



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B.

Semester: VIII

SUBJECT: Alternative Dispute

Resolution

SUBJECT CODE: BAL803

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Lecture-19



LECTURE 19: Impartiality of the Arbitrator and Bar of Limitations

Independence and Impartiality Accepting appointment

Parties to international arbitrations are entitled to expect of the process, a just, well reasoned and enforceable award. To that end, they are entitled to expect arbitrators to disclose possible conflicts of interest at the outset; to avoid putting themselves in the position where conflicts will arise during the course of the proceedings; to conduct the arbitration fairly, in a timely manner and with careful regard to due process; to maintain the confidentiality of the arbitration; and to reach their decision in an impartial manner.

Under Article 5.3 of the LCIA (Launched in April 2009, LCIA India is the first independent subsidiary of the London Court of International Arbitration) India Rules, all arbitrators will, before appointment, be required to sign a declaration that there are no circumstances known to them likely to give rise to any justified doubts as to their impartiality or independence.

In completing their statements of independence, arbitrators will take into account, inter alia, the existence and nature of any past or present relationships, direct or indirect, with any of the parties or their counsel; any doubt as to which must be resolved in favour of disclosure.

There is a continuing obligation on all arbitrators immediately to disclose any circumstances that might give rise to conflicts, if such circumstances arise at any time during the course of the arbitration.

Communications

All communications between the tribunal and the parties must be copied to the LCIA India secretariat. No arbitrator is permitted, during the course of the arbitration, to make any unilateral communication with any party or with any party's representative. If an arbitrator who has been nominated by a party wishes to communicate with that party before the tribunal has been formally constituted, he must do so through the LCIA India Registrar, in accordance with Article 13.1 of the LCIA India Rules.

Availability

It is, of course, essential that an arbitrator should not only be impartial and independent of the parties, but that his diary commitments should permit him to undertake and to fulfil his mandate without delay.

Before appointment, therefore, all arbitrators will also be required to confirm their ability to devote

sufficient time to the proceedings, over an appropriate timeframe, including drafting the Award.

Confidentiality

Article 30 of the LCIA India Rules imposes duties of confidentiality on parties and arbitrators, with which arbitrators should familiarise themselves, and with which the tribunal should ensure that it and the parties comply.

Bar of Limitations:-

The doctrine of res judicata can come into play in relation to international arbitration in a variety of ways. In the context of a discussion devoted to “Post-award issues”, res judicata is relevant only insofar as it relates to the effects of arbitral awards. In this connection, the issues that arise are whether a given arbitral award has res judicata effect in the same arbitration (in which case the question is that of the effects of partial or interim awards in subsequent phases of the same arbitration), in other arbitrations (whether or not based on the same arbitration agreement) and in proceedings before domestic courts. Other aspects of the doctrine which do not involve the effects of awards, and are therefore beyond the scope of this discussion, are the res judicata effects in arbitral or in domestic court proceedings of judgments of domestic courts which deal with arbitration (for instance a finding of nullity or inapplicability of an arbitration agreement) and the res judicata effects in arbitration proceedings of national judgments on issues of substance.

RES JUDICATA:

Res judicata or res judicata (RJ), also known as claim preclusion, is the Latin term for "a matter [already] judged", and may refer to two concepts: in both civil law and common law legal systems, a case in which there has been a final judgment and is no longer subject to appeal; and the legal doctrine meant to bar (or preclude) continued litigation of such cases between the same parties, which is different between the two legal systems. In this latter usage, the term is synonymous with "preclusion".

In the case of res judicata, the matter cannot be raised again, either in the same court or in a different court. A court will use res judicata to deny reconsideration of a matter.

The legal concept of res judicata arose as a method of preventing injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources in the court system. Res judicata does not merely prevent future judgments from contradicting earlier ones, but also prevents litigants from multiplying judgments, so a prevailing plaintiff could not recover

damages from the defendant twice for the same injury.