



Presented By: Hubert Thompson

What are the course objectives?

This one-day practical training course should familiarise you with how to deal with challenges (objections) within the dispute resolution process, also known as jurisdictional challenges.

We answer the question: “How should the Presiding Officer (an Adjudicator or Arbitrator) deal with a challenge to his jurisdiction to hear, act and adjudicate over a dispute?”

If a dispute is referred to adjudication or arbitration, the Presiding Officer may be confronted with a challenge by one of the parties. He should then first deal with the challenge before he could deal with the actual merits of the dispute.

Such a challenge may be a bona fide defence against the relief or remedy sought by the claimant. However, the responding party sometimes lodges a challenge mainly for a tactical reason to may be frustrate the proceedings so that the “dispute could not be referred in a timely manner so that the dispute could be resolved in time.”

Challenges could be classified as:

- A threshold challenge, which is a challenge against the Presiding Officer’s right to preside over the matter. If successful, it would completely preclude the Presiding Officer from presiding over the matter. He may then not proceed.
- An internal challenge, where some aspects of the referring party’s case fall outside the Presiding Officer's jurisdiction. The Presiding Officer would still be entitled to proceed and preside over the matter and deal with the challenge as part of his determination, which may be an interim determination.

Threshold challenges could be divided into:

- A real “locus standi” challenge: May the claimant appear in front of the Presiding Officer? Is there a dispute that could be adjudicated in terms of the contract between the parties and is there sufficient connection between the dispute and the claimant? Does the Presiding Officer have the necessary authority to decide over that dispute?

- A “non-compliance with the provisions of the law (and the law includes the contract)” challenge: Was there compliance with the provisions of the law? Was the correct procedure followed to make the determination applicable to the dispute or to escalate a dispute to a specific procedure?
- A “quo warranto” challenge: Has the appointed Presiding Officer the right to hold office (to be the presiding officer)? Was the right procedure followed to appoint the Presiding officer? Is the Presiding Officer impartial and independent?

If those involved in resolving the dispute do not understand and know how to deal with such challenges, valuable time and resources could be spent fruitlessly when applying their knowledge and understanding of the matter and the tools and techniques inappropriately.

A party may also be barred from taking further part in the dispute resolution process if the party does not deal with the challenge correctly, resulting in that he may lose his right to claim compensation or extension of time under the contract.

What is this course content?

The course content is as follows:

- Challenges within the dispute resolution process
- The differences between adjudication and arbitration
- The implications if there is non-compliance with the law
- The audi alteram partem principle of the rules of natural justice
- Procedural law
- Determining the extent of a dispute
- How to deal with challenges to the jurisdiction of an Adjudicator or Arbitrator
- Mock proceedings

Case study 1: Objection against the appointment of an arbitrator

Case study 2: Premature Notice of Disagreement and not following the correct procedure

Case study 3: Submitted information does not comply with the provisions of the contract

Case study 4: Validity of claims due to non-continuity in submitting monthly updates

Case study 5: Records not kept and submitted as required in terms of the contract

What is the course structure and accreditation?

This course is offered over one day.

This course has been accredited for 1 CPD Credit with the Engineering Council of South Africa.

Copies of the slides used during the course and the book “Adjudication and Arbitration: How to deal with challenges to jurisdiction” drafted by Hubert Thompson form part of the course material and will be made available at the commencement of the course.

Course lecturer

The course will be presented by Hubert Thompson. He is an Honorary Fellow of the South African Institution of Civil Engineering (SAICE). He serves on the Panel of Mediators, Adjudicators and Arbitrators of SAICE and he is a Member of the Dispute Resolution Board Foundation (DRBF).

He is also registered as a professional engineer with the Engineering Council of the Engineering Council of South Africa (ECSA) as well as admitted to and authorised to practice as an advocate of the High Court of South Africa.

He has been involved in various amicable settlements, adjudications and arbitrations relating to construction disputes.

Hubert is also the author of the book “The Legal Process dealing with Construction Disputes”. This book could be ordered from the SAICE bookshops at “saice.org.za”. SAICE also presents a course with that name based on the content of this book.

Registration

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In-house courses available on request.