grant leave where there is no case law on the point in question or where a tribunal specifically seeks guidance or says that the matter is one of general importance to the industry concerned.[147] Finally, it is suggested that it should be easier for the court to hear cases which are in the common interest to help the development of the law.[148]

Although the foregoing is not the view of the majority, the report, however, believes that that there may be scope for the court to take some account of them when appropriate.[149] It notes that under Section 69, the court has to be "satisfied" as to various requirements, with satisfaction as a subjective concept.[150] Nevertheless, the conclusion is that the present evidence shows that the tests in Section 69 work satisfactorily on the whole, and that any need for a slightly more liberal approach can be met by pragmatism on the part of the court.[151]

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141. Commercial Court Users' Committee, Report on the Arbitration Act 1996 1 (2006) (U.K.).

142. *Id.* at 17.

143. International Dispute Resolution Centre, REPORT ON THE ARBITRATION ACT 1996 16 (2006) (U.K.) [hereinafter IDRC].

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at 17.

148. *Id.*

149. IDRC, *supra* note 142, at 17.

150. *Id.*

151. *Id.* at 18.

There are still some commentators who have "suggested that Section 69 remains a significant disincentive to arbitrating in England."[152] Yet, others maintain that Section 69 of Act 1996 was "calculated to place particularly severe restraint on the role of the commercial and higher courts."[153] After all, Arbitration Act 1996 was enacted to restore the confidence of international users in the finality of English arbitration.[154] Hence, the DAC placed important limitations in Section 69.[155]

The first limitation is the opt-out provision, whereby parties can agree to exclude appeal to the court on a question of law of an arbitral award.[156] This can be done by using an express clause or by providing for institutional rules,[157] which has the effect of ousting the jurisdiction of the courts under Section 69.[158] Other ways are providing for an *ex aequo et bono* or *amiable compositeur*[159] and, obviously, by opting for a system of law that is not English law.[160]

Another important limitation is that an appeal for error of law can only be made with the consent of all the parties or with leave of court.[161] Leave of court, as discussed, is further restricted by statutory criteria and is no longer based on judicial discretion. In fact, it has been said that "the first time that permission to appeal to the court has been granted pursuant to Section 69 of the 1996 Act" was in *CMA CGM SA v. Beteiligungs-KG MS "Northern Pioneer" Schiffahrtsgesellschaft mbH & Co.*[162]

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152. Speller & Fly, *supra* note 125, at 2.

153. *CMA CGM SA*, [2003] EWCA Civ. 1878 at 61 (Eng.).

154. Hon. Anthony Diamond & V.V. Veeder, *The New English Arbitration Act 1996: Challenging An English Award Before the English Court,* 8 AM. REV. INT'L ARB. 47, 48 (1997).

155. Speller & Fly, *supra* note 125, at 2.

156. *Id.*

157. Dedezade, *supra* note 15, at 60 (This enumerates Art. 28.6 of the ICC Rules, Art. 29.2 of the LCIA Rules, and s.22 (a) of the LMMA Rules.).

158. *Id.*

159. *Id.* at 62. (Section 46 (1) (b) of the Arbitration Act 1996 enables the arbitral tribunal to decide a dispute in the case *ex aequo et bono* or as amiable compositeur (such clauses are sometimes referred to as "equity clauses."). As a system of law has not been chosen by the parties, it follows that no question of law can arise for decision, either as a preliminary determination in accordance with Section 45 or for appeal under Section 69 of the of the Arbitration Act 1996.).

160. Dedezade, *supra* note 15, at 62.

161. Speller & Fly, *supra* note 125, at 3.

162. *CMA CGM SA*, [2003] EWCA Civ. 1878 at 1 (Eng.).

Finally, an important safeguard to appeal an error of law in an arbitral award is the courts' reluctance to overturn arbitrators' awards on question of law.[163] The English courts have recognized that its powers in Section 69 should be used sparingly so as to respect the arbitral proceeding chosen by the parties.[164] Thus, it seemingly heeded the pronouncement of Lord Diplock that courts must weigh the "rival merits of finality and meticulous legal accuracy"[165] in light of the "parliamentary intention to give effect to the turn of the tide in favour of finality in arbitral awards."[166]

III. UNITED STATES RULE ON JUDICIAL REVIEW OF ARBITRAL AWARDS

A. History of United States Arbitration Laws

Arbitration in the New World existed well before the white settlers arrived in its land. The native American tribes used arbitration to settle disputes within the tribe, as well as between tribes.[167] The Chamber of Commerce of New York, organized in 1786, was the earliest known American arbitration tribunal.[168] Arbitration at that time did not flourish and instead only resulted in confusion due to the absence of organization of the idea or of the processes of arbitration, and lack of available records of its early use.[169]

This pattern was broken in 1920 with the enactment of the modern arbitration law in the State of New York, considered to be the first successful legal framework of arbitration in the U.S.[170] The New York Arbitration Act of 1920 proved to be a revolutionary step as it allowed agreements to submit to arbitration future disputes arising out of the contract containing such agreements and closed the courts to the parties until after they had complied with their arbitration agreements.[171] At the same time, however, the Act brought to the aid of the parties the powers of the court in enforcing agreements and awards by authorizing them to appoint arbitrators and to expedite arbitration upon default of one of the parties.[172] In 1926, the

163. Speller & Fly, *supra* note 125, at 3.

164. *Id.* at 3 (citing Tuckey J. in Egmatra AC v. Macro Trading Corporation [1991] 1 Lloyd's Rep. 862, 865).

165. Pioneer Shipping Ltd., [1982] 1 A.C. 724 at 739.

166. *Id.*

167. ROBERT V. MASSEY, JR., HISTORY OF ARBITRATION AND GRIEVANCE ARBITRATION IN THE UNITED STATES 2 (2005).

168. *Id.*

169. *Id.* at 5.

170. DOMKE & WILNER, *supra* note 2, at 18.

171. FRANCES KELLOR, AMERICAN ARBITRATION: ITS HISTORY, FUNCTIONS, AND ACHIEVEMENTS 11 (1948).

172. *Id.*

Arbitration Society of America, the first permanent institution of arbitration, was consolidated with the Arbitration Foundation and became the American Arbitration Association.[173]

The Arbitration Society of America, prior to becoming the American Arbitration Association, was instrumental in effecting, in 1925, the United States Arbitration Law, otherwise known as the Federal Arbitration Act (FAA).[174] The FAA provided for the enforcement of arbitration agreements and awards in federal courts, particularly involving foreign trade and maritime transactions disputes.[175] The courts were encouraged to view arbitration as a legitimate form of dispute resolution in order to correct the failure of state statutes to enforce arbitration agreements.[176]

The general satisfaction on the effectiveness of arbitration also led to a movement for uniform laws in commercial arbitration among the States.[177] The Conference of Commissioners on Uniform State Laws recommended in 1924 the adoption by several states of a draft of the Uniform Arbitration Statute.[178] The developing interest in arbitration led to the draft of a model arbitration law, the Uniform Arbitration Act (UAA) in 1955, and later amended in 1956.[179] The UAA was further revised by the Conference of Commissioners in 2000 resulting in the creation of the Revised Uniform Arbitration Act (RUAA).[180]

On international arbitration, the U.S., before 1970, enforced arbitration largely based on the concept of comity, since it neither became a party to the 1923 Geneva Protocol on Arbitration nor to the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards.[181] It was only in 1970 that the U.S. Senate ratified the New York Convention, even though the New York Convention was approved as early as 1958 but took effect in 1972.[182] Then, Chapter 2 of the FAA, implementing the New York Convention, also

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173. *Id.* at 17.

174. *Id.* at 13.

175. Federal Arbitration Act, 9 U.S.C. §§ 1-14 (2006).

176. *Id.*

177. DOMKE & WILNER, *supra* note 2, at 18.

178. *Id.* § 7:2 7-4.

179. Richard E. Speidel, *Common Legal Issues in American Arbitration Law*, *in* ARBITRATION LAW IN AMERICA: A CRITICAL ASSESSMENT 29, 56 (2006); *See also* DOMKE & WILNER, *supra* note 2, § 7.2, at 7-4.

180. *Id.*

181. DOMKE & WILNER, *supra* note 2, § 50.2, at 50-4.

182. Richard E. Speidel, *International Commercial Arbitration: Implementing the New York Convention*, *in* ARBITRATION LAW IN AMERICA: A CRITICAL ASSESSMENT 185, 202 (2006) [hereinafter Speidel, *International Commercial Arbitration*].

became law in 1972, while Chapter 1 of the FAA, dealing with interstate arbitration, remains in force since 1925 and supplements Chapter 2.[183]

Thus, the discussion of arbitral awards is limited to the following arbitration regimes in the U.S.: (a) interstate arbitration, governed by Chapter 1 of the FAA; (b) intrastate arbitration, governed by the RUAA; and (c) in international commercial arbitration, governed by the New York Convention, as implemented by Chapter 2 of the FAA.

B. Scope of Judicial Review of Arbitral Awards Under the United States Laws

1. Domestic Arbitral Awards

In the U.S., the statutory grounds for vacating, modifying, and correcting arbitral awards are found in Sections 10 and 11 of the FAA and Sections 23 and 24 of the RUAA. The FAA provides that in any maritime transaction or contract evidencing a transaction involving commerce to settle by arbitration, a controversy arising therefrom shall be valid, irrevocable, and enforceable, save upon such grounds existing in law or in equity for the revocation of any contract.[184] Moreover, where the parties have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, then any party may apply to the court for an order confirming the award.[185] The court must grant such an order unless the award is vacated, modified, or corrected pursuant to Sections 10 and 11 of the FAA.[186] Section 10 provides the grounds for vacation of arbitral awards:

> (1) Where the award was procured by corruption, fraud, or undue means;
>
> (2) Where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.[187]

In the event the court orders for vacation of the arbitral award under any of the foregoing grounds, it may in its discretion direct a rehearing by the

183. *Id.* at 56.

184. Federal Arbitration Act, 9 U.S.C. § 2 (2006).

185. *Id.* § 9.

186. *Id.*

187. *Id.* § 10 (a).

arbitrators.[188] The review of an arbitral award is very deferential[189] in that every reasonable presumption and intendment will be made in favor of the arbitral award and its proceedings.[190] In this regard, a court may not review the findings of facts or applications of law, as these involve matters of judgment in which the court should not interfere.[191]

Meantime, the grounds for modification or correction of arbitral awards under Section 11 of the FAA are: (a) evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award; (b) that the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; and (c) the award is imperfect in matter of form not affecting the merits of the controversy.[192]

In addition to the foregoing, a request to an arbitrator to clarify an award is not statutorily prohibited.[193] A remand for clarification differs from a motion to vacate, modify or correct for it is only proper where the award cannot be understood or where it cannot be complied with because a party does not comprehend the relief granted.[194]

Under Section 23 of the RUAA, the grounds for vacating arbitral awards are similar to those provided in the FAA:

(1) the award was procured by corruption, fraud, or other undue means;

(2) there was:

(a) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(b) Corruption by an arbitrator; or

(c) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Section 15, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) an arbitrator exceeded the arbitrator's powers;

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188. *Id.* § 10 (b).

189. DOMKE & WILNER, *supra* note 2, § 38.7, at 38-24.

190. *Id.* § 38.7 and 38.24, at 38-25.

191. *Id.*

192. Federal Arbitration Act, 9 U.S.C. § 11 (2000).

193. DOMKE & WILNER, *supra* note 2, § 40.5, at 40-13.

194. *Id.* § 40.5 and 40.12, at 40-13 (citing American Ins. Co. v. Seagull Compania Naviera, S.A., 774 F. 2d 64, 67 (2d Cir. 1985)).

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under Section 15 (c) not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 9 so as to prejudice substantially the rights of a party to the arbitration proceeding.[195]

Once the court vacates an arbitral award on any of the foregoing grounds other than (5), it may order a rehearing.[196] Further, if the ground relied upon are those under (1) and (2), the rehearing must be before a new arbitrator.[197] If the grounds are those stated in (3), (4), or (6), the hearing may be before the same arbitrator who rendered the award in issue or its successor.[198]

On modification or correction of arbitral awards, the grounds are found in Section 24 of the RUAA, which are also similar to those under the FAA: (a) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award; (b) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or (c) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.[199]

Note that in both the FAA and RUAA, further appeals may be taken from an order confirming or denying confirmation of an award or partial award, modifying or correcting an award, or vacating an award.[200] As mentioned, a court's review of an arbitration award is very deferential, as the law is well settled that a court may not review any of the finding of facts or applications of law by the arbitrators, since they involve matters of judgment, and it would be contrary to the intent of an arbitration agreement for a court to interfere.[201] However, an appellate court's review of an order vacating or confirming an award is *de novo*.[202] The appellate court will review the district court's decision without deference to the district court's legal conclusions, under a clearly erroneous standard, and will not protect findings based on the application of incorrect legal principles.[203]

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195. Revised Uniform Arbitration Act, § 23 (a) (2000) [hereinafter RUAA].

196. *Id.* § 23 (b).

197. *Id.*

198. *Id.*

199. *Id.* § 24 (a).

200. Federal Arbitration Act, 9 U.S.C. § 16 (2006); RUAA § 28 (2000).

201. DOMKE & WILNER, *supra* note 2, § 38:7 38-24-25.

202. *Id.* § 38.8 at 38-30.

203. *Id.* § 38.8 and 38.30 at 38-31.

In the U.S., the basis for judicial review of arbitral awards is not solely on statutory grounds enumerated above. There are also judge-made non-statutory grounds warranting vacation of arbitral awards, which are: (a) the arbitrator's manifest disregard of the law; (b) the award's conflict with a strong public policy; (c) the award being arbitrary and capricious; (d) the award being completely irrational; or (e) the award's failure to draw its essence from the underlying contract.[204]

The above-enumerated grounds are mainly derived from the precedent held by the U.S. Supreme Court in *Wilko v. Swan*[205] and in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*[206] Other than those dicta, the Supreme Court has not further clarified the meaning and the effect on the statutory grounds for vacating an arbitral award.[207] Federal courts were left to fill the void left by the Supreme Court and built on the dicta.[208] The grounds are highly contentious, as in fact, the Fourth Circuit Court of Appeals have rejected those non-statutory grounds and maintain the view that the courts retain a very limited power of judicial review of arbitral awards outside of Section 10 of the FAA.[209]

2. Foreign Arbitral Awards

As above mentioned, the source of international arbitration law in the U.S. is the New York Convention, as by Chapter 2 of the FAA.[210] Hence, enforcement of foreign arbitral awards in the U.S., pursuant to the New York Convention, must comply with the provisions of Chapter 2 of the FAA.[211] Moreover, in line with the reservation made by the U.S. under the New York Convention, enforcement of foreign arbitral awards will only be effected by U.S. courts on the basis of reciprocity.[212]

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204. *Id.* § 39.7, at 39-16.

205. Wilko v. Swan, 346 U.S. 427 (1953).

206. Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); DOMKE & WILNER, *supra* note 2, § 39.7 and 39.16, at 39-17.

207. *Id.* § 39.7, at 39-17.

208. *Id.*

209. *Id.* § 39.7, at 39-16 (citing Advest, Inc. v. McCarthy 914 F. 2d 6 (D. Mass. 1990)).

210. Federal Arbitration Act, 9 U.S.C. § 201 (2006); Speidel, *International Commercial Arbitration*, *supra* note 181, at 185, 202.

211. 2 MARTIN DOMKE & GABRIEL WILNER, DOMKE ON COMMERCIAL ARBITRATION (THE LAW AND PRACTICE OF COMMERCIAL ARBITRATION) § 50:3 50-17 (Larry E. Edmonson ed., 3d ed. 2007).

212. *Id.*

The grounds for refusal of the enforcement under the New York Convention are those enumerated under Part II (B) (a) (ii) hereof.

> The grounds for which a court may refuse to confirm an award under Article V of the [New York Convention] focus principally on the nonexecution of the wishes of the parties or, in the absence of the expression of the will of the parties, on the wishes of the legislator. This is true with respect to all the grounds except for that regarding the arbitrability issues, which goes to the legislative policy of the enforcing country, whether performed by the legislature or the courts. The other exceptional ground for refusing to confirm an award under Article V is the powerful one of public policy.[213]

In the U.S., the corruption of the arbitration process by the parties, arbitrators or others is considered contrary to basic policy, as reflected in Section 10 of the FAA and the laws adopting the UAA and RUAA.[214] Hence, it is expected that U.S. courts will look to Section 10 of the FAA and case law interpreting it, to determine what elements of public policy should be employed in complying with Article V of the New York Convention.[215]

C. Jurisprudence on the Scope of Judicial Review of Arbitral Awards

The statutory grounds for vacating, modifying, or correcting arbitral awards under the FAA are opined to be narrowly construed by the courts.[216] The grounds listed in Section 10 of the FAA only deal with matters on procedural consideration and do not go into the merits of the case.[217] Similarly, the grounds under Section 11 of the FAA are not used to correct arbitrators' awards on the merits, but are rather limited to obvious mathematical and clerical errors or to striking off matters not subject to arbitration.[218]

Hence, courts have supplemented Sections 10 and 11 of the FAA by creating common law grounds to review arbitral awards, which are: (a) manifest disregard of the law; (b) conflict with a strong public policy; (c) arbitrary and capricious; (d) completely irrational award; or (e) award's failure to draw its essence from the underlying contract.[219] Further, the

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213. *Id.* § 50:3, at 50-22.

214. DOMKE & WILNER, *supra* note 210, at § 50.3, at 50-22.

215. *Id.* § 50.3 and 50.22 at 50-23.

216. *See* Thomas S. Meriwether, *Limiting Judicial Review of Arbitral Awards Under the Federal Arbitration Act: Striking the Right Balance,* 44 HOUS. L. REV. 739, 746 (2007).

217. *Id.* at 745.

218. *Id.* at 746.

219. DOMKE & WILNER, *supra* note 2, at § 39.7, at 39-16.

parties to the arbitration themselves tend to augment the statutory limitations of the FAA by contractually defining their own standards of judicial review, either by expanding its scope or limiting it.[220] Neither the text of the FAA nor the legislative intent provides guidance for the validity of contractual expansion or limitation.[221] Even the Federal courts have varying rulings on the matter, similar with the other non-statutory grounds for vacatur.[222]

The lack of a unifying standard among federal courts on the non-statutory grounds for judicial review of an arbitral awards welcomes the recent advent of *Hall Street Assoc., L.L.C. v. Mattel, Inc.*[223] *Hall Street* ruled on the grounds of manifest disregard of the law and contractual expansion.[224] As such, this part of the Article would limit the examination of the U.S. jurisprudential developments to the grounds of manifest disregard of the law and contractual expansion.

Under the U.S. federal law, the manifest disregard of the law is the most widely-recognized extra-statutory ground upon which courts can set aside arbitration awards.[225] It allows the courts to supplement the FAA's limited grounds and provides an avenue to avoid enforcing erroneous awards.[226] The federal courts derived this ground from the dictum made by the U.S. Supreme Court in *Wilko*.[227] Here, the Supreme Court remarked that "[i]n unrestricted submission ... the interpretations of the law by the arbitrators in contrast to manifest disregard are not subject, in the federal courts, to judicial review for error in interpretation."[228] Furthermore, in *First Options of Chicago, Inc. v. Kaplan,*[229] the U.S. Supreme Court added "apparent

220. Eric Chafetz, *The Propriety of Expanded Judicial Review Under the FAA: Achieving a Balance Between Enforcing Parties' Agreements According to their Terms and Maintaining Arbitral Efficiency,* 8 CARDOZO J. CONFLICT RESOL. 1, 2 (2006).

221. *Id.* at 2.

222. *Id.* at 3. *See also* Noah Rubins, *"Manifest Disregard of the Law" and Vacatur of Arbitral Awards in the United States,* 12 AM. REV. INT'L ARB. 363, 366 (2001). (This states that the Supreme Court "gave little or no guidance as to the contours of 'manifest disregard' or when such behavior by arbitrators would justify annulling an award.")

Id.

223. Hall Street Assoc., L.L.C. v. Mattel, Inc., 128 S. Ct. 1396 (2008).

224. *Id.* at 1404.

225. Rubins, *supra* note 221, at 366.

226. *Id.* at 368.

227. *Id.* at 366.

228. *Wilko,* 346 U.S. at 436-37.

229. First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938 (1995) (Parties must abide by the arbitrator's decision if it is not in manifest disregard of the law.).

approval" to the manifest disregard of the law standard in its dictum.[230] It was stated in *First Options* that "parties [are] bound by the arbitrator's decision not in manifest disregard of the law."[231]

Despite the lack of guidance from the U.S. Supreme Court on the standard for manifest disregard of the law, the federal courts implemented the ground in arbitration jurisprudence, although in various ways.[232] It soon became evident, however, that there was a need for the U.S. Supreme Court to unify the standard or directly rule on the matter. In 2008, the U.S. Supreme Court had the opportunity to do so in *Hall Street,* but instead of clarifying the ground first pronounced in *Wilko,* the Court left jurisprudence on manifest disregard of the law still wanting of a definite standard.

In *Hall Street,* which involved a lease dispute between the landlord and tenant, the U.S. Supreme Court held that Sections 10 and 11 of the FAA are "exclusive grounds for expedited vacatur and modification."[233] In overruling *Hall Street's* argument that *Wilko* authorized the expandable judicial review, the Court held:

> The *Wilko* Court was explaining that arbitration would undercut the Securities Act's buyer protections when it remarked (citing FAA Section 10) that "[p]ower to vacate an [arbitration] award is limited," and went on to say that the "interpretations of the law by the arbitrators in contrast to manifest disregard [of the law] are not subject, in the federal courts, to judicial review for error in interpretation." *Hall Street* read this statement as recognizing "manifest disregard of the law" as a further ground for vacatur on top of those listed in Section 10, and some Circuits have read it the same way. *Hall Street* sees this supposed addition to Section 10 as the camel's nose: if judges can add grounds to vacate (or modify), so can contracting parties.
>
> But this is too much for *Wilko* to bear. Quite apart from its leap from a supposed judicial expansion by interpretation to a private expansion by contract, *Hall Street* overlooks the fact that the statement it relies on expressly rejects just what *Hall Street* asks for here, general review for an arbitrator's legal errors. *Then there is the vagueness of Wilko's phrasing. Maybe the term "manifest disregard" was meant to name a new ground for review, but maybe it merely referred to the Section 10 grounds collectively, rather than adding to them. Or, as some courts have thought, "manifest disregard" may have been shorthand for Section 10 (a) (3) or Section 10 (a) (4), the subsections authorizing vacatur when the arbitrators were "guilty of misconduct" or "exceeded their powers."* We, when speaking as a Court, have merely taken the *Wilko* language as we found it, without embellishment, and now that its meaning is

230. Rubins, *supra* note 221, at 366.

231. *First Options*, 514 U.S. at 942.

232. Rubins, *supra* note 221, at 366.

233. *Hall Street*, 128 S. Ct. at 1403.

> implicated, we see no reason to accord it significance that *Hall Street* urges.[234]

It seems that the U.S. Supreme Court deliberately left unanswered the questions as to whether manifest disregard of the law was meant to be a new ground for review or simply a collective reference to Section 10 of the FAA.[235] The effect of such ruling remains to be seen. Not long after, or to be precise, only six days following the promulgation of *Hall Street*, the New York Supreme Court held that "manifest disregard of law" is a judicial interpretation of the Section 10 requirement, rather than a separate standard of review. It seems appropriate, however, since the standard has apparently not been overruled by the U.S. Supreme Court, to resort to existing case law to determine its contours.[236]

Based on the interpretation of the New York Supreme Court of the ruling in *Hall Street,* it seems that federal courts remain exactly where they were prior to the *Hall Street* decision on judicial review of arbitral awards on the ground of manifest disregard of the law by depending on their existing case laws.[237]

The other non-statutory ground for judicial review of an arbitral award examined by the U.S. Supreme Court in *Hall Street* is the contractual expansion of judicial review.[238] Before presenting the holding of the U.S. Supreme Court therein, an overview of the judicial development of contractual expansion of judicial review would be appropriate. Similar to the ground of manifest disregard of the law, the federal courts of appeals have varying rulings on the validity of contractual expansion for judicial review.[239] There are courts that allow contractual expansion, while others have a contrary view.[240]

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234. *Id.* at 1403-04 (citations omitted and emphasis supplied).

235. Samuel Estreicher & Steven C. Bennett, Parties Can't Modify FAA Standards for Judicial Review, *available at* http://www.jonesday.com/files/Publication/90c623f7-81f0-4b65-9d96-818537a43fec/Presentation/PublicationAttachment/3b917d1d-891a-4782-8231-b38f3e828f76/EstreicherBennett_NYLJ041508.pdf (last accessed Sep. 2, 2009).

236. Chase Bank USA, N.A. s/h/a/ Bank One v. Andrea Hale, 2008 WL 1746984, 5 (N.Y. Sup. 2008).

237. *Hall Street*, 128 S. Ct. at 1403-04.

238. *Id.*

239. Thomas S. Meriwether, *Limiting Judicial Review of Arbitral Awards Under the Federal Arbitration Act: Striking the Right Balance,* 44 HOUS. L. REV. 739, 750 (2007).

240. *Id.*

On one hand, the courts in favor of contractual expansion are the Fifth, Fourth, Third, Sixth, and First Circuit Courts. The Fifth Circuit in *Gateway Technologies, Inc. v. MCI Telecommunications Corp.*[241] allowed an arbitration agreement providing for the parties to "settle any potential disputes via binding arbitration, 'except that errors of law shall be subject to appeal.'"[242] The Fifth Circuit Court held that the parties sought to expand the narrow grounds enumerated in the FAA and that it was permissible for them to do so based on the preeminent purpose of the FAA to enforce arbitration agreements.[243] The Fourth Circuit adopted the holding of the Fifth Circuit in its 1997 unpublished ruling in *Syncor International Corp. v. McLeland*[244] by heavily quoting from *Gateway Technologies, Inc.*[245] On the part of the Third Circuit, it considered whether the parties may opt out of the FAA vacatur grounds and define their own.[246] It held that the "parties may opt out of the FAA's off-the-rack vacatur standards and fashion their own"[247] pursuant to the purpose of the FAA to enforce the terms of private arbitration.[248] The Sixth Circuit also relied on said purpose in ruling that a parties' choice-of-law clause to displace the FAA vacatur standards is possible.[249] Finally, the First Circuit followed suit in holding that the FAA vacatur standards can be displaced only by "explicit contractual language evincing the parties' clear intent to subject the arbitration to a different standard of review."[250]

On the other hand, the courts against contractual expansion of judicial review of arbitration are the Seventh, Eight, Tenth, and Ninth Circuits. The Seventh Circuit, in a dictum stated that "parties 'cannot contract for judicial review of [an arbitral] award; federal jurisdiction cannot be created by contract.'"[251] The Eight Circuit expressed reservation about the validity of its assumption that the scope of judicial review can be expanded by

241. Gateway Technologies, Inc. v. MCI Telecommunications Corp, 64 F. 3d 993 (5th Cir. 1995).

242. Meriwether, *supra* note 238, at 751.

243. *Id.*

244. Syncor International Corp. v. McLeland, No. 96-2261, 1997 WL 452245 (4th Cir. Aug. 11, 1997).

245. Meriwether, *supra* note 238, at 752.

246. *Id.* at 752.

247. Roadway Package Sys., Inc. v. Kayser, 257 F. 3d 287, 293 (3d Cir. 2001).

248. Meriwether, *supra* note 238, at 752.

249. *Id.* (citing Jacada (Europe), Ltd. v. Int'l Mktg. Strategies, Inc., 401 F. 3d 701 (6th Cir. 2005)).

250. *Id.* at 753 (citing P.R. Tel. Co. v. U.S. Phone Mfg. Corp., 427 F. 3d 21, 23 (1st Cir. 2005)).

251. *Id.* at 754 (citing Chi. Typographical Union No. 16 v. Chi. Sun-Times, Inc., 935 F. 2d 1501, 1505 (7th Cir. 1991)).

contract and expressed uncertainty on whether the parties can dictate how a federal court will review an arbitration award considering that Congress has provided for a limited procedure.[252] The Eight Circuit's uneasiness was not evident in the Tenth Circuit ruling which squarely held that "parties may not contract for expanded judicial review of arbitration awards."[253] The court was of the view that judicial review of an arbitral award is separate from the arbitration process.[254] The Ninth Circuit espoused the same stance and made it clear that it did not view the FAA as providing only a default set of review standards, and further stated that the FAA standards are exclusive.[255]

The ruling of the U.S. Supreme Court in *Hall Street* should now settle the conflicting views of the federal circuit courts, answering the issue of "whether the FAA has textual features at odds with enforcing a contract to expand judicial review following arbitration."[256] It stated that under the rule of *ejusdem generis*, when a statute sets out a series of specific items ending with a general term, the general term is confined to covering subjects comparable to the specifics it follows. Since a general term included in the text is normally thus limited, then surely a statute with no textual hook for expansion cannot authorize contracting parties to supplement review for specific instances of outrageous conduct with review for just any legal error. In addition, the court must grant the application for an order unless the award is vacated, modified, or corrected as prescribed in Sections 10 and 11 of this title. Furthermore, one must view the three provisions, Sections nine to 11, as substantiating a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway; otherwise, it may turn informal arbitration as a cumbersome and time-consuming part of the judicial review process.[257]

In sum, the U.S. Supreme Court, in ruling that statutory grounds for vacatur under the FAA are exclusive, relied on three textual bases: (a) the rule of *ejusdem generis*; (b) the language of the FAA providing that "the court must grant;" and (c) an example of what a default provision is under Section

252. *Id.* at 755 (citing UHC Mgmt. v. Computer Scis. Corp., 148 F. 3d 992, 997 (8th Cir. 1998)).

253. *Id.* at 756 (citing Bowen v. Amoco Pipeline Co., 254 F. 3d 925, 937 (10th Cir. 2001)).

254. Meriwether, *supra* note 238, at 756 (citing Bowen v. Amoco Pipeline Co., 254 F. 3d 925, 937 (10th Cir. 2001)).

255. *Id.* at 757 (citing Kyocera Corp. v. Prudential-Bache Trade Servs., Inc. (Kyocera III), 341 F. 3d 987, 1000 (9th Cir. 2003) (en banc)).

256. *Hall Street*, 128 S. Ct. at 1404.

257. *Id.* at 1404-06 (citations omitted).

five of the FAA.[258] Nonetheless, the U.S. Supreme Court clarified that in ruling on the exclusivity of the grounds in Sections 10 and 11 of the FAA, it does not "exclude [a] more searching review based on authority outside the statute as well."[259] Hence, even though the Court declared the FAA vacatur standard as exclusive, still it left open other "possible avenues for judicial enforcement of arbitration awards."[260]

IV. PHILIPPINE RULE ON JUDICIAL REVIEW OF ARBITRAL AWARDS

A. History of Philippine Arbitration Laws

Arbitration in the Philippines can be traced even before the Spaniards arrived in 1521.[261] The *datu* (chieftain), who is the head of a *barangay* (a village form of government), settles the disputes of his constituents, and his decisions are accepted as having authority and finality.[262] On family quarrels, the elders and parents were looked up as arbitrators whose godly pronouncements are binding upon the disputants.[263]

The Spanish regime in the Philippines brought about the effectivity in the territory of Spain's *Codigo Civil* (Civil Code).[264] This Code was promulgated in Spain in 1889, and was made applicable to the Philippines in the same year through a Royal Decree.[265] The Code contained provisions on compromises, which also applied to arbitrations, specifically under Articles 1820 and 1821[266] thereof.[267] Article 1821 of the Code provides that the procedure for arbitration shall be made pursuant to the provisions of *Ley de Enjuicinamiento Civil* (Law of Civil Procedure), which describes litigation by means of friendly adjusters.[268]

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258. Estreicher & Bennett, *supra* note 234.

259. *Hall Street*, 128 S. Ct. at 1406.

260. Estreicher & Bennett, *supra* note 234.

261. RUFUS B. RODRIGUEZ, PHILIPPINE ARBITRATION AND THE UNCITRAL MODEL LAW 2 (2d ed. 2002) (citing JOSE K. MANGUIAT, COMMERCIAL ARBITRATION, VOLUNTARY ARBITRATION: WHYS AND WHEREFORES (1987)).

262. *Id.*

263. *Id.* at 2–3.

264. *Id.* at 3 (This refers, in particular, to Book IV, Title XIII, "*De los transacciones y compromises*" (compromise and arbitration)).

265. *Id.* at 3.

266. CODIGO CIVIL, art. 1820.

267. Chung Fu v. Court of Appeals, 206 SCRA 545, 550 (1992).

268. Cordoba v. Conde, 2 Phil. 445, 446 (1903).

In 1898, the Spaniards ceded the Philippines to the Americans by virtue of the Treaty of Paris.[269] Under the American administration, the Code of Civil Procedure was enacted on 7 August 1901, which repealed the *Ley de Enjuicinamiento Civil*.[270] The Code of Civil Procedure did not mention arbitration as a mode of settling disputes.[271] Hence, despite the fact that the *Codigo Civil* was then still in force, its substantive provision on arbitration was nonetheless held ineffective by the repeal of the procedural provisions.[272]

The change in administration in the Philippines brought along with it the American treatment of arbitration. The Supreme Court articulated this treatment in its 1903 decision in *Wahl v. Donaldson, Sims & Co.*,[273] which involved a dispute over a charter contract containing an arbitration clause. The Court took a hard stance against arbitration and declared:

> Agreements to refer matters in dispute to arbitration have been regarded generally as attempts to oust the jurisdiction of the courts, and are not enforced. The rule is thus stated in Clark on Contracts: A condition in a contract that disputes arising out of it shall be referred to arbitration is good where the amount of damages sustained by a breach of the contract is to be ascertained by specified arbitration before any right of action arises, but that it is illegal where all the matters in dispute of whatever sort may be referred to arbitrators and to them alone. In the first case a condition precedent to the accrual of a right of action is imposed, while in the second it is attempted to prevent any right of action accruing at all, and this cannot be permitted. This seems to be the general rule in the United States and we understand that in the civil law it is also the rule that, where there is a stipulation that all matters in dispute are to be referred to arbitrators and to them alone, such stipulation is contrary to public policy.[274]

However, in the case of *Allen v. Province of Tayabas*,[275] the Court softened its stance against arbitration as a mode of settling disputes,[276] declaring that "courts will look with favor upon amicable arrangements that

269. Francis E. Lim, *Commercial Arbitration in the Philippines*, 46 ATENEO L.J. 394, 397 (2001).

270. RODRIGUEZ, *supra* note 260, at 3.

271. Lim, *supra* note 268, at 397.

272. *Id.* (This refers to the pronouncement of the Supreme Court in *Cordoba*, 2 Phil. 445.).

273. Wahl v. Donaldson, Sims & Co., 2 Phil. 301 (1903).

274. *Id.* at 302-03.

275. Allen v. Province of Tayabas, 38 Phil. 356 (1918).

276. Lim, *supra* note 268, at 398.

seek to oust courts of their jurisdiction and will only, with great reluctance, interfere to anticipate or nullify the action of the arbitrator."[277]

Four years after Philippine independence from the Americans, the Philippine Civil Code (New Civil Code)[278] was enacted in 1950, which, as amended, is currently in effect. The Philippine Congress incorporated arbitration in Articles 2042 to 2046[279] of the New Civil Code under Title XIV, Book IV.[280] Note that because Article 2043 expressly states that provision on compromises also applies to arbitration, the following disputes are non-arbitrable: civil status of persons, validity of a marriage or legal separation, any ground for legal separation, future support, the jurisdiction of courts, and future legitime.[281]

The Philippine Legislature soon recognized the growing need for a law regulating arbitration; thus, it enacted Republic Act No. 876 in 1953,[282] otherwise known as The Arbitration Law.[283] The Act was intended to supplement the New Civil Code on arbitration.[284]

On 10 June 1958, the Philippines became a signatory to the New York Convention, but it was not until 6 July 1967 that Congress ratified the same.[285] Thereafter, about 50 years from the enactment of The Arbitration Law, the Philippine Congress enacted on 2 April 2004 Republic Act No. 9285,[286] known as the Alternative Dispute Resolution Act of 2004 (ADR Act of 2004).[287]

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277. *Allen*, 38 Phil. at 364.

278. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

279. CIVIL CODE, arts. 2042-46.

280. Lim, *supra* note 268, at 399.

281. *Id.* at 399 (citing CIVIL CODE, art. 2035).

282. An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes [The Arbitration Law], Republic Act No. 876 (1953).

283. *Chung Fu*, 206 SCRA at 551.

284. *Id.*

285. Victor P. Lazatin & Patricia Ann T. Prodigalidad, *Arbitration in the Philippines* 3 (ASEAN Law Ass'n Workshop Papers 9th G.A., 2006).

286. An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes [ADR Act of 2004], Republic Act No. 9285 (2005).

287. Lazatin & Prodigalidad, *supra* note 284, at 3.

B. Scope of Judicial Review of Arbitral Awards Under the Philippine ADR Act of 2004

The chapters of ADR Act of 2004 are divided into Mediation, Other ADR Forms, International Commercial Arbitration, Domestic Arbitration, Arbitration of Construction Disputes, and Judicial Review of Arbitral Awards.[288] The ADR Act of 2004 adopted a dual system of arbitration[289] in providing that domestic arbitration shall continue to be governed by the Arbitration Law,[290] and international commercial arbitration shall be governed by the Model Law.[291] Moreover, the Act states that the recognition and enforcement of arbitral awards shall be governed by the New York Convention, limited to awards covered by the Convention.[292] For our purposes, this study will only discuss judicial review of domestic and international commercial arbitral awards, and would not deal with other forms of alternative dispute resolution, or special arbitration law in the Philippines pertaining to the arbitration of construction dispute.[293]

1. Foreign Arbitral Awards

Under Article 34 of the Model Law, the court may set aside an arbitral award, as an exclusive recourse, only if:

> (a) the party making the application furnishes proof that:
>
> (i) a party to the arbitration agreement referred to in article 7 [of the Model Law] was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of [the] State; or
>
> (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
>
> (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains

288. ADR Act of 2004.

289. CUSTODIO O. PARLADE, ALTERNATIVE DISPUTE RESOLUTION ACT of 2004 (REPUBLIC ACT NO. 9285) ANNOTATED 55 (2004).

290. ADR Act of 2004, § 32.

291. *Id.* § 19 (Note that the Model Law was amended by UNCITRAL on July 7, 2006, at its 39th session, however, ADR Act 2004 expressly refers, under Section 19 thereof, to U.N. Document A/40/17 as approved on Dec. 11, 1985. Hence, the 1985 Model Law should govern, as it is expressly provided under ADR Act 2004.)

292. ADR Act of 2004, § 42.

293. Creating an Arbitration Machinery for the Philippine Construction Industry, Executive Order No. 1008 (1985).

> decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
>
> (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
>
> (b) the court finds that:
>
> (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of [the] State; or
>
> (ii) the award is in conflict with the public policy of [the]State.[294]

This recourse to set aside under the Model Law is intended to be the only "means of actively attacking an award,"[295] to the exclusion of any other regulated in the local law.[296] Moreover, the application to set aside an arbitral award is available to a party for a limited period of three months, [297] and limited to the exhaustive reasons enumerated.[298] Nevertheless, a party retains the right to defend himself against the award by requesting refusal of recognition or enforcement in proceedings initiated by the other party.[299] The court, when asked to set aside an award, may, where appropriate, suspend the setting aside proceedings and invite the arbitral tribunal to take measures for eliminating the defect. This proceeding is otherwise known in most common law jurisdictions as "remission."[300] It is only after the failure of the remission, in the period provided by the court, shall it resume the setting aside proceeding.[301]

On recognition and enforcement of an arbitral award, the rule is that the award, irrespective of the country in where it was issued, shall be recognized

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294. UNCITRAL Model Law on International Commercial Arbitration, art. 34, June 21, 1985, 24 ILM 1302 [hereinafter *Model Law*].

295. *Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration: Report of the Secretary-General,* [1985] 16 Y.B. INT'L COMM'N TRADE L. 104, 137 U.N. Doc. A/CN.9/264 [hereinafter *Analytical Commentary*].

296. *Id.*

297. *Model Law*, art. 34 (3).

298. *Analytical Commentary*, *supra* note 294, at 104.

299. *Id.*

300. *Id.* at 138.

301. *Id.* at 138-39.

as binding and, upon application in writing with the competent court, shall be enforced subject to the grounds provided.[302] Article 36 of the Model Law enumerates the grounds for refusing recognition or enforcement of an arbitral award, made in the country where the arbitration took place, which are essentially similar to the grounds listed under Article 34, with an additional ground that the "award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made."[303]

The grounds provided under Article 36 are essentially the same as those in Article V of the New York Convention.[304] This ensures that the Model Law is in harmony with the New York Convention,[305] the aim of which is to have a uniform treatment of all international awards not covered by any multilateral or bilateral treaty.[306] Therefore, the grounds listed covers foreign as well as domestic awards, provided they are rendered in international commercial arbitration.[307]

On foreign arbitral awards, the ADR Act of 2004 provides that the New York Convention shall govern the recognition and enforcement of arbitral awards covered by the said Convention.[308] Note, however, that Article 43 of the ADR Act of 2004 further provides that the court may, on grounds of comity and reciprocity, recognize and enforce a non-convention award as a Convention award.

The application for recognition or enforcement of a Convention award shall be filed with the regional trial court.[309] A party may oppose an application only on those grounds enumerated under Article V of the New York Convention.[310] As above-mentioned, the grounds listed under Article V of the New York Convention are mirrored in Article 36 of the Model Law. Thereafter, a decision of the regional trial court confirming, vacating, setting aside, modifying, or correcting an arbitral award may be appealed to the Court of Appeals.[311] The losing party who appeals from the judgment of the court confirming an arbitral award shall be required by the appellate court to post a counter-bond executed in favor of the prevailing party equal

302. *Model Law*, art. 35 (1).

303. *Id.*

304. *Analytical Commentary*, *supra* note 294, at 104.

305. *Id.* at 139.

306. *Id.*

307. *Model Law*, art. 1 (3).

308. ADR Act of 2004, § 42.

309. *Id.*

310. *Id.* § 45.

311. *Id.* § 46.

to the amount of the award,[312] in order to discourage dilatory and frivolous appeals.[313] The appeal process shall be made in accordance with the rules of procedure to be promulgated by the Philippine Supreme Court.[314]

In sum, an international arbitral award, whether under the New York Convention or not, may be set aside or refused recognition and enforcement on lack of procedural fairness, or if a court finds that the subject matter of the dispute is not arbitrable, or that the award conflicts with the forum's public policy.[315] On one hand, when a Philippine court sets aside an award under Article 34 of the Model Law, the arbitral award loses its character in the Philippines as a decision that has *res judicata* effect upon the parties or as a final and binding settlement of their dispute that was submitted to arbitration.[316] On the other hand, when a Philippine court refuses recognition and enforcement of a foreign arbitral award under the New York Convention and the Model Law, it only means that the award is not allowed in its jurisdiction.[317]

2. Domestic Arbitral Awards

It is worthy to recall at this point that Section 32 of the ADR Act of 2004 provides that domestic arbitration shall continue to be governed by the Arbitration Law. In addition, Section 41 of the law provides that a party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure promulgated by the Supreme Court and only on those grounds enumerated in Section 24 of the Arbitration Law.[318] A look at the Arbitration Law presents another means by which judicial review of an arbitral award could be invoked. Section 25 thereof states the grounds for modifying or correcting an award. Hence, there are two modes of judicial review of domestic arbitral awards under the Arbitration Law: vacating an award under Section 24 and modifying or correcting an award under Section 25.

Section 24 of the Arbitration Law provides that the court shall order vacating the award upon a petition from a party to the controversy and upon showing of affirmative proof that:

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312. *Id.*

313. PARLADE, *supra* note 288, at 231.

314. *Id.*

315. William Park, *Symposium on International Commercial: Article: Illusion and Reality in International Forum Selection,* 30 TEX. INT'L L.J. 135, 187 (1995).

316. PARLADE, *supra* note 288, at 231.

317. *Id.*

318. ADR Act of 2004, § 41. *See* PARLADE, *supra* note 288, at 391 (This clarifies that the appropriate section referred in Section 41 of the ADR Act of 2004 should be Section 24 of the Arbitration Law rather than Section 25.).

> (a) The award was procured by corruption, fraud, or other undue means; or
>
> (b) That there was evident partiality or corruption in the arbitrators or any of them; or
>
> (c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and willfully refrained from disclosing disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or
>
> (d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[319]

When the court vacates the award, it may in its discretion, direct a new hearing either before the same arbitrators or a new arbitrator or arbitrators chosen in the manner provided in the submission or contract for the selection of the original arbitrator or arbitrators.[320] The court may also limit the time in which the arbitrators may make a decision.[321]

Section 25 of the Arbitration Law provides for the grounds by which the court shall order the modification or correction of the award upon application of any party:

> (a) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the award; or
>
> (b) Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; or
>
> (c) Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the court.[322]

The court order may modify and correct the award so as to effect the intent of the parties and promote justice.[323]

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319. The Arbitration Law, § 24.

320. *Id.*

321. *Id.*

322. *Id.* § 25.

323. *Id.*

The Arbitration Law also provides in Section 29 that a further appeal may be taken from a court order made in a proceeding under the said law or from a judgment entered upon an award by means of certiorari proceedings, limited to questions of law. The appeal remedy here pertains to Rule 45[324] of the Rules of Court, which governs the procedure for filing an appeal by certiorari to the Supreme Court from an order of the regional trial court.[325] The petition must be filed within 15 days from notice of the judgment or final order.[326]

Additionally, although not provided in the Arbitration Law, other modes of judicial review of domestic arbitral awards can be found in Rules 43 and 65 of the Rules of Court. Rule 43 provides that the decision of voluntary arbitrators may be appealed by a petition for review[327] to the Court of Appeals within 15 days from notice of the award on questions of fact, questions of law, or mixed questions of fact and law.[328] It bears stressing that the Rule states that the findings of fact of the arbitrator, when supported by substantial evidence, shall be binding on the Court of Appeals.[329]

Rule 65 contains the procedure for filing a special civil action for certiorari. Arbitrators are considered quasi-judicial officers.[330] Thus, under Rule 65, the petition for certiorari shall be filed not later than 60 days from notice of judgment or order with the Court of Appeals involving an act or omission of a regional trial court or a quasi-judicial agency.[331] It must be alleged that the tribunal exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[332] This remedy is only available if there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[333]

Hence, in domestic arbitration, arbitral awards may be subject to judicial review under three modes. First is by a petition to vacate an award or an application for modifying or correcting an award to the regional trial court,

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324. Gonzales v. Climax Mining Ltd., et al., 512 SCRA 148, 163 (2007).

325. 1997 RULES OF CIVIL PROCEDURE, rule 45.

326. *Id.* rule 45, § 2,

327. *Id.* rule 43, § 5.

328. PARLADE, *supra* note 288, at 389 (citing 1997 RULES OF COURT, rule 43, §§ 1, 3, 4, and 10).

329. *Id.*

330. *Id.* at 386 (citing Oceanic Bic Division (FFW) v. Romero, 130 SCRA 392, 400 (1984) & *Chung Fu*, 206 SCRA at 556 (1992)).

331. 1997 RULES OF CIVIL PROCEDURE, rule 65, § 4.

332. *Id.* rule 65, § 1.

333. *Id.*

limited to any of the grounds stated in Sections 24 and 25 of the Arbitration Law, and subject to further appeal by certiorari under Rule 45 of the Rules of Court, in relation to Section 29 of the Arbitration Law. Second is by means of a petition for review directly to the Court of Appeals under Rule 43 of the Rules of Court on questions of fact, questions of law, or mixed questions of fact and law. Finally, domestic arbitral awards may be appealed by filing a petition for certiorari to the Court of Appeals under Rule 65 of the Rules of Court, upon showing that the arbitral tribunal acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. The remedy is only available when there is absence of appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

C. Jurisprudence on the Scope of Judicial Review of Arbitral Awards

One of the leading cases on judicial review of arbitral awards is the 1992 case of *Chung Fu Industries (Phils.) Inc. v. Court of Appeals*,[334] which involved a construction agreement between Chung Fu and Roblecor Philippines, Inc., whereby the latter committed to construct an industrial/factory complex. Negotiations ensued between the parties which led to the execution of an arbitration agreement. Chung Fu, however, after submitting itself for arbitration and agreeing to the terms and conditions that the award shall be final and unappealable, sought a judicial review of the arbitration award.[335] The Supreme Court resolved the issue of whether the arbitration award is beyond the ambit of the court's power of judicial review where the parties agree that the decision of the arbitrator shall be final and unappealable.[336]

The Supreme Court ruled in the negative.[337] It held that although Article 2044[338] of the New Civil Code recognizes the validity of such stipulation, it, however, provides for exceptions as stated in Articles 2038,[339] 2039,[340] and 2040[341] as to when an arbitral award may be annulled or rescinded.[342] More so, Sections 24 and 25 of the Arbitration Law provides for the grounds for vacating, modifying, or rescinding an arbitrator's

334. *Chung Fu*, 206 SCRA at 545.

335. *Id.* at 548.

336. *Id.* at 555.

337. *Id.*

338. CIVIL CODE, art. 2044.

339. *Id.* art. 2038.

340. *Id.* art. 2039.

341. *Id.* art. 2040.

342. *Chung Fu*, 206 SCRA at 556.

award.[343] Therefore, if and when the factual circumstances referred to in the foregoing provisions are present, the Court held that judicial review of the award is properly warranted.[344] The Court further clarified that voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, and pursuant to judicial precedents,[345] their decisions should not be beyond the scope of the power of judicial review.[346] In *Chung Fu,* the Court held that the trial court's refusal to look into the merits of the case, despite *prima facie* showing of the existence of grounds warranting judicial review, effectively deprived petitioners of their opportunity to prove or substantiate their allegations and was in grave abuse of its discretion. Likewise, the appellate court was found to have committed grave abuse of discretion in not giving due course to the petition. The Court held that courts should not shirk from exercising their power to review, where under the applicable laws and jurisprudence, said power may be rightfully exercised where the objections raised may properly constitute grounds for annulling, vacating, or modifying the arbitral award under the laws on arbitration.[347]

In 1998, the Supreme Court in *Asset Privatization Trust v. Court of Appeals*[348] had the occasion to rule that manifest disregard of the law is a ground to vacate an arbitral award, following the U.S. case of *Wilko*.[349] The case involved a Memorandum of Agreement between the Republic of the Philippines, represented by the Surigao Mineral Reservation Board, and the Marinduque Mining and Industrial Corporation (MMIC) granting MMIC the right to explore, develop, and exploit nickel, cobalt, and other minerals in the Surigao mineral reservation.[350] Both parties agreed to submit the case to arbitration by entering into a Compromise and Arbitration Agreement. The Arbitration Committee rendered a majority decision in favor of MMIC's stockholders, finding that the foreclosure was not legally and validly done.[351] Thereafter, Asset Privatization Trust (APT) filed a special civil action for certiorari, but the Court of Appeals denied due course and dismissed the petition. Hence, APT filed with the Supreme Court a petition for review on certiorari.[352]

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343. *Id.*

344. *Id.*

345. *Id.* (citing *Oceanic Bic Division (FFW),* 130 SCRA at 399).

346. *Id.*

347. *Id.*

348. Asset Privatization Trust v. Court of Appeals, 300 SCRA 579 (1998).

349. *Id.* at 587.

350. *Id.*

351. *Id.*

352. *Id.* at 601-02.

The Supreme Court laid down the general rule that the award of an arbitrator cannot be set aside for mere errors of judgment either as to the law or as to the facts.[353] Courts, therefore, do not have the power to review findings of law and fact contained in the award or substitute their judgment for that of the arbitrators.[354] Nevertheless, the Court declared that the arbitrators' award is not absolute and without exceptions.[355] For instance, arbitrators cannot settle issues beyond the scope of the submission agreement. Also, the parties are bound by the arbitrators' award only to the extent and in the manner prescribed by the contract and only if the award is rendered in conformity thereto. Thus, Sections 24 and 25 of the Arbitration Law provide grounds for vacating, rescinding, or modifying an arbitration award. Where the conditions described in Articles 2038, 2039, and 2040 of the Civil Code applicable to compromises and arbitration are attendant, the arbitration award may also be annulled.[356]

In addition to the foregoing grounds, the Supreme Court in *APT* declared that while a court is precluded from overturning an award for errors in the determination of factual issues, if an examination of the record reveals no support whatsoever for the arbitrators determinations, the award must be vacated.[357] The same is true if an award is made in manifest disregard of the law.[358] *APT,* therefore, is the only instance when the Court cited "manifest disregard of the law"[359] as a standard to apply in a judicial review of an arbitral award.[360]

The year following *APT*, the Supreme Court dealt with another case on vacating an arbitral award. *National Steel Corporation v. RTC of Lanao Del Norte*[361] is a consolidated case of a petition for certiorari under Rule 65 assailing the decision of the Regional Trial Court on a petition to vacate the arbitrators' award and an application for confirmation of arbitrators' award. The Court pronounced the general rule that voluntary arbitrators act in a quasi-judicial capacity.[362] Hence, the findings of facts by quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined

353. *Id.*

354. *Asset Privatization Trust,* 300 SCRA at 602-03.

355. *Id.*

356. *Id.*

357. *Id.*

358. *Id.*

359. *Wilko,* 346 U.S. 427.

360. PARLADE, *supra* note 288, at 397.

361. National Steel Corporation v. Regional Trial Court of Lanao del Norte, Br. 2, Iligan City, 304 SCRA 595 (1999).

362. *Id.* at 601.

to specific matters, are accorded not only respect but even finality if they are supported by substantial evidence, even if not overwhelming or preponderant.[363] Moreover, in a petition for certiorari under Rule 65, the Court will not review the facts found or even the law as interpreted or applied by the arbitrator unless the supposed errors of facts or of law are so patent and gross and prejudicial as to amount to a grave abuse of discretion or an excess of jurisdiction on the part of the arbitrators.[364]

In 2004, the Supreme Court had another opportunity to rule on the standard of judicial review of arbitral award in *National Power Corporation v. Alonzo-Legasto,*[365] which involved a dispute over the compensation for blasting works performed by First United Constructors Corporation (FUCC) for National Power Corporation (NPC) in relation to a contract for construction of power facilities between the parties.[366] During the pendency of the civil case on the matter, the parties entered into a Compromise Agreement, whereby the parties agreed to submit for arbitration.[367]

After hearing, the arbitrators rendered decision in favor of FUCC.[368] Consequently, FUCC filed a motion for execution with the trial court, while NPC filed a motion to vacate award.[369] The trial court rendered an order which granted the motion for execution and accordingly issued a writ, and denied the motion to vacate award.[370] The Court of Appeals declared that the trial court did not commit grave abuse of discretion considering that the arbitrators acted pursuant to the power conferred by the Compromise Agreement and that the award has factual and legal basis.[371]

On appeal, the Supreme Court reiterated the grounds stated in *Chung Fu* to justify a judicial review of arbitral award, particularly those contained in the Civil Code provisions and Sections 24 and 25 of the Arbitration Law.[372] In applying said precedent, the Supreme Court found that NPC failed to specify which of the foregoing grounds it relied upon for judicial review and that NPC did not present any proof to back up its claim of evident partiality on the alleged irregularity and injustice of the arbitration board chairman.[373]

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363. *Id.*

364. *Id.* at 601-02.

365. National Power Corporation v. Alonzo-Legasto, 443 SCRA 342 (2004).

366. *Id.* at 347.

367. *Id.*

368. *Id.* at 352.

369. *Id.*

370. *Id.* at 353.

371. *National Power Corporation,* 443 SCRA at 353.

372. *Id.* at 374.

373. *Id.*

In conclusion, the Supreme Court ruled that the findings of the Arbitration Board, supported by substantial evidence, should be accorded not only respect but finality.[374]

It can be observed that the foregoing cases are limited to judicial review of domestic arbitration awards. This is due to the lack of jurisprudence on international commercial arbitration awards under the Model Law. Nonetheless, the foregoing jurisprudence is still relevant considering that domestic arbitration in the Philippines is still governed by the Arbitration Law.

In *Chung Fu,* the Supreme Court did not allow an opt out provision from the appeal proceedings. Instead, the Court stated that the Civil Code and the Arbitration Law provide grounds for vacating, modifying, or rescinding an arbitral award. In effect, the Court ruled that those grounds found under the Civil Code and the Arbitration Law are not default grounds, but are rather mandatory grounds upon which the parties could not contract out of. In addition, *Chung Fu* classified arbitrators as performing functions in a quasi-judicial capacity. In the Philippines, it is settled that findings of quasi-judicial bodies, due to their acquired expertise, are accorded not only respect but even finality if they are supported by substantial evidence.[375] Nevertheless, courts would review a quasi-judicial decision if the errors of facts or law are so patent, gross, and prejudicial as to amount to grave abuse of discretion or an excess of jurisdiction on the part of the quasi-judicial body, in this case the arbitrator.[376]

In *APT,* the Supreme Court, borrowing from U.S. jurisprudence, vacated an arbitral award on the finding of manifest disregard of the law, and on lack of factual and legal basis, thereby, creating judicial non-statutory grounds that has not appeared in any subsequent cases. In fact, both *NSC* and *NPC* went the opposite direction and gave deference to the findings of the arbitrators. *NSC* found that the arbitrator did not commit grave abuse of discretion, while *NPC* held that the grounds for vacatur under the Civil Code and the Arbitration Law was not specified and that the one ground relied upon was without factual proof. *NPC* seemingly limited the vacatur grounds to those provided in the statutes.

The recent trend in Philippine jurisprudence seems to be in favor of giving deference to arbitral awards. It should be reiterated at this point that the jurisprudence examined are limited to the application of the Arbitration Law to domestic arbitration. Hence, the question remains whether international commercial arbitration awards made pursuant to the Model

374. *Id.*

375. *National Steel Corporation,* 304 SCRA at 601.

376. *Id.* at 601-02.

Law, having the arbitral seat in the Philippines, would be treated with the same deference by the Philippine courts.

V. ANALYSIS

The core ingredient of arbitration, which gives it advantage over litigation, is its finality.[377] Therefore, arbitration should enforce the parties' agreement to finality instead of a court's interpretation thereof.[378] This is especially important to international commercial practitioners who aim to benefit from the speed and cost of arbitration. Thus, the choice of the place of arbitral seat depends on which judiciary promotes the arbitration's integrity; one that does not intervene to correct an arbitrator's honest mistake of law or fact.[379]

Nevertheless, there is a need for tempered court regulation so as not to allow the arbitrators' acts to amount to lawlessness. This grants the losing party remedial recourse in case the arbitrators decide not in accordance with the contractual agreement of the parties.[380] Judicial review then becomes proper but must be restricted to instances where the arbitral award is obviously wrong or open to serious doubt.[381] Hence, the role of the courts is to support arbitration and not to augment arbitration as part of the judicial process.

The laws of England seem to be in best accord with the arbitration principle of finality. Proof of the effectivity of the English Arbitration Act 1996 is London's growing popularity as an arbitral seat.[382] The characteristics of the Act that keep it within the principles of finality are that it is comprehensive, coherent, and it clearly specifies mandatory and default provisions. Moreover, the English legal system is supportive of the finality of the arbitral awards as it does not create judicial non-statutory grounds for appeal, and narrowly construes the statutory standard to grant leave to appeal on a point of law.

As discussed, the DAC's main purpose in proposing the English Arbitration Act 1996 is to produce a comprehensive and coherent code that is readily accessible to foreign and domestic practitioners.[383] True enough,

377. Edward Brunet, *The Core Values of Arbitration*, *in* ARBITRATION LAW IN AMERICA: A CRITICAL ASSESSMENT 3, 23 (2006) (citing a statement by Richard Speidel).

378. *Id.* (citing a statement by Wharton Poor).

379. Park, *supra* note 314, at 181.

380. *Id.*

381. Roth & Brinkmann, *supra* note 16, at 69.

382. Speller & Fly, *supra* note 125, at 3.

383. Jeffrey Terry, *A New US Arbitration Statute for the 21st Century: An English Perspective in the Wake of the English Arbitration Act 1996*, *in* ARBITRATION NOW:

the English Arbitration Act 1996 turned out to be "[a] masterpiece of drafting clarity and a model for future draftsmen."[384] In comparison, both U.S. and Philippines arbitration laws cannot claim to be comprehensive and coherent. The FAA was drafted in 1925, more than 80 years ago, except for its second and third chapters which were added in recent years.[385] The FAA's first chapter applies to inter-state or foreign commerce, and more so to domestic and international arbitration.[386] Meanwhile, the second and third chapters overlap with the Conventions referred therein.[387] Consideration must also be made of the extensive and complicated common law and the various State and federal laws on arbitration which are not readily known to a non-U.S. practitioner.[388] These are sufficient to bewilder any lawyer not familiar with the U.S. legal system.

The Philippine ADR Act of 2004, despite being recently enacted, fails in coherence and comprehensiveness, similar to its previous colonizer. The Act refers to the applicability of other laws: the Model Law for disputes involving international commercial arbitration, the Arbitration Law for domestic arbitrations, and a special law for construction disputes. The applicable portions of the Rules of Court and the Civil Code on judicial review are not particularly referred to in the Act, despite the relevance of these laws to judicial review of the arbitral awards. Hence, Philippine arbitration law, similar to that of the U.S. arbitration law, is not easily accessible to a foreign practitioner unfamiliar with the Philippine legal system.

The effectivity of England Arbitration Act 1996 in limiting judicial review of arbitral awards also lies in clearly stating which provisions therein are mandatory or default.[389] A clear example would be Section 69 (1) of the Act which grants the parties an opt-out provision to appeal an arbitral award on a question of law. This clarity is not present in the U.S. FAA, which resulted in years of conflicting court opinions on whether Sections 10 and 11 are default provisions that the parties may contractually expand. It was not until *Hall Street* wherein the U.S. Supreme Court clarified that the grounds specified under Sections 10 and 11 of the FAA are exclusive and not default grounds. The question remains, however, whether the pronouncement in *Hall Street,* on contractual expansion, applies equally to the parties'

OPPORTUNITIES FOR FAIRNESS, PROCESS RENEWA7L AND INVIGORATION 111, 114 (Paul H. Haagen ed. 1999).

384. *Id.*

385. Terry, *supra* note 382, at 114.

386. *Id.* at 115.

387. *Id.*

388. *Id.*

389. *Id.* at 116.

contractual agreement to limit of appeals of arbitral awards. It would seem so, considering that the concept of a default provision is that the statute would apply absent any contractual agreement. In declaring that the vacatur grounds are not default provisions, it appears that contractually limiting the grounds for appeal is also not permitted. Absent a Supreme Court pronouncement directly dealing with the validity of contractual limitation, the federal courts are free to interpret *Hall Street* in light of the standards in their respective jurisdiction.

In the Philippines, the Supreme Court held in *Chung Fu* that the parties' agreement for an unappealable arbitral award, although valid, is subject to exceptions provided in the statutes for vacatur. This pronouncement implies that the vacatur provisions are not default, but rather are mandatory. On international commercial arbitral awards, the grounds enumerated in Article 34 of the Model Law are exclusive grounds and does not contain an opt out provision. Although there is clarity that the vacatur provisions are mandatory, however, the absence of any opt out provision for judicial review raises the issue of whether party autonomy in arbitration is defeated, which is an issue beyond the coverage of this paper.

A third observation is that in England, judicial non-statutory grounds for judicial review of arbitral awards are not attendant unlike in the U.S. where judicial non-statutory grounds such as manifest disregard of the law, conflict with a strong public policy, arbitrary and capricious, completely irrational, and failure to draw essence from the underlying contract are recognized. The Philippines has adopted the U.S. judicial non-statutory ground of manifest disregard of the law in *APT*. Whether the Philippine courts will continue to apply said ground remains to be seen.

Finally, in England, judicial review of arbitral awards is not extensive as the courts narrowly construe the statutory standard to grant leave to appeal on a point of law. Similarly in the U.S. the judicial non-statutory grounds for vacatur of manifest disregard of the law and violation of public policy are narrowly construed.[390] In contrast, the Philippines has an extensive judicial review of arbitral award. In addition to actions for vacating, modifying, or correcting an award before the trial courts, the parties may directly proceed to file a petition for review or a petition for certiorari directly to the Court of Appeals as provided in the Rules of Court. An appeal in the form of a petition for review may be made on questions of fact, questions of law, or mixed questions of fact and law, while a petition for certiorari is made upon showing that the arbitral tribunal acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, in the absence of appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. The appellate process is extensive due to the

390. DOMKE & WILNER, *supra* note 2, § 38.1, 38-2.

applicability to arbitration of the Rules of Court, which, however, is meant for civil actions. There is then the necessity for the Supreme Court to promulgate appellate rules consistent with the principles of arbitration to supplement the ADR Act of 2004.

VI. CONCLUSION

English courts tend to give deference to the arbitral process by limiting the means of judicial review of arbitral award to the statutory terms of the English Arbitration Act 1996. The U.S., having a more complex legal system, renders the same respect to the finality of arbitral awards, as evidenced by its revision of the UAA. However, the FAA being an outdated legislation could be improved through amendment by following the example of England's coherent and comprehensive arbitration law, providing clear distinction between mandatory and default provisions, and limiting the judicial non-statutory grounds or supplying unmistakable guidelines to their application. The Philippines, differing from England and the U.S. in having a mixed legal system of common and civil law, is developing slowly towards recognizing the finality of arbitral awards. The judiciary maintains an extensive judicial review of arbitral awards in obedience to the power granted by law. Thus, although the ADR Act of 2004 is a massive step towards promotion of arbitration in the Philippines, the Act requires further development in terms of being coherent and comprehensive, as well as limiting the grounds to appeal arbitral awards by not augmenting arbitration to the remedial civil proceedings of the courts. Despite the extensive procedure for appeal, the trend of court decisions in the Philippines is geared towards upholding the awards of the arbitrators.

In England, the U.S., and the Philippines the judicial hostility towards arbitration, exhibited in the early period, is giving way to judicial deference to the arbitral awards, although in varying paces. Thus, Lord Wilberforce's wish to see arbitration as a freestanding system, having its own substantive law,[391] might see fruition in the future.

391. *Lesotho Highlands Development Authority*, [2005] UKHL 43, at 231 (citing Hansard (HL Debates), Jan. 18, 1996, Col 778).