



# **FACULTY OF JURIDICAL SCIENCES**

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

**Semester: VIII**

**SUBJECT: Alternative Dispute**

**Resolution**

**SUBJECT CODE: BAL803**

**NAME OF FACULTY: Mohammad Aqib**

# Lecture-6



## LECTURE 6: Arbitration Agreement

### ARBITRATION AGREEMENT-

Under section 2 (a) of the Arbitration Act 1940 an arbitration agreement is defined as a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. Arbitration agreement or arbitration clause in an agreement is sometimes called submission. An Arbitration agreement is also called as 'reference'. In the word of Halsbury, 'It is agreement made by two or more parties between whom some difference has wise or may thereafter arise whereby they appoint another person to adjudicate upon such dispute and agree to be bound by his decision. The characteristics of arbitration, is that, it is a private tribunal chosen by the parties. The person, who is appointed to settle the differences or disputes is called an 'arbitrator', the proceeding before him are known as an 'arbitration' and his decision is known as 'award'.

### Essentials of a Valid Arbitration agreement are as following:-

- 1) Written : The arbitration agreement should be in written form of course, in the written arbitration agreement, there is no need of signatures of the parties. In the written agreement, the terms of arbitration should be minimum. The main purpose of the written arbitration agreement is to establish that the parties agreed to the settlement of disputes by arbitration.
- 2) Present or Future Dispute : Without the existence of dispute, the arbitration is meaningless. Arbitration pre-supposes the existence or the possible existence of a dispute. In this connection, dispute implies assertion of a right by one party and denial of that right by the other party.
- 3) Essential of a valid contract : To be a valid arbitration agreement, it should fulfill the all essential elements of a valid contract. Such as : offer and acceptance, free consent, legal relationship, lawful consideration, lawful object, not declared void contract, arbitration clause is not binding.

### WHO CAN ENTER INTO ARBITRATION AGREEMENT ?

- Every person (including a foreigner) who is competent to contract can enter into an arbitration agreement. He must have attained the age of majority according to the law to which he is subject and must be of sound mind and must not be disqualified from contracting by the law by which he is governed.

- In the case of a partnership, a partner may enter into an arbitration agreement on behalf of the partnership, only if he is so authorised in writing by the other partners or in the partnership agreement itself.
- The Directors or other officers of a company can enter into an arbitration agreement on behalf of the company, subject to the restrictions, if any, contained in the Memorandum of Association or Articles of Association of the Company.
- Central and State Governments can enter into such agreement, subject to fulfillment of Constitutional requirements.
- Public undertakings can enter into an arbitration agreement like any private party. Such agreement can be with private parties within the country or with foreign parties or foreign States and State agencies.