



# Class 1

Alternative Dispute Resolution

# Forms of Alternate Dispute Resolution

- **Negotiation**

- Not a full or complete method of settling a case and often a component of litigation. Still, it is often used, at least initially, as a substitute for litigation.

- **Mediation**

- More formal negotiation with a paid “referee” to help settle the case. However, the mediator does not have the power to make a binding decision or force a settlement.

- **Arbitration**

- A formal hearing, similar to litigation, but without the court system, juries, etc.

# History of Alternative Dispute Resolution

## ■ **Arbitration Act of 1888**

- Authorized the creation of arbitration panels with the power to investigate the causes of labor disputes and to issue non-binding arbitration awards.
- Did not work out too well.

## ■ **Erdman Act (1898)**

- The Act likewise provided for voluntary arbitration, but made any award issued by the panel was binding and enforceable in federal court.

## ■ **Board of Mediation and Conciliation**

- Established in 1913 (now called the National Mediation Board).
  - Formed and funded to carry out the mediation of collective bargaining disputes.

# History of Alternative Dispute Resolution (cont.)

- **Arbitration Society of America (predecessor of the American Arbitration Association)**
  - Founded in 1922 to assist people in avoiding an overly-clogged court system.
- **First Federal Arbitration Act**
  - Passed in 1925 to regulate the growing field of ADR.
- **1940s-1970s**
  - Arbitration caseload nationwide jumps from under 1,000 to over 35,000.
- **Mid 1980s**
  - Supreme Court upholds enforceability of arbitration decisions in a series of landmark cases.
- **Mid 1980s- present**
  - ADR continues to grow at a fast rate.

# Reasons for the Rise of Alternate Dispute Resolution

- **Speed**

- Cases settled through ADR methods are typically resolved much more quickly than the litigation process.

- **Preserve Amicability/ Decrease Tension**

- Once the parties engage in the adversarial process, the relationship often becomes so poisoned that it is impossible for the parties to reconcile or settle peacefully.

- **Confidentiality**

- Mediation and arbitration can be confidential and no publicly released written opinion is generated based on the results of the mediation. Court decisions are published and are a matter of public record.

# Reasons for the Rise of Alternate Dispute Resolution (cont.)

## ■ **Cost**

- Mediation costs much less than litigation and one need not hire attorneys to represent them. Even with arbitration, there are no formal rules as to who can argue. In litigation, licensed attorneys are required.

## ■ **Ability to Hire Experts in the Field**

- Parties can choose mediators or arbitrators who are expert in the field. In litigation, who knows whether the judge you get will know anything about the industry?

## ■ **Early Peek at Opponent's Position**

- Even if you do eventually go to Litigation, it's nice to get an early look at what the opponent's position is. Also, you can base your settlement offer on how strong the opposing case is.

QUIZ TIME!

# Relevant Federal and Uniform Acts

## ■ **Federal Arbitration Act**

- Found in Title 9 of the United States Code.
- Provides for compulsory arbitration where provided for under applicable contract.
- Allows arbitration awards to be confirmed in courts.

## ■ **Uniform Arbitration Act**

- Comprehensive series of law covering all aspects of arbitration, including validity of agreements to arbitrate, procedure, review and appeal, etc.
- Adopted in whole or in part by most states.

## ■ **Revised Uniform Arbitration Act**

- As with most uniform acts, the UAA is revised from time to time.
- Most recent one was in 2000, which didn't change much from the previous version.

# Dispute Resolution Spectrum

- **Least contentious, most control by parties**

## Negotiation

- informal negotiation
- formal settlement conferences
- supervised settlement conferences

## Mediation

- facilitative
- evaluative
- neutral evaluation

## Arbitration

- high-low
- bracketed
- traditional

## Litigation

- **Most contentious, least control by parties**