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# Alternative Dispute Resolution (Academic)

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## Quick Study LAW ALTERNATIVE DISPUTE RESOLUTION

<b>OVERVIEW</b> <ul style="list-style-type: none"><li><b>PRIVATE ENFORCEMENT</b><ul style="list-style-type: none"><li>Adversary to litigation</li><li>Advantage: efficient, expeditious, often less, often greater client control</li></ul></li><li><b>PRIVATE STRATEGIC PLANNING</b><ul style="list-style-type: none"><li>Private ADR engaged as an voluntary basis</li><li>Identify client's goals and objectives</li><li>With required notice: Binding and Not Binding</li></ul></li><li><b>PRIVATE MEDIATION</b><ul style="list-style-type: none"><li>Interest-Collaborative: Multi-Dimensional Problem Solving</li><li>Client's option to satisfy individual needs of each party; steps on common interests</li><li>ES: in personal injury case - ability to have medical services available while continuing case</li></ul></li><li><b>Position: One-Dimensional Adversarial</b><ul style="list-style-type: none"><li>Party's rights to maximize individual outcome with minimal regard to opposing party's needs</li><li>ES: in personal injury case - claim for necessary compensation</li></ul></li><li><b>Resolutions Panel</b><ul style="list-style-type: none"><li>actual value beyond which party will not settle, i.e., lowest amount Plaintiff will take and highest amount Defendant will pay</li></ul></li><li><b>Dispositive Negotiating</b><ul style="list-style-type: none"><li>Identifying issues fairly, where each party gets a separate share</li><li>ES: Manufacturer with new plant in Party B and help plant in Party B</li></ul></li><li><b>Alternative Negotiating</b><ul style="list-style-type: none"><li>Contracting needs for benefits of both parties</li><li>ES: Manufacturer licenses new and helps production in Party A and Party B</li></ul></li><li><b>Transactional Negotiation</b><ul style="list-style-type: none"><li>Planning for future events, such as dealing a contract at issue</li></ul></li><li><b>Dispute Negotiation</b><ul style="list-style-type: none"><li>Contract over current commitment, such as breach of contract</li></ul></li><li><b>Negotiating Styles</b><ul style="list-style-type: none"><li>Competitive - adversarial</li><li>Non-competitive - non-adversarial</li><li>Cooperative</li><li>Non-competitive</li><li>Adversarial</li></ul></li></ul>	<ul style="list-style-type: none"><li>in adversary: FRCP, Rule 16, identifying relevant information and duty</li><li><b>Advantages</b><ul style="list-style-type: none"><li>control over control: good faith participation by each claim party</li></ul></li><li><b>Disadvantages</b><ul style="list-style-type: none"><li>control party chooses to control rather than agreed upon by parties</li><li>emphasis on settlement focuses benefits instead of private procedure</li></ul></li><li><b>Relevant Federal and Uniform Statutes</b><ul style="list-style-type: none"><li>Federal Arbitration Act (9 U.S.C. § 1 et seq. (2008))</li><li>Revised Uniform Arbitration Act (2006)</li><li>Alternative Dispute Resolution Act (28 U.S.C. §§ 471 et seq. (2004))</li><li>Administrative Dispute Resolution Act (5 U.S.C. §§ 571 et seq. (2004))</li><li>Uniform Mediation Act</li></ul></li><li><b>Adversary Procedures</b><ul style="list-style-type: none"><li>Neutral renders non-binding opinion on issues</li><li>Goal: Obtain some settlement/impasse, such as difference in perception of factual issues</li></ul></li><li><b>Neutral Experts</b><ul style="list-style-type: none"><li>Appointed by court to examine factual issue and testify under FRP, Rule 70</li><li>Options: non-binding and subject to cross-examination by both parties</li></ul></li><li><b>Summary Jury Trial</b><ul style="list-style-type: none"><li>Hold jury to settlement conference</li><li>Panel of jurors issues non-binding award after hearing informal presentation</li><li>award may be binding if order does not indicate jury to advise</li></ul></li><li>Overriding: litigant not required to participate (34 Mo. Statute § 10.01)</li><li><b>Nonbinding Conference</b><ul style="list-style-type: none"><li>Provided over by judge or appointed to expedite litigation and explore settlement possibility</li></ul></li><li><b>Early Neutral Evaluation</b><ul style="list-style-type: none"><li>Mechanism combined with discovery offering non-binding evaluation</li></ul></li><li><b>Special Masters (Optional Procedures)</b><ul style="list-style-type: none"><li>Appointed by court under FRCP, Rule 53 to assist with management of discovery</li></ul></li><li><b>Screening Panels</b><ul style="list-style-type: none"><li>Statutory panel of experts hearing informal presentation and issuing non-binding opinion</li><li>Currently used in medical malpractice and in cases arising under seat reform</li></ul></li><li><b>PRIVATE DISCRETIONARY PROCEEDINGS</b><ul style="list-style-type: none"><li>Consent, final outcome on defined issues</li><li>Advantage of speed and quality</li><li>Neutral parties do not governing limits of future interaction: separate issues under discussion</li></ul></li><li><b>Arbitration</b><ul style="list-style-type: none"><li>May be initiated by statute or through parties' contract</li><li>Privately selected neutral person hears parties' arguments and issues award</li><li><b>voluntary arbitration</b> includes: collective bargaining with public employees, court ordered in some jurisdictions for the sake of expediency and cost reduction, and statute requiring arbitration of medical malpractice claims</li><li><b>labor arbitration</b> awards are given deference by court law: "Mitsubishi v. American Express Co." (1997)</li><li><b>judicial dispute resolution</b> is preferable to arbitrating due to complex legal issues and where legal authority is required: "Mitsubishi v. Chrysler of West Branch" (1997)</li><li>limited grounds for appeal</li><li>Discovery is generally precluded</li></ul></li><li><b>Jury Determined Settlement</b><ul style="list-style-type: none"><li>Issues are limited and resolved in hearing</li></ul></li><li><b>Private Judging</b><ul style="list-style-type: none"><li>Comprehensive between litigation and arbitration</li><li>Neutral appointed by court, with parties' agreement, to hear/judge</li><li>non-binding decisions</li></ul></li><li>not available in cases involving: "Mitsubishi v. Chrysler of West Branch" (1997)</li></ul>	<ul style="list-style-type: none"><li><b>PROS AND CONS OF SELECTION OF VOLUNTARY RESOLUTION</b><ul style="list-style-type: none"><li>Cost: litigant parties to voluntary resolution often face expense: arbitrators in negotiation</li><li>Outcome is generally non-binding</li><li>No guarantee of quality</li><li>Reliance on relationship between parties and under-lying interests</li><li>Neutral person design and manage negotiation process</li><li>Generally: also-acted with to e.g., arbitrator cases</li></ul></li><li><b>Mediation</b><ul style="list-style-type: none"><li>Neutral person meets with parties jointly or separately to encourage communication, expeditious</li><li>Recognizes individual interests</li><li>Suggests possible solutions</li></ul></li><li><b>Collaborative Law</b><ul style="list-style-type: none"><li>Used in domestic cases, pre-filing</li><li>Parties meet jointly with their attorneys to resolve dispute</li><li>agree to use neutral experts</li><li>agree that attorneys and experts are disqualified from further representation if settlement not reached</li><li>litigant and attorneys responsible for complete, voluntary disclosure and good resolution of issues</li></ul></li><li><b>Seat Trial</b><ul style="list-style-type: none"><li>Neutral limited discovery</li><li>Neutral person renders with, and hears process, then by, conclusions of each party, then issues an advisory opinion</li></ul></li><li><b>Dispositive</b><ul style="list-style-type: none"><li>Function as arbitrator within negotiation that with large number of people</li><li>Provides assistance to expedite mutual compliance</li><li>Neutral Litigator</li><li>Litigate generally to each side's best offer and arbitrator parties to whom the offer they are</li></ul></li></ul>	<b>DIAGNOSIS</b> <ul style="list-style-type: none"><li><b>PROS AND CONS OF MEDIATION</b><ul style="list-style-type: none"><li>Neutral as issue</li><li>High degree volume (discovery) completed a parties reduction in growth but increase in number of claims with ADR</li><li>not suitable for work cases, which can involve a significant dispute</li><li>mediation is best study and does not guarantee final result</li></ul></li><li><b>arbitration</b> may be binding with no way to appeal and is final (binding) in a high-value case, except where governments have been set</li><li><b>advisory arbitration</b> is more useful, as it will occur without cost party</li><li>litigation of conflict claims set procedure for later claims</li><li>final case where cost is a concern</li><li>where probability of success is small, mediation can still be cost-effective</li><li>non-adversarial arbitration is more efficient</li><li>Cost likely to be offset by "win-win" value</li><li>early neutral evaluation most directly addresses the concerns with emphasis on discovery and narrowing submissions</li><li>advisory arbitration and or summary jury trial are other alternatives, with emphasis on facilitating communication</li></ul> <li><b>Question of Moral Law and Fact</b><ul style="list-style-type: none"><li>Moral-law is more suitable where known standards are at issue, such as negligence</li></ul></li> <li><b>Question of Fact</b><ul style="list-style-type: none"><li>litigation, arbitration and private judging are more suitable where witness credibility, conflicting accounts, testimony and other-empirical are central to</li><li>advisory arbitration is suitable where significant fact is contested and witness credibility determinative</li></ul></li>
<b>FORMS OF ADR</b> <ul style="list-style-type: none"><li><b>PRIVATE PROCEEDINGS</b><ul style="list-style-type: none"><li>Used when parties want to begin litigation</li><li>Arbitration, Private Judge, Jury-Determined Nonbinding Law (Optional Procedures)</li><li>Mediation, Mini-Trial, Dispositive, Neutral Litigator and Evaluation of Voluntary Resolution, Collaborative Law</li></ul></li><li><b>Advisory Arbitration</b><ul style="list-style-type: none"><li>Non-binding opinion</li><li>Mediate</li><li>Contracting or mediation</li><li>if outcome reached, expedite resolution arbitrator</li><li>often binding except after arbitration hearing</li></ul></li><li><b>ES Facts Arbitration</b><ul style="list-style-type: none"><li>Neutral person voluntarily hears each party's evidence separately, then issues non-binding award</li></ul></li><li><b>Neutral Fact-Finding</b><ul style="list-style-type: none"><li>Neutral person performs independent investigation</li></ul></li><li>Can be binding or non-binding</li></ul> <li><b>PRIVATE COURTS AND PROCEDURES</b><ul style="list-style-type: none"><li><b>Background</b><ul style="list-style-type: none"><li>Generally, joint filing, parties use court's assistance prior to trial</li></ul></li><li><b>Federal Courts</b><ul style="list-style-type: none"><li>Development of ADR programs by District Court local rules required under Civil Justice Reform Act (28 U.S.C. §§ 471 et seq. (2004))</li><li>Executive Order 12958 directs federal agencies to use ADR to resolve claims involving government</li></ul></li></ul></li>			



## Synopsis

This useful study guide to Alternative Dispute Resolution outlines the steps and procedure involved in settling disputes in an official fashion while preempting litigation.

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