



An Inquest

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“A clever person solves a
problem. A wise person avoids it.”

Albert Einstein

Arbitration - Definition

Arbitration is a proceeding in which a dispute is resolved by an impartial adjudicator whose decision the parties to the dispute have agreed, or legislation has decreed, will be final and binding.



or



What is Arbitration?

Arbitration, a form of alternative dispute resolution (ADR), is a technique for the resolution of disputes outside the courts, where the parties to a dispute refer it to one or more persons (the "arbitrators", or "arbitral tribunal"), by whose decision (the "award") they agree to be bound. It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable.



Why do we need Arbitration?

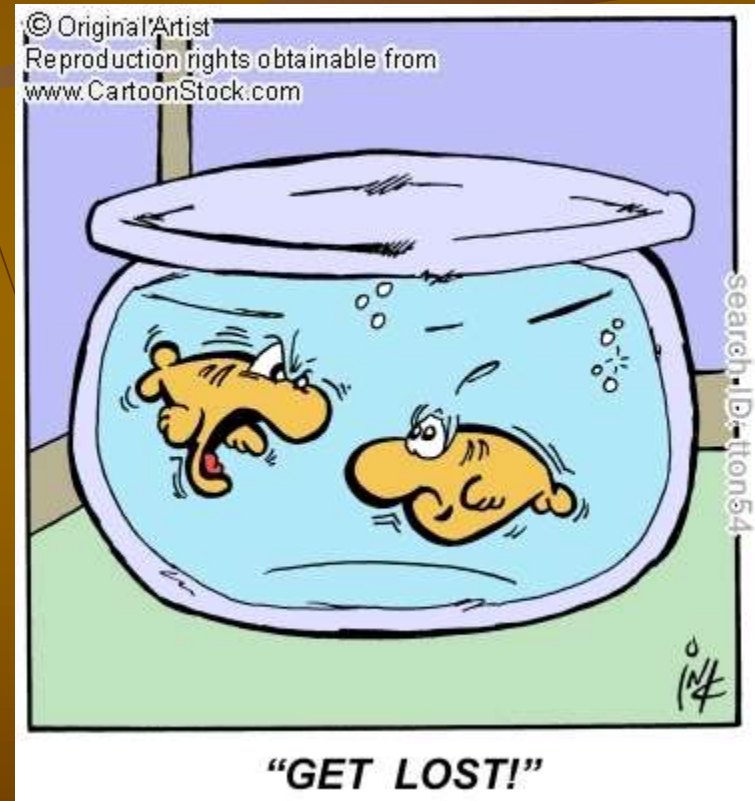
- There is a gap between these two...a dispute....and they are not willing to see or bridge the gap.



...at-least try to
see each other.
No way, they got an
arbitration clause...

How does the dispute arise?

Because there is a contract..



What is a contract?

"A **contract** is an **agreement** having a lawful object entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations between or among them. The **elements** of a contract are "offer" and "acceptance" by "competent persons" having legal capacity who exchange "consideration" to create "mutuality of obligation".

Why do we contract?

- To achieve our goals with the help of others.
- To share the risks with others.
- To minimize the risk by outsourcing certain activities for others to perform.

“Time Value of Money”

■ Rs 50 lakh today



■ Rs 50 lakh after 5 year

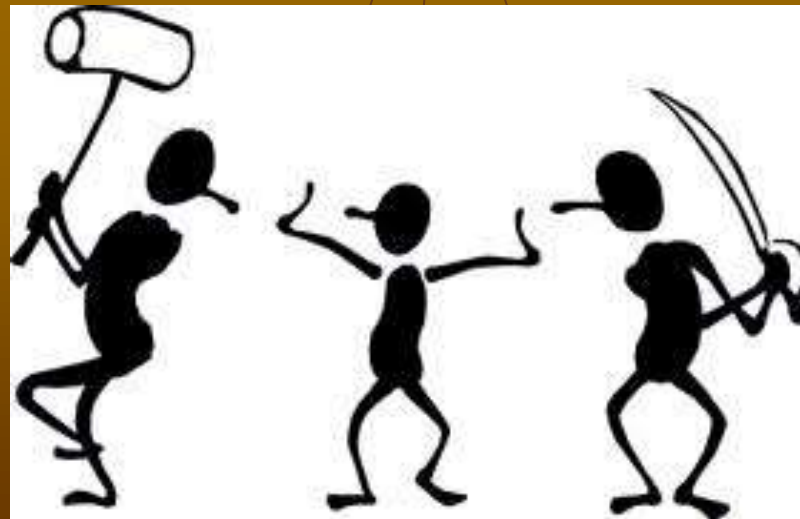


■ Rs 50 lakh after 10 year



Why do we need the disputes to be resolved?

- Disputes can make damages if left unsettled immediately.
- Arbitration is one of the dispute settling mechanism permitted by law.



What are the other forms of ADR?

- Arbitration
- Conciliation
- Mediation
- Negotiation
- Dispute Resolution Board (DRB)
- Restorative Justice



Arbitration Legislation

UNCITRAL Model Law:

The United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration. They have harmonized the concepts on arbitration and conciliation of different legal systems of the world. In 1980, UNCITRAL adopted Conciliation Rules. The General Assembly of the UN has recommended that all countries give due consideration to the Model Law and use for amicable settlement of disputes (particularly Int.Comm.Arbi.)



Arbitration Legislation

Main objectives:

- To comprehensively cover international and commercial arbitration and conciliation as also domestic arbitration and conciliation;
- To make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration;
- To provide that the arbitral tribunal gives reasons for arbitral award;
- To ensure that the arbitral tribunal remains within the limits of its jurisdiction;
- To minimize the supervisory role of courts in the arbitral process;
- To permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes;
- To provide that every final arbitral award is enforced in the same manner as if it were a decree of the court;
- To provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal;
- To provide that, for purposes of enforcement of foreign awards,....

Arbitration Vs Litigation

Advantages:

- Often faster than litigation.
- Cheaper and more flexible for businesses.
- When the dispute is highly technical, arbitrators with an appropriate degree of expertise can be appointed (one cannot "choose the judge" in litigation).
- Proceedings and an arbitral award are generally non-public, and can be made confidential.
- Flexibility to choose the language of arbitral proceedings, whereas in judicial proceedings the official language of the country of the competent court will be automatically applied.
- Arbitration awards are generally easier to enforce in other nations than court judgments.
- Limited avenues for appeal of an arbitral award, which is sometimes an advantage because it limits the duration of the dispute and any associated liability.

Arbitration Vs Litigation

Disadvantages:

- Arbitration may sometimes become highly complex.
- There are very limited avenues for appeal, which means that an erroneous decision cannot be easily overturned.
- Unlike court judgments, arbitration awards themselves are not directly enforceable. A party seeking to enforce an arbitration award must resort to judicial remedies, called an action to "confirm" an award.
- Although usually thought to be speedier, when there are multiple arbitrators on the panel, juggling their schedules for hearing dates in long cases can lead to delays.
- If the arbitrator or the arbitration forum depends on the corporation for repeat business, there may be an inherent incentive to rule against the consumer or employee or naïve or relatively new one to business.
- The parties are required to pay for the arbitrators, which adds an additional layer of legal cost, especially in low value disputes.

Arbitration Vs Litigation

Disadvantages:

- Arbitration may be subject to pressures from powerful law firms representing the stronger and wealthier party.
- Discovery may be more limited in arbitration or entirely nonexistent.
- If the arbitration is mandatory and binding, the parties waive their rights to access the courts and to have a judge or jury to decide the case.
- Arbitration agreements are sometimes contained in ancillary agreements, or in small print in other agreements, and consumers and employees often do not know in advance that they have agreed to mandatory binding pre-dispute arbitration by purchasing a product or taking a job.
- Although grounds for attacking an arbitration award in court are limited, efforts to confirm the award can be fiercely fought, thus necessitating huge legal expenses that negate the perceived economic incentive to arbitrate the dispute in the first place.

Contract should have an Arbitration clause

- You have a Contract. Whether your contract got an arbitration clause?
- There is an arbitration clause. Are you comfortable with disputes in the back drop of your arbitration clause which would take care everything? Are you confident of making good the losses?



Arbitration Legislation - Principle

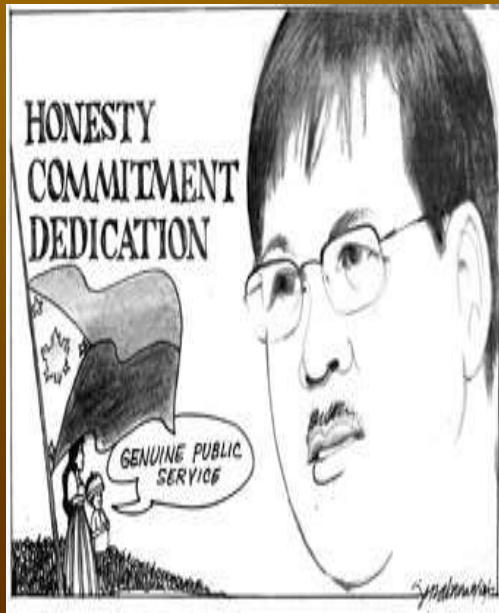
Salient Features:

- **Arbitration agreement**
- **Appointment of arbitrators**
- **Number of arbitrators**
- **Ground for Challenge**
- **Place of Arbitration**
- **Language**
- **Competence of arbitral tribunal to rule on its jurisdiction**
- **Expert appointed by arbitral tribunal**
- **Extent of judicial intervention**
- **Equal treatment of parties**
- **Determination of rules of procedure**



Arbitration Legislation – Principle Contd.

- **Statement of claim and defence**
- **Rules applicable to substance of dispute**
- **Form and contents of arbitral award**
- **Administrative assistance**
- **Interim measures etc. by court**
- **Application for setting aside arbitral award**
- **Enforcement**



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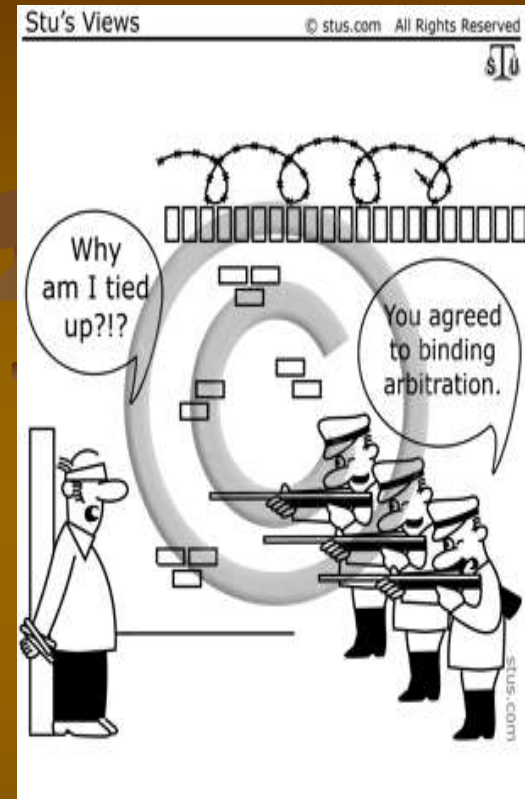


Role of Professionals in Arbitration

- Consultants — to explain, opine, witness
- Counsels — to help, present, assist, etc.
- Experts — to explain, opine, advise, scrutiny etc.
- Arbitrator(s) — to decide, award.



you created under your contract.



How do you utilize Arbitration as an ADR

- The parties, please never imagine of creating wealth through disputes or by opting ADR / arbitration.
- ADR / Arbitration can give you respite. But it comes with a cost.
- Please take the help of experts to learn or guidance while you enter into contract. They can help you to avoid disputes and create more wealth.



Is it wise to get into disputes?

MCHUMOR.com by T. McCracken



"Were the building contractors for the Leaning Tower of Pisa sued?"

© T. McCracken mchumor.com

Find out....

Think again...

Do you want to solve a
problem or dispute?

Outcome of Contract

- Win-win
- Win-lose or Lose-Win
- Lose-Lose



“You want to be clever or wise!”

“If you can't explain it to a six year old, you don't understand it yourself.”

(Albert Einstein)

THANK YOU