

Learning Units

Learning Units

Learning unit 03: Pre-litigation phase: Alternatives to litigation

Prescribed reading for Unit 3

Copyrighted Material - subject to fair use exception

Read chapter 3 of Marnewick (prescribed textbook).

According to Marnewick: *"It is the professional duty of every lawyer to advise clients on the most suitable method for the resolution of their disputes. This can only be done after weighing up the advantages and disadvantages of the alternatives and having regard to the particular facts of the case. In some cases that will mean that the case is removed from the control of lawyers altogether. That may not seem like a good outcome for the lawyer, but whether a particular outcome is satisfactory or not, has to be judged from the client's perspective, not the lawyer's."*

Chapter 3 of Marnewick addresses ADR processes and offers advice on negotiation and the common mistakes made in the process.

Learning outcomes

Copyrighted Material - subject to fair use exception

On completion of Learning Unit 03, you should be able to:

- identify alternative methods of dispute resolution and advise clients on the best method for the resolution of particular disputes
- conduct alternative procedures for the resolution of a dispute

Activity

Copyrighted Material - subject to fair use exception

- a. Using Appendix 1 from Marnewick consider the suitability of the different forms of ADR in the case of Mrs Smith. Write a short memorandum in which you explain the suitability / non-suitability of each form of ADR. Consider in particular: the payment of medical bills and the dispute between Mrs Smith, her insurer and the panel beater. Discuss your answers on myUnisa under **Forum 4 (discussion 4)**.
 - b. In criminal law, some forms of alternative dispute resolution fall into the framework of the Criminal Procedure Act 55 of 1977 and the Child Justice Act 75 of 2010. Identify these possibilities and comment on whether they can strictly be defined as ADR processes in the formal sense. In the same exercise, consider the options for restorative justice mechanisms of dispute resolution under South African criminal procedure. Discuss your answers on myUnisa under **Forum 4 (discussion 4)**.
-

- [Gateway](#)
- [Mobile View](#)
- [The Sakai Project](#)
- [University of South Africa](#)

- [Powered by Sakai](#)
- Copyright 2003-2018 The Sakai Foundation. All rights reserved. Portions of Sakai are copyrighted by other parties as described in the Acknowledgments screen.