

Overview

This unit is about having the experience and ability to assess the background and basis of a dispute as well as its merits in terms of its contractual context.

In this process you will need to identify the strengths and weaknesses of the case being made. You will need to assess and evaluate the documentation and supporting evidence in a logical and methodical manner which can be recorded and interpreted by others. You will need to assess your own limitations and recommend, as necessary the support and guidance from legal advisors. You will need to identify and quantify the potential outcomes along with the potential risks in both the long and short term. You should be familiar with the various options available and be able to make a considered judgement on the correct course of action, taking all contingencies into account. You will need to be able to supervise the preparation of the necessary submission documentation in a clear and concise manner with no ambiguities or anomalies. In doing this you should check the robustness of the arguments being tabled to check if they will stand up to scrutiny. You will need to be able to produce contractual binding correspondence and keep all relevant parties advised of the progress and outcome on the dispute.

Performance criteria

You must be able to:

Evaluate potential implications for the resolution of disputes

- P1 summarise the type and nature of the **dispute** and its legal context
- P2 assess the strengths and weaknesses of the case and make a judgement about the potential outcomes
- P3 evaluate all the **information which is relevant to the dispute**, identify **information** which will support the case and summarise and justify it in a reasoned argument
- P4 identify what **expertise and support** will be needed at different stages of the **dispute**
- P5 consult with experts, and providing them with a clear, valid and accurate summary, in cases where expert interpretation and judgement is required
- P6 assess the arguments and the advice received from experts, produce justifiable conclusions and recommendations for further action and pass these to the people involved in the **dispute**
- P7 assess the implications of proceeding with the case
- P8 identify potential **options for settling the dispute** which are based on relevant information and accurate assessments
- P9 identify potential responses to the **options for settling the dispute** and assess the risk involved
- P10 recommend a **process for settling the dispute** which is likely to be most acceptable to all the people involved and which meets legal requirements
- P11 specify, clearly, the **process for settling the dispute** which has been agreed and prepare written terms and conditions
- P12 advise against proceeding where the **dispute** is neither valid nor credible, and offer realistic advice on alternative approaches

Negotiate and progress the resolution of disputes

You must be able to:

- P13 prepare documents about the **dispute** which have a clear rationale, and which include valid supporting information
- P14 keep regular contact with the people involved in the **dispute** and investigate and propose **options and processes for settling the dispute**, which are likely to be acceptable to them
- P15 review **reactions and proposals** from opposite parties and recommend a **response**
- P16 ask questions to test the consistency and resilience of the opposite party's position and to probe for possible movement
- P17 summarise and record points of agreement and disagreement
- P18 recommend acceptance of offers which are judged to be the best available

**Performance
criteria**

- P19 draft formal acceptance letters accurately and in a suitable style, and send them promptly to all parties
- P20 suggest realistic **options and processes for settling the dispute** when offers are not acceptable and assess the advantages and disadvantages of each alternative

Knowledge and understanding

You need to know and understand:

Evaluate potential implications for the resolution of disputes

- K1 how and why to assess the strengths and weaknesses of the case (analysis)
- K2 how and why to advise against proceeding where the **dispute** is neither valid nor credible and offer realistic advice on alternative approaches (synthesis)
- K3 how to summarise the type and nature of the **dispute** and its legal context (application)
- K4 how and why to make a judgement about the potential outcomes of the case (evaluation)
- K5 what **expertise and support** do you identify will be needed at different stages of the **dispute** (understanding)
- K6 what to identify as potential **options for settling the dispute** (understanding)
- K7 how to summarise **information** which will support the case (application)
- K8 how and why to assess the implications of proceeding with the case (analysis)
- K9 how and why to recommend a **process for settling the dispute** (synthesis)
- K10 how and why to evaluate all the **information which is relevant to the dispute** and justify **information** which will support the case (evaluation)
- K11 how to produce justifiable conclusions and recommendations for further action and pass them to the people involved in the **dispute** (application)
- K12 how to consult with experts (application)
- K13 how and why to assess the arguments and the advice received from experts (analysis)
- K14 how and why to specify the **process for settling the dispute** which has been agreed and prepare written terms and conditions (evaluation)
- K15 how and why to provide experts with a clear, valid and accurate summary (synthesis)
- K16 how and why to assess the risk involved in **options for settling the dispute** (analysis)
- K17 how to identify potential responses to the **options for settling the dispute** (understanding)

Negotiate and progress the resolution of disputes

You need to know and understand:

- K18 how to prepare documents about the **dispute** (application)
- K19 how to keep regular contact with the people involved in the **dispute** (application)
- K20 how and why to investigate **options and processes for settling the dispute** (analysis)
- K21 how and why to propose **options and processes for settling the dispute** (synthesis)

Knowledge and understanding

- K22 how and why to assess the advantages and disadvantages of each alternative (analysis)
- K23 how to ask questions to test the consistency and resilience of the opposite party's position and to probe for possible movement (application)
- K24 how and why to suggest realistic **options and processes for settling the dispute** when offers are not acceptable (synthesis)
- K25 how and why to review **reactions and proposals** from opposite parties (analysis)
- K26 how to summarise and record points of agreement and disagreement (application)
- K27 how to send formal acceptance letters to all parties (application)
- K28 how and why to recommend a **response to reactions and proposals** from opposite parties (synthesis)
- K29 how and why to recommend acceptance of offers which are judged to be the best available (synthesis)
- K30 how and why to draft formal acceptance letters (evaluation)

Scope/range

Evaluate potential implications for the resolution of disputes

- 1 Dispute - types:
 - 1.1 land
 - 1.2 property
 - 1.3 construction
 - 1.4 contracts
 - 1.5 agreements
 - 1.6 third party claims
- 2 Information which is relevant to the dispute:
 - 2.1 contract documents
 - 2.2 correspondence
 - 2.3 instructions
 - 2.4 contract records
 - 2.5 technical reports;
 - 2.6 witness testimony
 - 2.7 other evidential material
 - 2.8 experts
- 3 Expertise and support in:
 - 3.1 legal
 - 3.2 technical
- 4 Options and processes for settling the dispute:
 - 4.1 re-negotiation
 - 4.2 negotiations at higher levels of authority
 - 4.3 conciliation and arbitration services
 - 4.4 formal dispute resolution
 - 4.5 legal action

Negotiate and progress the resolution of disputes

- 5 Dispute - types:
 - 5.1 land
 - 5.2 property
 - 5.3 construction
 - 5.4 contracts

Scope/range

- 5.5 agreements
- 5.6 third party claims
- 6 Options and processes for settling the dispute:
 - 6.1 re-negotiation
 - 6.2 negotiations at higher levels of authority
 - 6.3 mediation, adjudication and arbitration
 - 6.4 formal dispute resolution
 - 6.5 legal action
- 7 Reactions and proposals:
 - 7.1 positive
 - 7.2 negative
- 8 Responses:
 - 8.1 accepting
 - 8.2 rejecting
 - 8.3 clarifying
 - 8.4 providing additional information

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Evaluate and progress the resolution of disputes



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