



Business Law: LO4

LEGAL SOLUTIONS BASED ON ALTERNATIVE LEGAL ADVICE

Different legal frameworks and the laws of different countries.

Based on the country in which a business is located, different laws may govern the solutions which you provide for a business which may be having an issue.

Therefore, it is important to note the jurisdiction of the business and also to note whether this business may have branches in other jurisdictions.

The role of unions.

► What is a union?

A union is an organized group of workers who collectively use their strength to have a voice in their workplace. Through a union, workers have a right to impact wages, work hours, benefits, workplace health and safety, job training and other work-related issues.

Through unions, working people have a collective voice at work and an avenue to equality, fair treatment and economic security. They provide a powerful check to the almost total power of management in the workplace and ensure workers have a voice in workplace decisions that affect them.

Some of the key roles include being able to resolve workplace issues by being a voice for employees and acting as a bargaining representative during bargaining negotiations.

Other key features of unions include:

- ▶ working with management to help resolve workplace issues
- ▶ being an advocate for employees
- ▶ ensuring employers are meeting their minimum obligations
- ▶ looking into suspected breaches of:
 - ▶ workplace laws
 - ▶ discrimination laws
 - ▶ workplace safety laws.

Bargaining with Unions.

- ▶ Bargaining is a process where employers and employees negotiate the terms and conditions of an enterprise agreement.
- ▶ Employers and employees can be represented by a bargaining representative during this process. Normally the bargaining representative for employees will be a union official.
- ▶ All bargaining representatives and other parties involved in the process have to bargain in good faith.

EXAMPLE

The Jamaica Employers' Federation (JEF) was established in April 1958 and registered as a Trade Union to represent employers. The Federation's mission is to lead the development of an enabling business environment through the effective representation and provision of value-added services that strengthens the ability of employers to optimise competitiveness and workplace harmony.

http://www.commonwealthofnations.org/sectors-jamaica/civil_society/trade_unions/

Role of Alternative Dispute Resolution

- ▶ What is Alternative Dispute Resolution, 'ADR'?

This refers to ways of resolving disputes between parties without going to court.

Advantages of using ADR

- ▶ you may resolve your problem
- ▶ you may be awarded compensation
- ▶ the procedure is less formal than going to court
- ▶ in some schemes, the decision may be binding on the trader but not on you, leaving you free to pursue through court if you wish
- ▶ it may cost you less than going to court
- ▶ the procedure is confidential

Different Mechanisms in ADR

1. Negotiation

This is the first step in the Resolution process. As the name suggest, it involves the parties representing themselves, in an informal setting trying to agree to an outcome based on the particular situation.

2. Mediation

This is the second step which is a bit more formal. In Jamaica for example, in civil matters, it is mandatory and is required by the court for the parties either by themselves or with their attorney to attend the Dispute Resolutions foundation to agree on settlements. A trained mediator is also present at these meetings to ensure fairness.

3. Arbitration

This is the last step in the process. Where Mediation has failed, parties may opt to use arbitration before proceeding to court. At this stage a trained Arbitrator is present which, like the mediator promotes fairness. It should be noted that once the parties have accepted the decision of the Arbitrator it is legally binding and as such no action can be taken in court unless it is to enforce the decision of the Arbitrator. It should also be noted, in some contracts, especially between traders and suppliers, there is usually a clause which provides that where there is some breach, the parties will attend arbitration in order to have it settled rather than going to court.

<http://www.lawdonut.co.uk/business/law/contracts-disputes/dispute-resolution/alternative-dispute-resolution-faqs>

<https://www.acc.com/chapters/euro/upload/106program.pdf>