

Study Session 4

Unit-IV Adjudication as Dispute Settlement & Conflict Management

Study Session Outline

- I. Adjudication as
Dispute Settlement &
Conflict Management
- II. Forms of Adjudication
- III. Judicial settlement
- IV. Arbitration

Duration of formal study
session=2hrs

INTRODUCTION

Welcome to the study unit four! Under this unit you will specifically deal with the notion of Adjudication and the different forms that adjudication encapsulates, mainly the judicial settlement and Arbitration in more detail manner than the previous units.

Enjoy attending this unit!

Learning Outcomes of study unit Four

When you complete this unit, you will be able to
By the end of this unit, the learners should be able to;

- Discuss alternative dispute resolution mechanisms & conflict management
- Explain the forms of Adjudication

UNIT 4. Adjudication as Dispute Settlement & managing conflicts

In addition to the broader contribution of adjudication to solve disputes, it is also important in managing conflicts. The process of adjudication helps manage conflicts in that it tries to properly admit, process, enforce, and record the complains. Moreover it also involves referral of the cases to appropriate bodies. The attempts in the use of legal, normative processes in order to settle the dispute can also contribute in the proper management of the conflict. Reliance of the system of adjudication on legal processes, ad hoc or permanent legal institutions functionally makes it similar forms of international conflict management systems. (McAdams, 2004).

4.1 Forms of Adjudication

Adjudication commonly refers to two methods of dispute settlement. The first category of adjudication is the 'judicial settlement' that tries to solve disputes using the judicial process of courts and tribunals. The second category is arbitration.

1.1.1 Judicial settlement

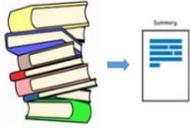
Judicial settlement is a way of submitting a dispute to a duly established courts and tribunals. The courts apply predetermined rules and procedures which are enacted by the authority. In order to entertain the cases submitted to them, the judicial bodies need to have jurisdiction. A concept which was defined in earlier topics of this module. Once it is determined that the court or tribunal can adjudicate the matter, parties to a dispute have to be bound by the orders and rulings of that judicial body or tribunal. Moreover, the judicial settlement method, uses judges as adjudicators. Decisions given in certain level of courts or tribunals may follow the procedure of appeal to the higher level of courts and tribunals. This is often done in order to respect the right of access to justice of the parties to the dispute.

1.1.2 Arbitration

The process of arbitration involves the establishment of ad hock panel of arbitrators based on the agreement of parties to an actual or potential dispute. Under the process of arbitration there is an issue of compromise that defines the issue to be arbitrated, rules and procedures of the arbitration, the arbitrators and source of funding.

Single-party Arbitration: This a form of arbitration by which one person is assigned or selected by the disputants to settle their case. This modality of dispute settlement has its own advantages in terms of cost and swift decision as the arbitrator has full desecration to use his own authority. On the other hand, there is a risk of being biased if the arbitrator is already biased. (McAdams, 2004). Single party arbitration is often used in disputes that might occur between states. Thus, the method of arbitration renders a good result if the single party is committed to solve the dispute between the states and has good attitudes towards both disputing parties.

Panel arbitration: This is the most common form of arbitration, by panel of arbitration, it means more than two(usually three or more) arbitrators are assigned to adjudicate a dispute. Most of the time three arbitrators are assigned by the parties to the dispute. The number of arbitrators is often made three or five... in order to be convenient in voting for decision. Most of the time the modus operandi is that each party to the dispute selects one arbitrator, and the third arbitrator, mostly the chair is selected either by the joint agreement of both parties or the court or any institution that is facilitating the arbitration may select the third arbitrator (the chair). The sessions, adjournments, orders and final decisions is normally channeled to the parties officially released though the chair. Decisions given through arbitration have legally binding effects on the parties to the dispute.



Unit Summary

Dear Learners, under this unit, we have discussed about the formal way of dispute settlement commonly referred to as 'Adjudication'. This form of dispute settlement mechanism can have two forms. The first one is the most common way of dispute settlement, i.e resorting to the judicial means. Under the judicial means of dispute settlement, we find courts of law and the involvement of judges in the justice rendering process.

On the other hand, Arbitration is also indicated as the other form of dispute settlement that may fall under the category of adjudication. By arbitration we mean that parties to a dispute select arbitrators in ad hock basis in order to solve a dispute at hand. Arbitrators can be panel of arbitrators or can be a single arbitrator depending on the choice of the parties to the dispute. The decisions given through arbitration is called arbitral award and it has a legally binding effect on both parties.

Self-Review Questions

1. Discuss the forms adjudication?
2. What is arbitration and how does it differ from the other forms of ADR?
3. Define single-party arbitration
4. What is judicial settlement
5. Discuss panel arbitration