

## Chapter 4 Alternative Dispute Resolution Procedure

Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

### Who Advocates ADR?

- Judges
  - Cuts costs
  - Reduces court delays
- Businesspeople
  - Maintains business relationships
  - Reduces costs
- Public-at-large
  - Reduces costs
  - Reduces court delays

Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

### Negotiation

- Parties meet to discuss and resolve their disputes and arrive at a mutually acceptable agreement
- Involves joint problem solving and cooperative behavior
- Produces no winner or loser
- Requires good negotiation skills

Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

### Conciliation

- Third party (the conciliator) brings conflicting parties to an agreement
- Conciliator's role is to limit passions and negative rhetoric and facilitate negotiation without taking a position
- Works well in labor disputes and divorce cases

Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

### Mediation

- Impartial third party tries to persuade the parties to discuss their disagreements and come to a resolution
- Parties meet with the mediator and outline their respective positions; then, they go to separate rooms, and the mediator shuttles back and forth
- The mediator does not make a decision for the parties, but tries to persuade the parties to reach a resolution of their dispute

Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

### Arbitration

- Parties submit their dispute to a neutral third party who resolves their dispute
- Arbitration is cheaper in time, money, and privacy than a trial
- Arbitration is less formal than a judicial proceeding and allows the parties to select the forum
- The main federal statute is the Federal Arbitration Act
- The main professional organization is the American Arbitration Association
- Many contracts require arbitration

Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

## Differences Between Contractual and Judicial Arbitration

- Contractual arbitration
  - Private
  - Limited discovery
  - Generally does not include a subpoena power
  - Does not include rules of evidence
  - Generally, results in a binding award
  - Has limited grounds for appeal
  - More cost effective
- Judicial arbitration
  - Public
  - Full discovery
  - Includes subpoena power
  - Includes rules of evidence
  - Does not result in a binding award
  - Fully preserves all appeal rights
  - More expensive, but cheaper than a full trial

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## Disadvantages of Arbitration

- Lack of appeal rights
- Lack of full disclosure
- Lack of discovery and disclosure
- Lack of evidentiary standards
- Lack of arbitration clause
- Lack of knowledge regarding the arbitrator's background
- Lack of a clear-cut victory
- Lack of precedent

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## Other Forms of ADR

- Mediation/ Arbitration
- Fact finding
- Minitrial
- Private judges
- Short trial
- Partnering

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## International Considerations

- New York Convention
  - Is ADR in the World Community?

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## Legally Speaking

- When life gives you lemons .... i.e., you have just purchased your first car and it turns out to be a "lemon." What should you do?
  - Check to see if your state has a lemon law
  - If so, do the necessary documentation
  - See if your contract requires arbitration
  - If not, see if your dealer will agree to arbitration
  - Determine whether a lawsuit is worth the time and expense for you

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## Summary

- Who Advocates ADR?
- Negotiation
- Conciliation
- Mediation
- Arbitration
- Differences Between Contractual and Judicial Arbitration
- Disadvantages of Arbitration
- Other Forms of ADR
- International Considerations
- Legally Speaking

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business