

Negotiation and Law 2020 (Nalsar – ADR)

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May 28-29, 2020

Ignorance of the Law is no excuse

- *Ignorantia facti excusat, ignorantia juris non-excusat*
- Everyone is supposed to know the law
- The law of the land
- How much law – The complete law
- Dynamic nature of law – hence, updated law
- Law is the last interpretation given by the last judge

Contracts in Business

- Contracts – Voluntary. Should be within the law of the land.
- India – Contract Act, 1872
- World Bank, Doing Business Index – India moved up from 130 to 100 to 70
- But for contract enforcement – 164
- Agreement enforceable by law
- Offer, acceptance, lawful, consideration, pepper-corn theory, breach, damages, LD, force majeure

Negotiating a Business Deal

- Offer, counter offer, Leading to acceptance
- Acceptance is like a lighted match stick to a train of gunpowder
- Reciprocal promises form consideration for each other
- Contract without consideration is null and void
- There has to be a consideration, howsoever small
- It depends on the relative bargaining power of the parties
- Very low bargaining power leads to desperation
- It is important to know the other party
- Are negotiators born or made?
- Value creation; Power influencers; Barriers in negotiation; Ethical issues

Dispute Resolution

- Breach of contract results in disputes
- Disputes are negative in connotation – wastage of time, effort, money; loss of opportunity; living in uncertainty
- Litigation and ADR (Alternate Dispute Resolution)
- Litigation → Courts – Three-tier structure – District Court – High Court – Supreme Court
- ADR – Negotiation, Mediation, Conciliation [all non-binding]; and Arbitration [binding]
- Arbitration – Institutional and Ad-hoc
- Institutional – ICC Paris, LCIA London, SIAC Singapore, Stockholm, Geneva, Indian Council of Arbitration, Dubai, Cairo, Riyadh, etc.
- Claim – Arbitration – Award – Challenge – in a court

Negotiating a Business Dispute

- BATNA: Best Alternative to a Negotiated Agreement
- Parties must know their Batna
- Bringing and creating options at the bargaining table
- Collaborative vs. Competitive
- How desperately you want something? What? Why?
- Mending relationships: *Wabi Sabi* and *Kintsugi*
- 6 steps: preparing; developing a strategy; getting started; building understanding; bargaining; closing
- Bargaining: for two parties (in reverse) – Bottom line, target point, top line.
- Styles: aggressive, defensive, moderate or middle path; and shades in between

- BATNA: What will the respective parties do if they don't come to an agreement?
- Parties: Who are the real parties in the negotiation?
- Interests: What are their fundamental needs and priorities?
- Value: How can value be created and who is likely to get it?