

Alternative Dispute Resolution

by Sophia



WHAT'S COVERED

In this lesson, you will learn about an option for resolving disputes outside of the courts. Specifically, this lesson will cover:

1. Purpose of ADR

A common method of dispute resolution that avoids many of the challenges associated with litigation is **alternative dispute resolution (ADR)**. ADR is a term that encompasses many different methods of dispute resolution other than litigation.

ADR involves resolving disputes outside of the judicial process, though courts can require parties to participate in specific types of ADR, such as arbitration, for some types of conflicts. Some ADR methods vest the power to resolve the dispute in a neutral party, while other strategies vest that power in the parties themselves.

Beginning around 1980, a movement toward alternative dispute resolution began to gain force throughout the United States. Bar associations, other private groups, and the courts themselves wanted to find quicker and cheaper ways for parties to settle disagreements.

As a result, neighborhood justice centers or dispute resolution centers sprang up in communities. Today, most state and federal agencies as well as most courts have a policy that, to save time and money, any dispute must first use ADR to resolve the issue before resorting to litigation.

IN CONTEXT

Imagine that you've been wronged by a supplier, by your employer, or by a business where you are a customer. You've correctly determined that you have an actionable legal claim. What are you going to do? You probably won't run to the courthouse to file a formal complaint to initiate litigation. This is because litigation is very expensive and time-consuming. Besides, you may wish to continue doing business with the supplier, employer, or business. Perhaps the matter is of a private nature, and you do not want to engage in a public process to determine the outcome. You would like the dispute to be resolved, but you do not want to engage in public, time-consuming, expensive litigation to do it.

Frequently used types of ADR include negotiation, mediation, and arbitration. Lesser-used methods of ADR include mini-trials, hybrid forms like mediation-arbitration, and collaborative goal-oriented processes.

ADR is often used to resolve disputes among businesses, employers and employees, and businesses and consumers. ADR can also be used in many other types of conflicts.

➞ **EXAMPLE** ADR strategies can be used in domestic law cases, such as divorce, or in international legal issues, such as issues relating to transboundary pollution. ADR can also be used in disputes between neighbors.



TERM TO KNOW

Alternative Dispute Resolution (ADR)

A means of resolving disputes outside of the judicial process, including but not limited to negotiation, mediation, arbitration, neutral evaluation, conciliation conferences, settlement conferences, and the like.

2. ADR in the Legal System

ADR methods are used outside of the courtroom, but that does not mean that they are outside of the interests of our legal system. Participation in ADR has important legal consequences.

IN CONTEXT

Parties who have agreed by contract to be subject to binding arbitration give up their constitutional right to bring their complaint to court. The Federal Arbitration Act (FAA) is a federal statute under which parties are required to participate in arbitration when they have agreed by contract to do so, even in state court matters.

There is a very good chance that you will - or already have - signed a contract that contains a mandatory arbitration clause. This provision is often contained in the terms of service or other contracts people typically do not read. If a dispute arises under that contract, then you will be required to arbitrate your claim rather than going straight to court. Under a binding arbitration clause, you will have waived your constitutional right to go to court.

Even if you have never signed such a contract and never will, it's important in the business world to understand the ADR process, situations in which litigation is a better choice than ADR, and special issues that arise when parties have unequal bargaining power.

3. Types of ADR

If an initial informal **negotiation** cannot solve the dispute, the parties may use one of two common types of ADR:

- Arbitration
- Mediation



TERM TO KNOW

Negotiation

A form of alternate dispute resolution in which the parties attempt to work directly with each other to resolve a dispute without the use of a third party.

3a. Arbitration

Arbitration is a process in which the parties use a private decision-maker, the arbitrator, and the rules of procedure are considerably more relaxed than those that apply in the courtroom.

Arbitrators might be retired judges, lawyers, or anyone with the kind of specialized knowledge and training that would be useful in making a final, binding decision on the dispute. In a contractual relationship, the parties can decide even before a dispute arises to use arbitration when the time comes. Or, parties can decide after a dispute arises to use arbitration instead of litigation.

In a contract, the parties can spell out the rules of procedure to be used and the method for choosing the arbitrator.

➔ **EXAMPLE** Parties may name the specific person or delegate the responsibility of choosing to some neutral person, or they may each designate a person and the two designees may jointly pick a third arbitrator.

Arbitration has two advantages over litigation. First, it is usually much quicker, because the arbitrator does not have a backlog of cases and because the procedures are simpler. Second, in complex cases, the quality of the decision may be higher, because the parties can select an arbitrator with specialized knowledge.

The drawbacks are that the arbitrator has to be paid; whereas, a court trial is typically provided at taxpayer expense, and that when arbitration is binding, it is final and parties lose their rights to appeal unless there was some impropriety committed by the arbitrator or a party.

Under both federal and state laws, arbitration is favored, meaning that if you have agreed to arbitration, you can't go to court if the other party wants you to arbitrate. Under the Federal Arbitration Act, the other party can go to court and get a stay against your litigation and also get an order compelling you to go to arbitration.



TERM TO KNOW

Arbitration

A form of alternative dispute resolution in which a neutral third party (the arbitrator) acts as a judge to determine a legally binding solution to the conflict.

3b. Mediation

Unlike arbitration, **mediation** gives the neutral party no power to impose a decision. The mediator is a go-between who attempts to help the parties negotiate a solution.

The mediator will communicate the parties' positions to each other, will facilitate the finding of common ground, and will suggest outcomes. But the parties have complete control: They may ignore the recommendations of the mediator entirely, settle in their own way, find another mediator, agree to binding arbitration, or go to court.

Mediation risks the loss of money and time invested in the process if it is not successful in reaching a settlement, but its rewards if the parties are successful are that it is private, much less costly than litigation,

preserves relationships, helps parties work together (especially valuable where there is ongoing business), and is tailored to parties' specific needs and interests, particularly the need for self-determination.



TERM TO KNOW

Mediation

A form of alternative dispute resolution in which a trained professional (the mediator) attempts to resolve a dispute by listening to the parties, facilitating discussion, and helping find a solution to the problem.



SUMMARY

In this lesson, you learned that litigation is not the only way to resolve disputes— alternative dispute resolution can also be an option. The **purpose of ADR** is to provide a faster, more cost-effective method of resolving disputes than the judicial system can. However, **ADR still has a place in the legal system**, as informal negotiation between the disputants usually comes first, followed by one of two **types of ADR: arbitration or mediation**. While mediation gives the parties complete control, arbitration is final and binding. Once you agree to arbitrate, you will have a final, binding arbitral award that is enforceable through the courts, and courts will almost never allow you to litigate after you have agreed to arbitrate.

Best of luck in your learning!

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