

Alternative Dispute Resolution

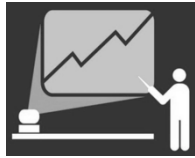


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Read & Précis: Chapter 4, Issue 1, pages 163-175

Welcome

- Ensure mobile phones are off
- No eating in the classroom
- You may take notes



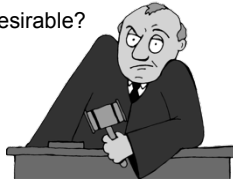
Topic Aims

- Alternative dispute resolution methods.
- Tribunals.



Litigation

- Litigation (court) may not always be the best solution.
- It may provide an enforceable decision, but it can be very expensive.
- Why else might it not be desirable?



ADR Methods

- Negotiation
- Mediation
- Conciliation
- Arbitration
- Tribunals are NOT a form of ADR as they are a part of our court system, however they resolve disputes.
- An Ombudsman has the power to investigate complaints.



Negotiation

- Dispute resolution at its simplest.
- Generally quicker and cheaper than other methods.
- How may the doctrine of Judicial Precedent help parties reach a settlement?



Mediation

- Neutral mediator helps parties reach a compromise solution.
- Aim is to encourage the parties to find common ground.
- Mediator does not suggest solutions.



Conciliation

- Neutral third party plays an active role in suggesting a solution.
- Process is now generally regarded as another form of mediation.
- Often used in unfair dismissal cases.

Arbitration

- Both sides agree to let a third party decide a solution.
- Arbitrator may be a lawyer or, alternatively, an expert in the field of the dispute.
- Either way, the decision is legally binding.

Arbitration

- Private arbitration is governed by the **Arbitration Act 1996** which provides:
 - 1) The parties should be free to decide how their disputes should be resolved; and
 - 2) The agreement between the parties to submit their dispute to the judgment of an individual other than a judge, must be made in writing.

Scott v Avery clause

- Included in many commercial contracts.
- Court will refuse to deal with the dispute.
- Why do you think many companies include these clauses in their contracts?

Tribunals

- They are not a form of ADR but part of our legal system.
- Generally deal with citizen's rights to welfare benefits.
E.g. Social Security Tribunal, Employment Tribunal etc.
- A tribunal must be used if applicable, unlike mediation or conciliation.

Ombudsmen

- An Ombudsman is an official appointed to provide a check on government activity in the interests of the citizen.
- The Ombudsman may either:
 - 1) Rectify the problem.
 - 2) Publish a report with recommendations for change.
- How is an Ombudsman's powers limited?

Pros and Cons

- In pairs, produce a list showing the advantages and disadvantages of the different methods of ADR.



Just to remind you...

- For the Unit 1 exam, you should be able to **know, understand** and **discuss**:
 - Why ADR is used.
 - The different methods of ADR.
 - The advantages and disadvantages of their use.
