



Law of Arbitration

DR. ZULKIFLI HASAN

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Content

- **Scope and Limits of Arbitration**
- **Competency to refer to arbitration**
- **Effect of Arbitration**
- **Alteration and Amendments to arbitration agreement**
- **Frustration and Abandonment**

SCOPE

- **Matters that may be arbitrated**

- **General rule**

Any legal right which is enforceable by an award is capable of being arbitrated

- **Civil Disputes**

- **If the arbitration relates to an offence and the injured party may have a remedy by action and indictment, nothing can stop it to negotiate and accept compensation through arbitration although prosecution might have commenced.**

- **Arbitration is possible in the following situations:**
 - i. **Industrial disputes**
 - ii. **Building contract disputes**
 - iii. **Consumer disputes**
 - iv. **Trade disputes**
 - v. **Family disputes**
 - vi. **Disputes relating to civil matters
(where only damages can be claimed)**

COMPETENCY TO REFER TO ARBITRATION

i) Minors

A minor could make submission to arbitration

ii) Mentally Disordered Person

Maybe bound by a submission to arbitration unless incapable of contracting to the knowledge of the other party

iii) Bankrupt

He is competent to submit to arbitration but he cannot affect the right of his creditors

Effect of Arbitration Agreement

- Irrevocable and
- Enforceable
- The arbitral tribunal appointed by virtue of an AA is, unless a contrary intention is expressed in the AA, irrevocable except by leave of the HC.

Death of a Party

- AA is not discharged by the death of any of the parties but will in that event be enforceable by or against the personal representative of the deceased.
- S 34 (4)
- Personal Rep: the executor, or administrator of a deceased person.
- Personal rep of the deceased may enforce the agreement.

Bankruptcy

- A party to AA who is bankrupt may, if the person having jurisdiction to administer the property adopts the agreement, commence or defend arbitration.
- This includes Official Assignee who can make application to the courts for direction.
- **S.49: If a bankrupt enters into a contract which provides for arbitration, it could be enforced against him only if the person having jurisdiction to administer the property of the bankrupt adopts the contract**

Insolvency

- In relation to companies
- At any time after the presentation of winding up petition and before a winding up order, the company or any creditor may apply to the court to stay or restrain further proceedings.
- Where a company commences a voluntary creditor's winding up, no proceedings may be proceeded without leave of court.

Unilateral Election to Arbitrate

- Mutual right to refer to arbitration.
- *Baron V Sunderland Corp* [1966] 2 QB 56
 - Principle of mutuality is essential ingredients of an arbitration
- *Swee Pte Ltd v Lim Kian Chai* [1983] 1 mlj 353
 - Arbitration clause permitted only the Pt to invoke the arbitration clause and that recourse was not available to the dt. The court held that the clause was unfair.

AMENDMENT AND ALTERATION

-Arbitration agreement can be amended and altered on the following conditions:

i)Consent of the parties; and

ii)Before the arbitrator makes his award

iii) in writing

iv) signed by the parties

Termination of Proceedings

- **Can be revoked with the consent of all parties**
- **No one party may unilaterally revoked the agreement**
- **S34- shall order the termination:-**
 - **The claimant withdraws the claim**
 - **The parties agree on the termination**
 - **Become unnecessary or impossible**

SUBSEQUENT AGREEMENT

■ General rule:

Arbitration can only commenced if the agreement contains arbitration clause.

■ **Subsequent agreement:**

i. deals with different obligations

ii. does not contain arbitration clause

-any dispute arising under the subsequent agreement would be outside the arbitration clause.

Alagappa Chettiar v. Palanivelpillai

[1967] 1 MLJ 208

Where the arbitration clause was contained in the main lease agreement, then, when a subsequent agreement was signed in respect of the same premises containing no arbitration clause, then the main lease does not cover disputes arising out of the subsequent agreement and an arbitrator appointed under the arbitration clause of the main lease would have no jurisdiction to deal with such disputes.

Frustration and Abandonment

- **Frustration:** legal termination due to unforeseen circumstances
- **Abandonment:** Relinquishment or renunciation of an interest, claim, possession and etc.
- conduct of a party may indicate that he has no interest in the idea of arbitration
- Such conduct must be clearly demonstrated by the party who intend to repudiate the contract

Frustration

Bremer Vulkan's case

[1981] AC 909 House of Lords

Bremer V is the P. They build 5 bulk carriers for D and was delivered to D. Arbitration proceedings contemplated by D 5 years after the last vessel was delivered and proceedings started 15 years after completion of the contract. The P sought an injunction restraining D from proceeding with arbitration on the ground of delay.

- **Held: Both D and P were under obligation to keep the arbitration moving. P has done nothing to prevent the delay, both are equally responsible for the delay. Any failure to apply to arbitrator to end the delay makes both parties in breach of their contractual obligations.**
- **Unless there is misconduct, the court will not interfere with the AT's discretion in dealing with the procedure and evidentially matters.**

Frustration

- ***Hannah Blumenthal's case* [1983]1 AC 854**
- An arbitration agreement cannot be frustrated as a result of such delay because both parties were under an obligation to direct the tribunal and failure to do so amounts to default which precludes frustration.
- 2 factors which constitute frustration:
 - i) External events which were not foreseeable by the parties at the time of entering the contract which make the performance of the contract impossible
 - ii) Outside event and its consequence should have taken place without the fault of either party.
- Impossibility of performance, render performance illegal, prevent achievement of the objective
- S 34 (2) (C): become unnecessary or impossible

Abandonment

Food Corp v. Antclize Shipping Corp [1988] 1 WLR 603

- Arbitration proceedings were not proceeded for as long as eight years. Issue: Whether it stood abandoned by mutual consent?
- Held: No agreement to abandon could be inferred and as there is no time limit for the arbitration to proceed, no lapse could be implied