

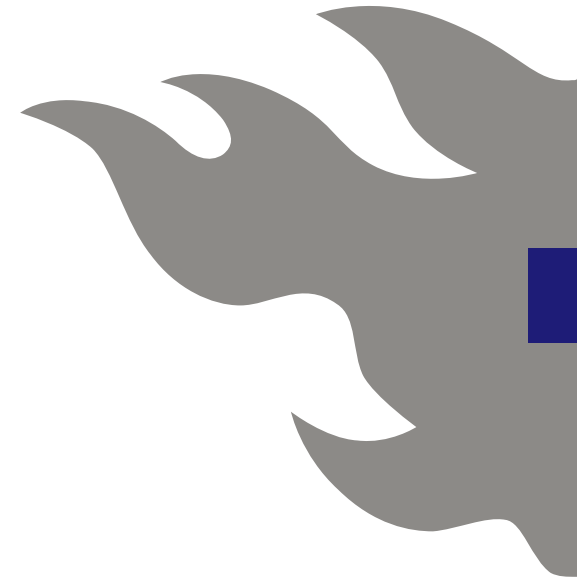


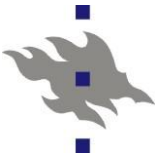
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Access to Justice and Due Process

30.1.2018

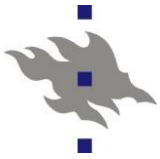
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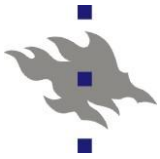
Access to Substantive Rights?

- n Access to justice *defined* as access to (procedures to enforce) substantive rights?
- n Access to justice *evaluated* by access to (procedures to enforce) substantive rights?
 - n In narrow sense (substantive rights of one person)
 - n In broader sense (changes in behaviour)



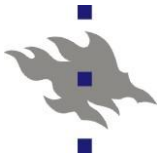
Access to Fairness?

- n Access to procedures? Access to conflict resolution?
- n Access to fair procedures? Access to fair conflict resolution?
- n What is fair procedure?
 - n Independence and impartiality
 - n Participation/ opportunity to be heard
 - n Legal aid/ counsel
 - n Access as a procedural right



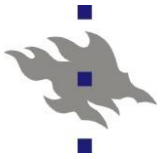
Does Emphasis on Access to Substantive Rights Endanger Access to Fairness/ Due Process?

- n Access and ADR
- n ADR and due process
 - n Background in other than procedural concerns
 - n Justification sought in substantive rather than procedural
- n Due Process requirements and fairness as constitutional protection
- n Will there be effective access to fair procedures in an ADR based (or better other than court based) system?



Excursion: Due Process in International Commercial Arbitration

- n Arbitration between private and public – based on contract, run by private but enforceable
- n Trade-off with enforcement and due process requirements
- n Institutionalisation of due process principles, transnational due process standards in style of *lex mercatoria*
- n Discussion on due process paranoia



Is There Anything in The Future to Encourage Fairness and Institutionalise the Principles?

- n Private/ collective – shift of focus to macro outcomes?
- n Adjudicative/ consensual – shift of focus to substance?
- n Fairness as Right and safeguard/ product development?
- n Enforcement by the states and trade-off/ need of enforcement by states?

- n Legitimacy/ acceptance/ implementation of the results
- n Expectations and need of the users