



PROJECTS – PART 3

DISPUTE RESOLUTION

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Workshop summary



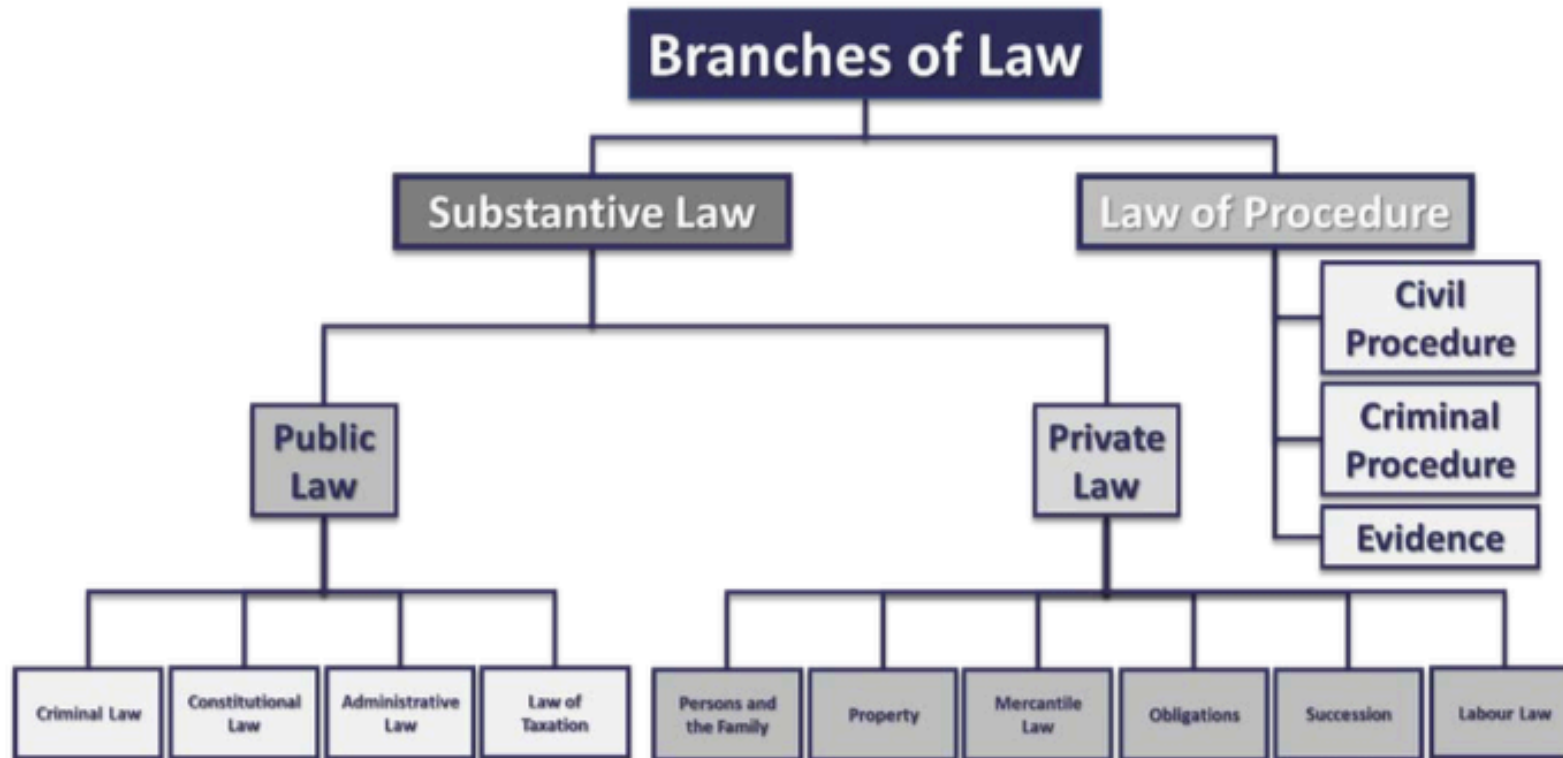
- General remarks
- Dispute resolution : litigation
- Alternative dispute resolution : mediation
- Alternative dispute resolution : adjudication
- Alternative dispute resolution : arbitration
- Dispute resolution : building contracts

General remarks



- What is a dispute?
 - Definition : disagreement on rights
 - Difference with valuation and certification
- Why part of contract?

Dispute resolution : Litigation



Source: AoA Intro to Theory of Law

- Rules of High Courts : (publ. 17 January 2014 – eff. 16 April 2014)
- Cost – time - outcome

Alternative dispute resolution : mediation



- ❑ Voluntary and flexible process
- ❑ Mediator chosen by parties
- ❑ Independent and impartial person : natural justice
- ❑ Mediation agreement
- ❑ Private, confidential and without prejudice
- ❑ Focused on needs, interest and concerns
- ❑ Aim : maximal mutual benefit to parties
- ❑ Rule 38(1) of High Court provides mediation
- ❑ Rules of Mediation
- ❑ Code of conduct for mediators

Alternative dispute resolution : adjudication



- ❑ Contractual process (general term different)
- ❑ Adjudicator chosen by parties (failure: appointed)
- ❑ Independent and impartial person : natural justice
- ❑ Adjudication agreement
- ❑ Aim : swift, efficient and cost-effective
- ❑ Based on existing documents : written claim and response
- ❑ Outcome : binding to parties, but not final
- ❑ Rules for Adjudication within contract
- ❑ National Adjudicators List administered by EPA

Alternative dispute resolution : arbitration



- ❑ Judicial process
- ❑ Arbitrator appointed by third party (mostly)
- ❑ Aim : just, relatively swift, efficient and cost-effective
- ❑ Outcome : binding to parties and final
- ❑ Arbitration agreement
- ❑ Independent and impartial person : natural justice
- ❑ Reference – hearing - award
- ❑ Arbitration Act 42 of 1965
- ❑ Association of Arbitrators (Southern Africa) NPC

Dispute resolution : building contracts



White form of contract

- Declaration of dispute
- Step 1 : Principal Agent
- Step 2 : Adjudication
- Step 3 : Arbitration

Other contracts

- FIDIC : Dispute Adjudication Board (DAB)
- GCC : Adjudicator - Arbitrator

- Legal principle : Pacta servanda sunt