

General Introduction of Arbitration and
Conciliation
[ALTERNATE DISPUTE RESOLUTION]

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Objectives

- Explain the need for Alternative Dispute Resolution instead of litigation.
- Explain the four main types of Alternative Dispute Resolution: negotiation, mediation, arbitration and conciliation.
- Discuss the types of cases where each form of ADR may be used.
- Evaluate the advantages and disadvantages of the four different forms of alternative dispute resolution.

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Conciliation

- Involves third party taking a more ACTIVE role in suggesting ways to come to a settlement.
- Common in industrial disputes – **ACAS** is the biggest conciliatory body.
- “Prevention rather than cure” approach.
- Also used in access to services for the disabled.
- Conciliation can also be used to prevent industrial strikes.



Conciliation Activity



- Visit www.acas.org.uk to research the **role** of ACAS.
- Watch the video at <https://www.youtube.com/watch?v=1fOsYkxr-UI> and make a note of other roles and responsibilities that ACAS have, making them one of the biggest conciliators in the UK. What other initiatives have ACAS introduced to prevent industrial strikes from happening?
- Use reputable news websites to research information surrounding the following industrial disputes:
 - Junior Doctor strikes
 - Southern Rail strikes
 - London Tube driver strikes

What was the role of ACAS, if any in these cases? How has the dispute been resolved?
- Research some further examples of occasions where ACAS may have intervened to prevent or control a strike.

Arbitration

- Governed by the **Arbitration Act 1996**
- Common in commercial contracts and sporting disputes.
- Award is binding on the parties
- Flexible procedure – number of witnesses, where, when, time etc.
- Can choose specialist in the field OR legal professional as arbitrator
- Must be carried out in a judicial manner in line with natural justice.
- **Scott v Avery** clause – agreement to arbitrate before contract – look at www.abta.co.uk for some example of these clauses in holiday contracts.



Arbitration Act 1996

- s1 Arbitration Act 1996 states,
 - (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.*

- An agreement to arbitrate **will usually be in writing**; the Arbitration Act 1996 applies only to written arbitration agreements. The precise way in which the arbitration is carried out is left almost entirely to the parties' agreement.
- s15 Arbitration Act 1996 states that the parties are **free to agree on the number of arbitrators**, so that a panel of two or three may be used or there may be a sole arbitrator. If the parties cannot agree on a number then the Act provides that only one arbitrator should be appointed.
- The Act also says that the parties are free to agree on the **procedure** for appointing an arbitrator. Most agreements will either name an arbitrator or provide a method of choosing one. It is often provided that the president of the appropriate trade union will appoint the arbitrator.
- The Institute of Arbitrators provides trained arbitrators for major disputes. In many cases, the arbitrator will be someone who has expertise in the particular field involved in the dispute, but if the dispute involves a point of law the parties may decide to appoint a lawyer.
- If there is no agreement on whom or how to appoint, then, as a last resort the court can be asked to appoint an appropriate arbitrator.

Arbitration Act 1996

The actual procedure is left to the agreement of the parties in each case, so that there are many forms of hearing:

Paper Hearing

This is where the two sides put all the points they wish to raise into writing and submit this, along with any relevant documents, to the arbitrator. He will then read all the documents, and make his decision.

Oral Hearing

Once the arbitrator has all the documents, both parties will attend a hearing at which they make oral submissions to the arbitrator to support their case.

The decision made by the arbitrator is called an **award** and is **binding on the parties**. It can even be enforced through the courts if necessary. The decision is usually final, though it can be challenged on the grounds of serious irregularity in the proceedings on a point of law.

Arbitration Activity



- Visit <http://www.tas-cas.org/en/index.html> to research the **role of the Court of Arbitration for Sport**.
- Use reputable news websites to research information surrounding the following disputes heard at the Court of Arbitration for Sport:
 - Luis Suarez biting ban
 - Russian Olympics doping ban.

What was the role of Court of Arbitration for Sport, if any in these cases? How has the dispute been resolved?

- Research some further examples of occasions where the Court may have intervened to resolve a dispute in the world of sport.





Arbitration

ADVANTAGES	DISADVANTAGES
<p>The parties can choose their own arbitrator, and can therefore decide whether the matter is best dealt with by a technical expert , a lawyer, or a professional arbitrator.</p>	<p>An unexpected legal point may arise in the case which is not suitable for decision by a non-lawyer arbitrator.</p>
<p>Questions of quality can be decided by an expert in the particular field, saving the expense of calling expert witnesses and the time that would be used in explaining all the technicalities to a judge.</p>	<p>If a professional arbitrator is uses, his fees may be expensive.</p>
<p>The hearing time and place can be arranged to suit the parties.</p>	<p>It will also be expensive if the parties opt for a formal hearing, with witnesses giving evidence and lawyers representing both sides.</p>

ADVANTAGES	DISADVANTAGES
The actual procedure is flexible and the parties can choose that which is more suited to the situation, resulting in a more informal and relaxed hearing than in court.	The rights of appeal are limited.
The matter is dealt with in private and there will be no publicity.	The delays for commercial and international arbitration may be nearly as great as those in the courts if a professional arbitrator and lawyers are used.
The dispute will be resolved more quickly than through a court hearing.	
Arbitration proceedings are usually much cheaper than going to court.	
The award is normally final and can be enforced through the courts.	10



Assignment: For each form of ADR, write down the **5 most important things** to include in an exam answer. When you are done, pass your answers to your partner for marking!! We will then discuss the most important. Also think about **advantages** and **disadvantages** of each form of ADR apart from those already enlisted

 <p>NEGOTIATION</p>	<p>MEDIATION</p> 	
	<p>CONCILIATION</p>	 <p>ARBITRATION</p>

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References

This is a work by external agency which has been referred after some alterations. The original work can be accessed from the link hereunder and the author of the work has been given due credit by acknowledging his/her creation.

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