

# MARKET LEADER

Business Law



BUSINESS ENGLISH

Tricia Smith



**FINANCIAL TIMES**  
World business newspaper.

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# Arbitration

## Before you read

Discuss these questions.

- 1 Have you ever been in dispute with another person over an agreement or a contract?  
What was the problem?
- 2 What steps can you take, apart from going to court, to settle a commercial disagreement?

## Reading tasks

### A Understanding main points

Read the text on the opposite page about how international disputes between companies are resolved and answer these questions.

- 1 Why might you prefer not to go to court in the country of your business partner?
- 2 What are the three main business areas which have traditionally been resolved by arbitration?
- 3 How is a forum made up for a neutral arbitration?
- 4 What is the main difference between arbitration and litigation, according to the text?
- 5 Which are the main arbitration centres?
- 6 In which city would you choose to arbitrate an east-west trading dispute?
- 7 Which specific aspects of a contract are named in the text?
- 8 What do clients look for from an arbitration service?
- 9 What examples of expert witnesses are given in the text?
- 10 Do all the venues share the same arbitration rules?

### B Understanding details

Mark these statements T (true) or F (false) according to the information in the text.  
Find the part of the text that gives the correct information.

- 1 Disputes only arise in commercial transactions.
- 2 Commodities are things traders buy and sell, usually raw materials, like coffee, wool or copper.
- 3 A neutral forum has a balanced composition to ensure fairness to both parties.
- 4 New York is the only American arbitration venue named in the text.
- 5 Arbitration is a business in itself, for lawyers and their associates.
- 6 *Name recognition* for arbitration is like *brand awareness* for consumer goods.
- 7 International business depends on rapid resolution of contractual disagreements.
- 8 The courts of law in each country are less powerful than arbitration panels.

## BUSINESS AND THE LAW DISPUTES

# Resolution in a neutral forum

Arbitration settles international commercial cases, says Jeremy Winter

**J** You have been in a conference room in your lawyer's office for the whole day, negotiating a crucial international contract. Term by term, detail by detail, the lawyers have argued it out. Someone says: 'What are we going to put in for dispute resolution?' When you started the negotiations you thought that the deal was a certain money-spinner for both parties, so no disputes could arise. Now you are not so sure. So what do you say? What do your lawyers advise? Ideally, you might want to be able to have recourse to the courts in your own country: the other party would probably like to do the same in its home country. Neither is acceptable to the other, for fear of home-team advantage or even local bias.

The answer is to opt for arbitration. This is not really a difficult decision, and that is why arbitration is the recognised way of resolving international commercial disputes. For at least a century, it has been the dominant force in dispute resolution in areas such as shipping, commodities and construction. You can opt for a neutral forum and have a panel of three arbitrators, one chosen by each party, and the third (the chairman) chosen either by the parties or the two party-appointed arbitrators. In addition, you can keep your disputes away from the public eye, because arbitration takes place in private, unlike litigation in the court.

The main centres for interna-

tional arbitration are: Paris, London, Geneva, Stockholm, New York, Hong Kong and Singapore. Which is used depends on the background and businesses of the parties. Stockholm, for example, was always the place for arbitrating east-west trade disputes, London for shipping and commodities. Singapore looks set for a busy time in the coming months and years after the Asian financial crisis. These locations, and the arbitration centres and lawyers working there, compete intensely. Arbitration bodies try hard to get their standard arbitration clause put into people's contracts, so they have a captive market once disputes arise. They do this by publicising their activities and their rules.

What they are looking for is 'name recognition'. In Europe, Paris (home of the International Chamber of Commerce and its probably has the best name recognition, followed by London (home of the London Court of International Arbitration), and Geneva. What people look for in arbitration is speed, cost effectiveness, confidentiality and reliability of the arbitrators and hence their decisions.

The choice of venue involves a complex balancing of a number of factors:

- the availability of good experienced arbitrators
- the availability of good experienced lawyers, and expert witnesses such as accountants and engineers



tants and engineers

- the cost of these people
- the support or otherwise that the local legal system gives to arbitration. (For example, if the arbitration gets bogged down as a result of delaying tactics by one party, what powers does the arbitrator, or court, have to speed things up? Will the courts readily interfere or overturn arbitrators' decisions?)

- accessibility - basic things like flight access, good facilities (some of the best are now in the Gulf states), administrative back-up, good telecommunications, IT support and even climate.

National legislation also has to lend its support to such an important economic activity as arbitration. England has taken steps to improve English arbitration law in the form of the Arbitration Act 1996, which came into force at the beginning of 1997.

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## Vocabulary tasks

### A Definitions

Match these terms with their definitions.

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1 dispute resolution (line 8)</li> <li>2 a money-spinner (line 11)</li> <li>3 have recourse to the courts (line 16)</li> <li>4 home-team advantage (line 21)</li> <li>5 local bias (line 22)</li> <li>6 financial crisis (line 55)</li> <li>7 delaying tactics (line 93)</li> <li>8 speed things up (line 95)</li> <li>9 interfere (line 97)</li> <li>10 overturn decisions (line 97)</li> <li>11 take steps (line 108)</li> <li>12 come into force (line 111)</li> </ol> | <ol style="list-style-type: none"> <li>a) unfair treatment</li> <li>b) accelerate</li> <li>c) reverse something already decided</li> <li>d) settling disagreements</li> <li>e) make use of the legal system</li> <li>f) benefit from being local or on home ground</li> <li>g) meddle or get involved with</li> <li>h) something that makes profits for everyone</li> <li>i) ways of making things take a long time</li> <li>j) become operational</li> <li>k) serious money problems</li> <li>l) institute action</li> </ol> |
|--|---|

### B Terms of disagreement and dispute

Use an appropriate word or phrase from the box to complete each sentence.

resolve resolution dispute settle arbitrate  
arbitration arbitrator agree disagree delaying tactics

- 1 There is a serious problem we must try to *resolve*.
- 2 He was a distinguished lawyer who was an expert .....
- 3 The ..... process took far longer than the parties had expected.
- 4 This was due to the ..... employed by one of the companies involved.
- 5 The question is: how are we going to ..... this dilemma?
- 6 When the goods arrived in poor condition, a ..... arose over whose fault this was, and who should bear the cost.
- 7 The best way is not to go to court, which is public and costly, but to ..... an agreement.
- 8 I believe you are wrong on that point - we ..... on the interpretation.
- 9 There is always an answer if you try hard to find it: every difficulty has a .....
- 10 You cannot assume he will ..... to those terms: you must check with him first.

### C Parties to an agreement

In law, it is important to distinguish between the parties involved in a transaction or an action. Complete the sentences below, using words from the box. Not all the words will be needed.

signatories    buyer/seller    borrower/lender    supplier/producer    wholesalers/retailers  
lawyer/client    teacher/student    plaintiff/defendant    licensee/licensor  
franchiser/franchisees    undersigned    parties to the agreement

- 1 Everyone promises to obey the treaty – all major countries are ...*signatories*... to it.
- 2 In the civil case, the ..... brought an action against the ..... for damaging his car on purpose.
- 3 The price was negotiated between the ..... and the ..... of the house, in a private sale.
- 4 The bank agreed that the ..... should pay 12% on the loan, so the ..... made a fair profit!
- 5 Manufacturers sell their goods to ....., and in turn, ..... buy from them.
- 6 The relationship between a ..... and ..... is bound by confidentiality.
- 7 The beer can be produced under licence but the ..... must fulfil all the requirements imposed by the .....
- 8 Some clothes companies sell their products on a franchise basis: each country has a main ....., with numerous people working as .....
- 9 A letter was sent to the manager complaining about working conditions. All the members wrote their names. The letter read: 'We, the ....., strongly protest about conditions at work.'
- 10 Many projects require the cooperation of various partners. If they all agree to work together, they become .....

### D Word families

Complete the chart.

verb	person	thing
arbitrate	1 ... <i>arbitrator</i> ...	2 .....
license	3 .....	4 .....
5 .....	6 .....	franchise

### Over to you

- 1 Recently there was a case of a mail-order company selling televisions over the Internet where the price of a top-line television was shown as \$3 instead of \$300. The web page was seen in many countries and several customers placed orders for the 'cheap TV', but the company said they had no obligation to supply as the price was a mistake. What do you think? Should the company honour the orders? Was it a contract? If it was, where was it made – in the country of origin or where the customer lives and ordered the goods? Is this a case for arbitration?

**Before you read**

Discuss these questions.

- 1 Employment discrimination can be based on age, gender and race – are there other categories you can think of?
- 2 Are women and men employed as equals in your country, in terms of pay and conditions?

**Reading tasks****A Understanding main points**

Read the text on the opposite page about an important case about discrimination against women in the workplace and answer these questions.

- 1 What is the case about?
- 2 Where is the case being heard?
- 3 Who brought the appeal – the ADA or Ms Kolstad?
- 4 What types of discrimination are mentioned in the text?
- 5 Why did Ms Kolstad sue the ADA?
- 6 Was there any dispute about the facts of the discrimination against Ms Kolstad?
- 7 What was the lower Appeals Court's decision?
- 8 Which organisation is mentioned that supports the ADA?
- 9 If the Supreme Court decides in favour of Ms Kolstad, how much may she receive in damages?

**B Understanding expressions**

Choose the best explanation for each of these words or phrases from the text.

- |                                      |                             |
|--------------------------------------|-----------------------------|
| 1 knock-on effect (line 16)          | 4 upholds (line 47)         |
| a) blow to the body                  | a) reverses                 |
| b) wider consequences ✓              | b) agrees with and supports |
| c) entry requirement                 | c) sets a standard          |
| 2 malice (line 32)                   | 5 brief (line 71)           |
| a) friendliness                      | a) short letter             |
| b) with bad or cruel intention       | b) legal document           |
| c) unintentional                     | c) kind of case             |
| 3 reckless indifference (line 32)    | 6 caps (line 85)            |
| a) driving without care              | a) sets an upper limit      |
| b) heartless and cruel               | b) interferes               |
| c) not caring about the consequences | c) is the head              |



# Court to hear key case on discrimination

By Patti Waldmeir  
in Washington

The US Supreme Court today hears a case which could have a big impact on the size of damages paid by US employers in employment discrimination lawsuits. The court agreed to hear the case, *Carole Kolstad vs the American Dental Association (ADA)*, to clarify what kind of employer conduct will give rise to punitive damages – damages awarded to punish and deter an offender – in lawsuits involving sex discrimination. However, law employment experts said that the suit was also likely to have a knock-on effect on race, age and other employment discrimination suits brought under Title VII of the 1991 Civil Rights Act.

The case involves a female lawyer employed as a lobbyist for the ADA, a professional trade association. A jury found that Ms Kolstad was denied promotion because of intentional sex discrimination. The issue before the court is not whether this is so, but whether such discrimination must be 'egregious' before punitive damages are awarded.

Title VII permits such damages where there was 'malice or ... reckless indifference to the federally protected rights of an individual'.

But in Ms Kolstad's case an Appeals Court found that the ADA's conduct was neither 'egregious' nor 'truly outrageous' enough to merit punitive damages.

At the moment there is confusion over the standard of conduct necessary to attract punitive damages, with the various circuit courts applying differing standards to define 'reckless indifference'. If the Supreme Court upholds the Appeals Court's decision in Kolstad – that the conduct did not meet this standard of 'egregious' – this would set a new standard nationwide that could limit the size of both jury awards and pre-trial settlements.

## 'Our concern is that punitive damages would become the norm'

Conversely, if Ms Kolstad wins, jury awards and settlements could shoot up. Her lawyers argue in their brief that 'egregious' is too high a standard, and that employees need only show that their employers knew or should have known their conduct was probably unlawful in order to have claims

for punitive damages put before a jury.

'If adopted, this standard would subject employers to punitive damages virtually every time an employee engages in intentional discrimination against another,' the US Chamber of Commerce argues in a brief filed to support the ADA. 'Our concern is that punitive damages would become the norm, not the exception,' whereas the law clearly intends them to be the exception,' says Stephen Bokat of the National Chamber Litigation Center, which has also backed the ADA.

According to Jury Verdict Research, which tracks jury awards, 40% of verdicts in gender discrimination cases in the last six years have included punitive damages. The law caps damages at \$50,000-\$300,000 per plaintiff, depending on the size of the employer.

A lower court jury awarded Ms Kolstad back pay after a male employee in the same office was, according to her lawyer's brief, 'preselected' for a promotion for which he was less qualified than she was.

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1 an abbreviation for versus, meaning against

2 very bad indeed, disgraceful (widely used in legal terminology in American English)

### Legal brief

Discrimination is unfair treatment or denial of normal privileges to people because of their race, age, sex, nationality or religion. In this case, the US appeal judges were asked to decide if the unfair treatment had been so bad as to warrant an extremely stiff penalty (punitive damages), which should deter others from similar behaviour. Note that each US state administers its own justice system but the system of appeal is from trial court to Appeals Court and then the Supreme Court, which is the highest appeal court in the US.

## Vocabulary tasks

## A Complete the sentence

Use an appropriate word or phrase from the box to complete each sentence.

limit	punitive	damages	egregious	circuit judge	Act	settlement
jury	lawsuit	brief	cap	appeal	federal rights	

- The amount of money awarded to a victim has a ..... *limit* .....
- The courts are in session at different times during the year in different places, so that the ..... can work in a variety of places.
- When Parliament votes to pass a Bill it becomes an .....
- There is no ..... on the liability of owners in a private partnership.
- Many people think there should be a specialist ..... for complex fraud cases.
- American citizens should study their ..... so that they know what laws protect them from abuse.
- Damages set very high in order to deter others are called .....
- A special term for very bad behaviour in the US is ..... behaviour.
- Every court decision may be sent for ..... if circumstances justify it.
- An out-of-court ..... is desirable if possible.
- Anyone can bring a ..... against someone else if they feel they have suffered a wrong that cannot be settled easily.
- A barrister cannot work in a court without a ..... from a solicitor.

## B Opposites

Match the opposites.

- |                        |                                  |
|------------------------|----------------------------------|
| 1 lawful               | a) illegal                       |
| 2 clarify              | b) female                        |
| 3 legal                | c) unlawful                      |
| 4 malice               | d) one-off                       |
| 5 preselection         | e) confession                    |
| 6 male                 | f) confuse                       |
| 7 punitive             | g) token                         |
| 8 knock-on effect      | h) kind intentions               |
| 9 discriminate against | i) fair job promotion procedures |
| 10 denial              | j) act fairly                    |