



# **FACULTY OF JURIDICAL SCIENCES**

**COURSE: B.B.A.LL.B.**

**Semester: VIII**

**SUBJECT: Alternative Dispute**

**Resolution**

**SUBJECT CODE: BBL803**

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# Lecture-13



*LECTURE 13: Termination of mandate and substitution of arbitrator* **and powers of Arbitral Tribunal**

**Termination of mandate and substitution of arbitrator—**

In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate—

- A) where he withdraws from office for any reason; or
- B) by or pursuant to agreement of the parties.

Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

**Powers of Arbitral Tribunal**

Under Section 2(1)(d) of the Arbitration and Conciliation Act, arbitral tribunal means a sole arbitrator or a panel of arbitrators.

The parties are free to agree on a procedure on the appointment of an arbitrator. In a panel or board of arbitrators the award of the majority will prevail. The duties and powers of the arbitral tribunal include the following:

- To give ruling on the existence or validity of the arbitration agreement or on its own jurisdiction.
- To order interim measures of protection.
- To determine the admissibility and the weight of evidence lead before the forum.
- To decide the dispute on merits as per the substantive law of the parties and according to the terms of contract and usage of trade.
- To encourage voluntary dispute settlement through Alternative Dispute Resolution (ADR) mechanisms including conciliation
- To deliver reasoned arbitral award.
- To determine the cost of arbitration and its apportionment among the parties.
- To render accounts of deposits to the parties and return unspent balance.

### **Rule on its own jurisdiction**

The arbitration tribunal shall decide any challenge to the very existence or validity of the arbitration agreement in question or decide any objection taken on the ground of lack of its jurisdiction. Any party, including even those who have participated in the appointment of the arbitrator, can take such objection or challenge latest with his defence statement.

Any objection that the arbitral tribunal is exceeding its authority must be taken at once during the arbitration proceedings.

However, the arbitral tribunal can consider any of the aforesaid preliminary objections, even if delayed, for good reasons.

In case such preliminary objection is overruled, the arbitral tribunal shall continue with arbitration and make the award. The aggrieved party can now apply to the court for setting aside the award re-agitating the said preliminary objection amongst other grounds of challenge to the award.