

Self-test 4.3

The first, and perhaps the foremost, consideration is the **status of the relationship between the parties** in the dispute. In cases where the relationship between the parties is ongoing and expected to continue for the foreseeable future, the disagreeing parties will prefer to resolve the contract dispute through means that hopefully will preserve the relationship.

The choice of mechanism should also be based on the type of outcomes desired by the buyer. There may be a **need to establish an appropriate precedent** to govern the buyer's actions in future disputes as well as the one at hand. Another consideration is whether the disputing parties **want to be directly involved** in generating the outcome or resolution. The presence of the disputing parties is important to successfully resolving disputes using techniques such as negotiation, arbitration, mediation and conciliation proceedings. Active participation by all parties involved in a dispute generally results in a more equitable and harmonious resolution as opposed to having third parties such as attorneys involved.

The level of emotion displayed by the principals is another important consideration. If emotions such as anger and frustration are high, the total cost of litigation, in terms of money, time and management effort, may be more significant than originally anticipated. The harsh experience of a prolonged court battle has convinced many potential litigants to consider less costly and more timely dispute-resolution alternatives.

The **importance of speed** in obtaining a resolution can be a factor determining whether to litigate, mediate or arbitrate. In many instances, the alternatives to court adjudication are quicker than litigation. Time pressures may force the disputing parties to be more

creative and understanding in reaching an appropriate resolution short of meeting in court. There is a direct relationship between the time involved in settling dispute and the cost involved. Quicker resolution is generally cheaper.

Finally, the **information required to reach a settlement** may dictate the mechanism preferred. The closer the parties come to having the courts settle their dispute, the more formal the information requirements. Strict rules of evidence in the courtroom may not be desirable to parties because of publicity. Companies involved in the dispute may not be willing to spread out their dirty linen or trade secrets in public. In addition, the credibility of experts and other witnesses may be more difficult to achieve or maintain in a trial. All of the other dispute-resolution mechanisms or settlement options discussed allow a greater degree of privacy to the parties involved than that, which can be attained in a court.

Self-test 4.4

The two options of dealing with claims are:

1. Attempts to resolve the issue amicably between the parties
2. Make use of a third party, e.g., arbitration and litigation

A contract should be terminated when:

1. The supplier's performance is unacceptable and in breach of the contract, and shows no sign of being rectified
2. There are important changes in the buyer's needs, e.g., the project for which the contract was required is cancelled