



Alternative Dispute Resolution

Introduction

- *Alternative dispute resolution is often referred to as ADR.*
- *It describes the ways that parties can settle civil disputes with the help of an independent third party and without the need for a formal court hearing.*

ADR & the Civil Procedure Rules

- *Under the Civil Procedure Rules, parties involved in litigation are encouraged to use ADR.*
- *The court can also impose cost sanctions if it decides that one or more of the parties have been unreasonable in refusing to attempt to settle their dispute out of court using ADR.*

Three main types of ADR

- *Arbitration*
- *Mediation*
- *Conciliation*

Arbitration

- Arbitration is the adjudication of a dispute by one or more specially-appointed experts or lawyers.*
- People who work as arbitrators often belong to the Chartered Institute of Arbitrators.*
- Arbitration is governed by the Arbitration Act 1996.*

Arbitration Act 1996, s.1

- (a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;*
- (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest...*

Choosing an arbitrator

- *Parties are free to decide between themselves whom they will appoint as an arbitrator.*
- *Where there is no agreement a party can apply to a court under the Arbitration Act 1996 s.18 to have one appointed by the court.*

Arbitration by Contract

- *Arbitration by contract is when the parties have signed a contract and there is a clause in the contract where they agree to refer any dispute over the terms of the contract to an arbitrator.*
- *Such a clause is sometimes known as a 'Scott v Avery clause'.*

Arbitration as a Trade Practice

- *Arbitration is common in many trade practices.*
- *For instance, many insurance policies contain a clause stating that any dispute over a claim will first be referred to an arbitrator before any court claim is made.*

Arbitration Act 1996 s.9

Where a party tries to ignore an arbitration clause agreed in a contract, the court in which he or she is trying to make his claim will order a 'stay' (i.e. a stop) of proceedings so that the matter may be referred to arbitration as agreed in the contract.

ADR: The Commercial Court

- *The Commercial Court is a specialist part of the Queen's Bench Division. It hears claims arising out of trade and commerce.*
- *A judge in the Commercial Court may refer a dispute brought before it to an arbitrator.*

Special Types of Arbitration

- *'Expert Determination' is where the arbitrator is an expert with inquisitorial powers who gives a binding decision.*
- *'Adjudication' refers the use of an expert to rule on a technical issue. It is primarily used in construction disputes as set out in the Housing Grants, Construction and Regeneration Act 1998.*

Mediation

- *Parties in a dispute may refer their dispute to an independent third party who will act as a go-between.*
- *The mediator will help the parties discuss their dispute in order to try to settle it.*

Refusing Mediation

If parties in litigation refuse an offer to mediate without good reason then even if they win their case in court, the judge can refuse to award them some or all of their legal costs.

Med-Arb

- *This is a mixture of mediation and arbitration.*
- *Here the parties agree to mediate but will refer the dispute to an arbitrator if the mediation is unsuccessful.*

Conciliation

- *Similar to mediation but the conciliator may suggest a way to settle to the dispute.*
- *If parties in litigation refuse an offer of conciliation without good reason then even if they win their case, the judge can refuse to award them some or all of their legal costs.*

Conciliation & Mediation Agencies

- *The Centre for Effective Dispute Resolution (CEDR)*
- *UK Mediation*
- *Mediation Wales*
- *National Mediation Helpline*
- *various court-based mediation schemes*
- *the ADR schemes of many industries and commercial associations.*

Neutral Evaluation

- *Neutral Evaluation is where a third party, usually somebody legally qualified, gives an opinion on the likely outcome if the case went to trial.*
- *Parties will use this opinion as a basis for trying to settle their dispute out of court.*

Ombudsmen

- *There are a number of Ombudsmen appointed by Parliament.*
- *They investigate complaints against government departments, local councils and certain industries.*

Some Important Ombudsman

- *The Public Services Ombudsman for Wales considers complaints about housing, planning, education, social services and health services in Wales.*
- *The Parliamentary and Health Service Ombudsman investigates complaints about the unfair or improper treatment of citizens by UK government departments, their agencies and the NHS in England.*

Some Important Ombudsman

- *The Financial Services Ombudsman investigates complaints about financial firms.*
- *The Pensions Ombudsman investigates complaints against the way pension schemes have been run.*

Industry Regulators

- Some industries that have a public role have regulators appointed by the government to oversee the way that their companies behave.*
- For instance, 'Ofcom' can investigate television and radio programmes that fail to meet certain broadcasting standards.*
- They generally have fewer powers than ombudsmen in investigating complaints from the public.*

Exercise

What do you think are the advantages and disadvantages of Alternative Dispute Resolution?

Essay Question

(a) Describe what is meant by Alternative Dispute Resolution. (12)

(b) To what extent does Alternative Dispute Resolution promote access to justice? (13)

Total 25 marks.