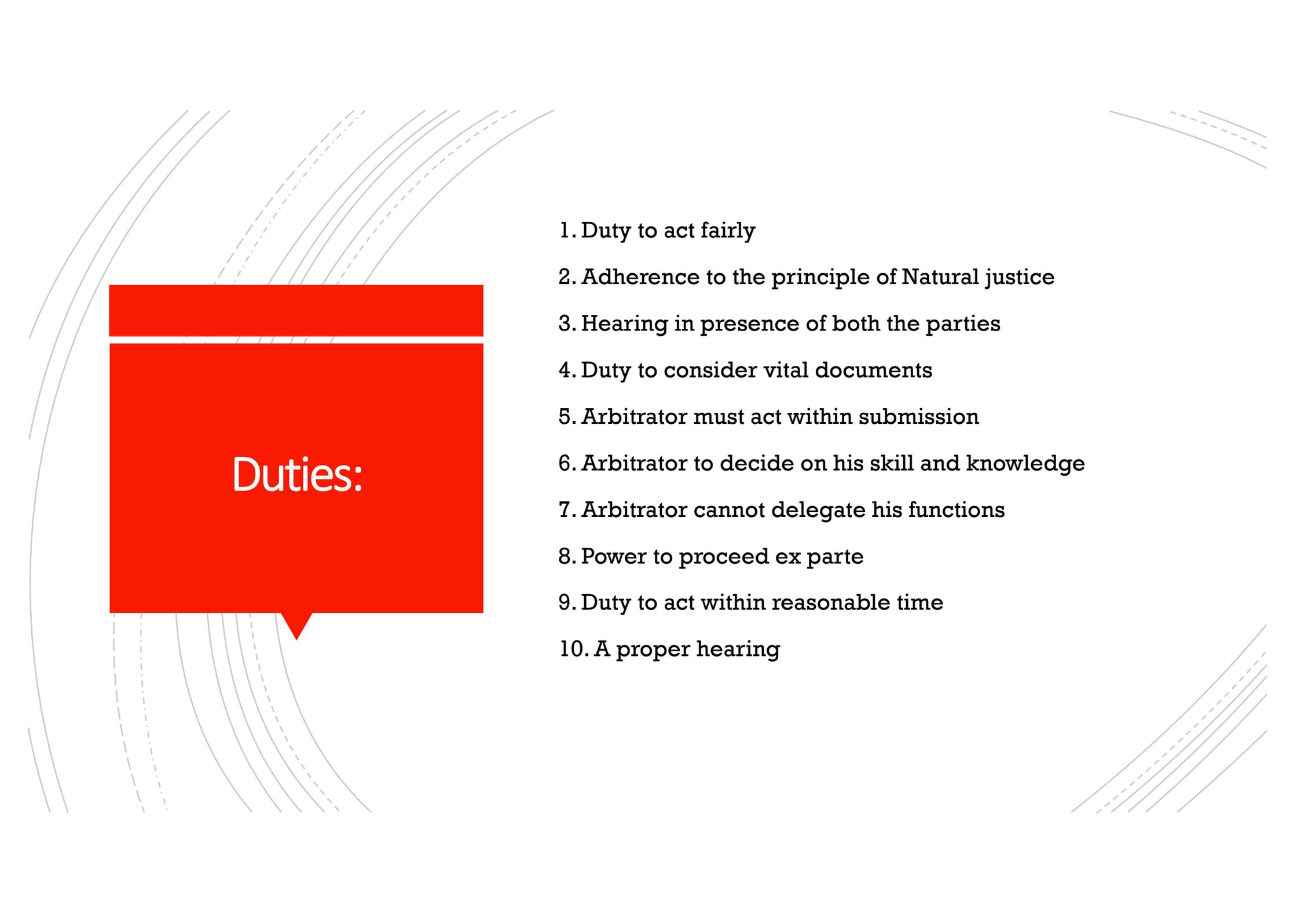


DUTIES OF AN ARBITRATOR

- Refer to page titled “**DUTIES OF ARBITRATOR**” of the case material LB-602: Alternative Dispute Resolution (e-copy can be downloaded from the official website of LC-II), for your kind perusal.
- Source: Law relating to Arbitration and Conciliation (by P.C. Markanda, Naresh Markanda & Rajesh Markanda); The Arbitration And Conciliation Act, 1996; The Arbitration And Conciliation (Amendment) Act, 2019.
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Duties:

1. Duty to act fairly
2. Adherence to the principle of Natural justice
3. Hearing in presence of both the parties
4. Duty to consider vital documents
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6. Arbitrator to decide on his skill and knowledge
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8. Power to proceed ex parte
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1. Duty to act fairly

- Arbitrator must act in a **fair and reasonable** manner to both the parties.
- **No undue favours to one party:** In the arbitration hearings he must not show or exhibit favour towards one party more than towards the other and must refrain from doing for one party which he cannot do for the other.
- **Rules of natural justice** must be followed by the arbitrators including the principles incorporated in the maxim *audi alterem partem*.
- Ignorance of the rules of natural justice cannot be defended on the plea that the evidence was inconsequential or had not affected the mind of the arbitrator or was of a trifling nature.

2. Adherence to the principles of natural justice

- An arbitrator is **not bound by the technical and strict rules of evidence** which are founded on fundamental principles of justice and public policy.
- However, in proceedings of arbitration, there must be **adherence to the principles of natural justice, equity, law and fair play in action.**

- **Cardinal rules:**

Each party must have a full opportunity to **present his own case** to the tribunal.(Section 18 of the Act)

Each party must be **aware of his opponent's case**, and must be given a full opportunity to test and rebut it.(Section 23(1) of the Act)

The parties must be **treated alike**. Each must have the same opportunity to put forward his own case, and to test that of the opponent.(Section 18 of the Act)

- The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary.
- The rule of natural justice requires that parties should be given an opportunity to be heard by the arbitrators, which means whatever material they want to place before the arbitrators should be allowed to be placed.

3. Hearing in presence of both the parties

- s.24(3) of the 1996 Act : *“All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties”*.

- **Padam Chand Jain v. Hukam Chand Jain (1999) :**

When the arbitrator accepts documents from one party in the absence of the other party, the arbitrator would be guilty of misconducting the proceedings because no arbitrator can accept document from one party at the back of the other.

4. Duty to consider vital documents

- The well-settled rule of law is that an **arbitrator misconducts** the proceedings if he **ignores very material documents** to arrive at a just decision to resolve the controversy.
- Even if the department did not produce those documents before the arbitrator, it was incumbent upon him to get hold of all the relevant documents for arriving at a just decision.
- The making of an award without the basic documents, namely, the arbitration agreement before the arbitrators at the time of application of mind, i.e. at the time of considering the rival contentions of the parties is not permissible.
- The arbitrator has to **insist on the production** of the agreement, even if not presented by the parties, as without such agreement being on record, the respective contentions of the parties cannot be adjudicated upon.

5. Arbitrator must act within submission

- Arbitrator's authority is **derived from the contract** and is governed by the Arbitration Act which embodies principles derived from a specialized branch of the law of agency.
- As an arbitrator derives his jurisdiction only from the agreement for his appointment, it is **never open to him to reject any part** of that agreement, **or to disregard any limitation** placed on his authority.
- A deliberate departure from contract amounts to **not only manifest disregard of his authority** or misconduct on his part, but it may **tantamount to a mala fide action**.
- The arbitrator is **not permitted** in law **to enlarge the scope** of reference.

Any decision or award on an item(s) which is beyond the scope of reference shall not have the sanction of law.

If the award on an item not referred for adjudication in arbitration had been decided by the arbitrator and is not severable from the rest of the award, then the whole of the award shall be set aside by the Court.

Cont'd.

- **Continental Construction Co. Ltd. v. State of Madhya Pradesh (1988) :**

Where in a works contract a contractor demands extra costs due to price escalation, which had been barred specifically under the terms of the agreement, the award of such extra costs by the arbitrator was held to be bad in law on the ground that the arbitrator acted in excess of the jurisdiction conferred on him.

- **Jivrajbhai Ujamshi Sheth and others v. Chintamanrao Balaji and others (1965) :**

If the parties set limits to action by the arbitrator, then the arbitrator has to follow the limits set for him.

The assumption of jurisdiction not possessed by the arbitrator renders the award, to the extent to which it is beyond the arbitrator's jurisdiction, invalid.

If it is not possible to sever such invalid part from the other part of the award, the award must fail in its entirety.

6. Arbitrator to decide on his skill and knowledge

- **Express Qualifications to be accredited as an Arbitrator:**

The **2019 Amendment** has introduced the **VIII Schedule** which specifically provides that only a certain specific class of persons holding certain qualifications would be eligible to be accredited as an arbitrator including:

advocates, chartered accountants, cost accountants and company secretaries, or officers of the Indian legal service, or officers with a law degree or an engineering degree, officers having senior level experience of administration [all with 10 years of experience], or a person having educational qualification at the degree level with 10 years of experience in a technical or scientific stream in the fields of telecom, information technology, intellectual property rights or other specialized areas [both in the government and in the private sector].

- Significantly, any person having been convicted of any offence involving moral turpitude or an economic offence would be in conflict of these norms.
- Therefore, Arbitrator is appointed as per the need of the contract. The **specialization** of an Arbitrator is the paramount consideration.

7. Arbitrator cannot delegate his functions

- One who has an authority to do an act for another must execute it himself, and cannot transfer it to another.

Reason : The trust and confidence reposed in the party, cannot be assigned to a stranger, whose ability and integrity were not so well thought of by him for whom the act was to be done.

- Arbitrators cannot refer their arbitrements to others, nor to an umpire, to whom no submission was made.

8. Power to proceed *ex-parte*

- In general, an arbitrator is not justified in proceeding *ex parte* without giving the party absented himself due notice.

It is advisable to give the notice in writing to each of the parties or their solicitors.

It should express the arbitrator's intention clearly, otherwise the award may be set aside.

- **Shri Ram Ram Niranjana v. Union of India (2001) :**

As per terms of the arbitration agreement, both the parties were required to nominate their respective arbitrators.

Delay occurred on the part of one party to nominate its arbitrator. Thereupon, the nominee-arbitrator of the other party started conducting arbitration proceedings *ex parte* in a tearing haste without waiting for other party.

He not only proceeded *ex parte* on same date but also recorded statement of witness and heard arguments.

It was held that the procedure adopted by the arbitrator was in violation of the principles of natural justice and the award rendered by him was set aside.

9. Duty to act within reasonable time

- Section 14(1)(a) of the Act provides that the mandate of an arbitrator shall terminate if he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay.

- **Kifayatullah Haji Gulam Rasool v. Bilkish Ismail Mehsania (2000) :**

Where the parties stipulated by consent that if the arbitrator does not complete the arbitral proceedings on or before a particular date his mandate shall stand terminated, then the mandate automatically terminates on the expiry of that date. Consent order is nothing but an agreement between the parties with super imposed seal of the court.

- **The question of reasonableness** should be determined by reference to the nature of arbitration and the interests of the parties and not individual circumstances of the arbitrator.

Thus, if the arbitrators were delayed in proceeding by illness or unexpected absence abroad, they would be open to removal, even though they had not personally flawed.

An arbitrator may be incompetent or guilty of misconduct and yet not be guilty of such delay.

10. A proper hearing

▪ **Rudramani Devaru v. Shrimad Maharaj Niranjan Jagadguru, (2005) :**

The minimum requirements of a proper hearing should include:

- (i) each party must have notice that the hearing is to take place and of the date, time and place of holding such hearing;
- (ii) each party must have a reasonable opportunity to be present at the hearing along with his witnesses and legal advisers, if any, if allowed;
- (iii) each party must have an opportunity to be present throughout the hearing;
- (iv) each party must have a reasonable opportunity to present statements, documents, evidence and arguments in support of his own case;
- (v) each party must be supplied with the statements, documents and evidence adduced by the other side;
- (vi) each party must have a reasonable opportunity to cross-examine his opponent's witnesses and reply to the arguments advanced in support of his opponent's case.
- (vii) Each party to arbitration reference is entitled to advance notice of any hearing and of any meeting of the arbitral tribunal as provided under S.24 of the Act.