



Class 9

Alternative Dispute Resolution

Structure of Mediation

- A neutral third party assists in the negotiation of an agreement between parties who could not come to an agreement on their own.
- Hybrid of **negotiation** and **arbitration**
- Mediation is like **negotiation** in that:
 - its success ultimately depends on agreement between the parties.
 - no third party has the authority to force a solution.
- Mediation is like **arbitration** in that:
 - neutral third party involved and “leading” the parties.
 - financial investment into alternative dispute resolution techniques put in by both parties.

What Mediators Do and What Mediators Don't

MEDIATORS DO	MEDIATORS DON'T
Assist parties in developing an approach to solving the problem	Dictate to parties how the mediation will proceed without their authorization
Help keep discussions on point and focused	Cut parties off simply because the mediator has heard enough
Help the parties understand each other better	Speak on behalf of either side or introduce new points into the negotiation in favor of either party
Make sure the parties consider the probable results and costs of litigation, and encourage reaching agreement through mediation	Force the parties to come to an agreement or prevent a party from excluding herself from the mediation process
Encourage solution-seeking in ways which might not have been considered earlier in the process	Limit the realm of solutions available to the parties
Help parties draft a valid negotiation agreement if an agreement is reached, and possibly help the parties implement their agreement	Enforce the agreement or police the parties following mediation to ensure strict compliance with the agreement

Mediation - Advantages

- 1. Speed**
 - Faster than litigation or arbitration because those require hearings, presentation of witnesses, etc.
 - Can be faster than negotiation because it is more focused.
- 2. Inexpensive (compared to litigation or arbitration).**
- 3. Simplicity**
- 4. No complex rules or procedures that need to be followed.**
- 5. Ability to "change on the fly" - not locked in by pleadings or motions.**
- 6. Flexibility in finding settlements and solutions.**
- 7. Settlement terms more likely to be agreeable to both parties.**

QUIZ TIME!

Mediation - Disadvantages

1. No guaranteed result, after the time and expense is put in to set up the mediation process.
 2. No procedural rules to guide the parties, no real way to discern credible evidence, etc.
 3. Little or no due process protections are available to either party
 4. No legal precedent is binding on and no legal precedent is set during negotiation.
 5. Lack of formal discovery mechanism can make it difficult to investigate during a mediation process.
- Because of these factors, mediation is often commenced after a lawsuit has been filed in civil court, allowing the civil court system to enforce some of these characteristics.