Mediation - How does it work in practice?
Alternative Dispute Resolution

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May 2008
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Historical Background

ADR - Alternative to What?

- An imposed solution or decision
- Litigation or arbitration
  Mediation leads to a negotiated solution.
Why Negotiations Break Down

- One party cannot negotiate
- Failure to persuade the other party
# Mediation -v- Arbitration

## Similarities and differences

<table>
<thead>
<tr>
<th>Mediation</th>
<th>Confidential</th>
<th>Arbitration</th>
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</thead>
<tbody>
<tr>
<td>Mediator has no power to decide the outcome</td>
<td>Voluntary, private, flexible</td>
<td>Arbitrator is given power to make binding decisions</td>
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<tr>
<td>Mediator helps parties to come to a mutually acceptable agreement</td>
<td>Use a neutral trained professional that you select</td>
<td>Arbitrator hears the evidence and decides</td>
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<tr>
<td>Enforcement can be part of the agreement</td>
<td>Low cost and cost-effective</td>
<td>An award may still require enforcement</td>
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## Mediation is:

- Voluntary
- Without prejudice
The Mediation Session (Process Steps):

- Joint session
- First private meeting with claimant
- First private meeting with respondent
- Second private meeting with claimant
- Second private meeting with respondent
- Final joint session to announce result

A Mediator is not:-

- A judge or arbitrator
- Rendering a binding decision
- Giving an opinion
- Finding fault or apportioning blame
A Mediator is:-
- Neutral and unbiased
- An agent of reality
- Playing the “Devil’s Advocate”

A Mediator helps:-
- Define and analyse differences
- Identify interests not positions
- Generate a “climate” for settlement
Why Mediation Works :-

- It brings the parties together
- It educates the parties
- It allows venting of frustrations
- It leads to a sudden outbreak of common sense.

Advantages:-

- Speed
- Cost
- Privacy
- Preserves commercial relationships
- Flexible procedures
- It works! - More than 80% settle on the day
Persuasion:-

- The ability to offer compelling value to others
- Their values NOT YOURS
As a Party -
What Mediation helps you avoid:-

- Loss of control
- Loss of face
- Lengthy proceedings
- Expense
- Bad publicity
- Loss of relationship