Instructor's Manual to Accompany

Alternative Methods of Dispute Resolution

Martin A. Frey
Professor Emeritus
The University of Tulsa
College of Law

THOMSON
DELMAR LEARNING™

Australia Canada Mexico Singapore Spain United Kingdom United States

THOMSON
DELMAR LEARNING

WEST LEGAL STUDIES

Instructor's Manual to Accompany
Alternative Methods of Dispute Resolution

by Martin A. Frey

Printed in the United States
1 2 3 4 5 XXX 06 05 04 03 02

For more information, contact Delmar Learning,
5 Maxwell Drive, Clifton Park, NY 12065-2919.

Or find us on the World Wide Web at
www.DelmarLearning.com or
www.westlegalstudies.com

Library of Congress Cataloging-in-Publication Data

ISBN: 0-7668-2111-0
Catalog Card Number: 2002019276

NOTICE TO THE READER

Contents

Table of Transparency Masters

Introduction to the Instructor's Manual

Alternative Methods of Dispute Resolution covers the full range of dispute resolution processes from inaction (not doing anything) through litigation and private judging. After the first two overview chapters, each of the next fifteen chapters considers a different dispute resolution process. The final two chapters focus on selecting a dispute resolution process. Since some dispute resolution processes are more complex than others, chapter lengths vary. The discussion within each chapter follows a concept-example, concept-problem, and concept-example-problem format. The concept may be followed by an example or by a problem or by both. The *concept* presents the theory. The *example* relates the theory to a set of facts. The *problem* gives students an opportunity to apply the theory to a new set of facts and thus solidify their understanding of the concept. The example-and-problem format gives the instructor an opportunity to interact with his or her students.

This *Instructor's Manual* discusses the overall organization of the text, presents answers to the problems found within each chapter of the text, gives answers to the end-of-chapter review questions, includes additional role-play exercises, and furnishes the instructor with transparency masters for use during class. A number of problems in the text are intended to encourage discussion and seek opinions rather than focus on definitive answers.

The subject—alternative methods of dispute resolution—may be presented to students as a course or may be included as a segment of another course. Therefore, the time devoted to this subject may range from 45 class hours down to a few hours. This text is easily adapted to fit the course design.

Very brief coverage. A very brief coverage of ADR can be achieved with the Introduction (The ADR Movement) and Chapter 1 (The Methods of Dispute Resolution). With slightly more time, Chapter 2 (The Participants) can be added.

Ten class hours. Ten class hours of ADR could include the Introduction, Chapter 1 (The Methods of Dispute Resolution), Chapter 6 (Negotiation), Chapter 10 (Private Mediation), Chapter 18 (Selecting a Dispute Resolution Strategy before the Dispute Arises), and Chapter 19 (Selecting a Dispute Resolution Strategy after the Dispute Arises).

Thirty class hours. Thirty class hours of ADR could include all the chapters of this text with the exception of Chapter 16 (Litigation) and Chapter 17 (Private Judging). Because of time constraints, the role-play exercises could either be omitted or a role-play exercise from Chapter 6 (Negotiation), Chapter 10 (Private Mediation), Chapter 11 (Court-Sponsored Mediation), Chapter 13 (Private Arbitration), or Chapter 19 (Selecting a Dispute Resolution Strategy after the Dispute Arises) could be substituted for chapters such as Chapter 7 (Early Neutral Evaluation), Chapter 8 (Summary Jury Trial), Chapter 12 (Mini-Trial), Chapter 15 (Mediation-Arbitration), or Chapter 17 (Private Judging).

Forty-five class hours. Forty-five class hours of ADR could include all the chapters of this text and role-play exercises for Chapter 6 (Negotiation), Chapter 10 (Private Mediation), Chapter 11 (Court-Sponsored Mediation), Chapter 13 (Private Arbitration), and Chapter 19 (Selecting a Dispute Resolution Strategy After the Dispute Arises). The role-play exercises found in the text or in this *Instructor's Manual* could be used. The role-play exercises in the *Instructor's Manual* have confidential facts where the exercises in the text do not. Several role-play exercises are found in each of five of the chapters of the text and the *Instructor's Manual.* This gives the instructor the opportunity to select among the exercises. Role-play exercises could be conducted during class or as out-of-class assignments. Role-play exercises also could be videotaped.

The nature of a course in ADR lends itself to guest speakers. A guest speaker could provide students with an overview of his or her field (including ethical concerns), be a member of a panel, or participate in a demonstration of a dispute resolution process. For example, a judge who regularly participates in court-sponsored mediation (settlement conference) could conduct a mock settlement conference for the class using students as role players (i.e., attorney for the plaintiff, the plaintiff, the attorney for the defendant, the defendant, and the defendant's insurer if the problem calls for the defendant to be insured). The fact situations could be selected from those in the text or the *Instructor's Manual.*

Before beginning the course, an instructor may find it helpful to check with the local state court and with the nearest federal district court about their ADR programs. An ADR administrator can be a valuable source of information as well as a potential guest speaker or panelist. Also, a number of websites can be helpful. For example, *http://www.uscourts.gov/* provides access to all federal courts. The on-line resource to accompany this text includes a number of helpful links.

INTRODUCTION

The ADR Movement

The Introduction dates the beginning of the ADR movement to the 1970s and 1980s and discusses a number of factors that influenced the ADR movement, including the mounting costs and delays inherent in the judicial system; the fact that few cases were actually resolved by litigation; the escalating confrontational nature of society; the difficulty of collection; the limited nature of judicial remedies; and the existence of unconnected forms of dispute resolution.

The Introduction discusses experimentation using private dispute resolution processes in public venues and public dispute resolution processes in private venues and experimentation involving dispute resolution processes. Also discussed is the shift from experimentation to the institutionalization of ADR processes.

Problem I-1 and Problem I-2 are designed to give students an understanding of which ADR processes are available through the courts in their locale. Problem I-1 involves federal courts; Problem I-2 involves state courts.

Problem I-1. Problem I-1 asks students to visit the federal court website at *http://www.uscourts.gov*. From this site, students can find the homepage of their district. Students may want to bookmark their federal district court's Web page. Students may learn which ADR processes are sponsored by their federal district court. The fact that ADR processes are not listed does not mean that the district does not offer such programs. A follow-up telephone call to the office of the clerk of the court may provide additional information.

Problem I-2. Problem I-2 asks students to search the Web for the homepage of the state trial court. A telephone call to the office of the clerk of the court may also provide the court's website. If such a website exists, students could compare the federal district court's and state trial court's websites for content, especially for information concerning court-sponsored ADR programs.

Students who are from a different federal district or from a different state trial court district may be asked to use their own district.

Problem I-3. Private ADR services have existed for years. With the advent of the Internet, a number of private ADR services have sought to use the new technology. Problem I-3 asks students to find three such *on-line* dispute resolution services. Problem I-3 gives students suggestions that will facilitate their search. Once these services are found, students are asked to compare the three.

Students may be asked whether they would prefer to use an *on-line* service rather than the more traditional in-person service. What are the advantages and disadvantages of each?

Some services provide ADR services by conference telephone calls. What are the advantages and disadvantages of telephonic ADR?

PART

I

An Overview of ADR

Introduction

Part I, in two chapters, presents an overview of the dispute resolution process.

Chapter 1. The Methods of Dispute Resolution
Chapter 2. The Participants

CHAPTER

1 The Methods of Dispute Resolution

Alternative Methods of Dispute Resolution categorizes the array of dispute resolution process into five groups. The group is defined by who participates in the process and who resolves the dispute. The groups form a continuum beginning with only one party participating to a neutral third party telling the parties how their dispute is to be resolved.

1. *Unilateral action in dispute resolution.* Only one party participates in the process, and that party resolves the dispute.
2. *Bilateral action in dispute resolution.* Both parties participate in the process, and it takes both to resolve the dispute.
3. *Third party evaluation as a prelude to dispute resolution.* Both parties and a neutral third party participate in the process, although another process is required to resolve the dispute.
4. *Third party assistance in dispute resolution.* Both parties and a neutral third party participate in the process, although it is only the two parties who resolve the dispute.
5. *Third-party adjudication in dispute resolution.* Both parties and a neutral third party participate in the process, and the third party issues a ruling that resolves the dispute for the parties.

Figure 1-1 at the end of the chapter offers a comparison among the various methods of dispute resolution. Each process is considered as to availability, who selects the process, who participates in the process, who decides the outcome, and on what the outcome is based. Also, a figure is included at the end of each chapter that deals with the characteristics of the specific method of dispute resolution discussed in that chapter. This overview includes availability, process selection, the participants, preparation, the process, fairness, the outcome, costs, precedential value, and impact on future relationship. Figure 1-1 and the end-of-chapter figures may prove helpful when answering a number of problems in this chapter that ask students to evaluate a process as it relates to a set of facts.

	Who Participates?			Who Decides the Dispute?		
	One Party	Both Parties	Both Parties and Neutral Third Party	One Party	Both Parties	Neutral Third Party
Unilateral Action inaction acquiescence self-help	X			X		
Bilateral Action negotiation		X			X	
Third-Party Evaluation early neutral evaluation summary jury trial			X			
Third-Party Assistance ombuds private mediation court-sponsored mediation mini-trial			X		X	
Third-Party Adjudication court-annexed arbitration mediation-arbitration litigation private judging			X			X

FIGURE 1-1 The ADR Continuum

UNILATERAL ACTION IN DISPUTE RESOLUTION

Inaction, acquiescence, and self-help are classified as unilateral methods of dispute resolution because only one party participates in the process and that party resolves the dispute.

Inaction is the most common form of dispute resolution. One party voluntarily withdraws from the dispute.

> *Problem 1-1.* Problem 1-1 investigates why one party would decide not to pursue the other party to the dispute. Based on the given set of facts, students are asked to project why Kathleen would select inaction as her method of dispute resolution.
>
> *Problem 1-2.* Problem 1-2 is a follow-up to Problem 1-1. Problem 1-1 dealt with a hypothetical set of facts. Problem 1-2 asks students to reflect upon their own conduct. Have they ever used inaction as their method of dispute resolution? Why did they choose that method over other methods? The discussion may lead students to conclude that inaction is a form of dispute resolution and that it is commonly used.

Rather than withdrawing from the dispute, inaction as a method of dispute resolution may take a more tentative form—"wait and see."

> *Problem 1-3.* Problem 1-3 probes when action may be premature because all the facts are not known. What facts might not be known at this time? Will these facts be revealed with time? Should a neighbor force the issue by reporting the violations to the police? Will the prob-

lem take care of itself? Problem 1-3 does not directly affect the party who is deciding whether to "wait and see."

Problem 1-4. Problem 1-4 does directly affect one of the parties. Should Jason wait to see what the other party does? Does he expose himself to any risks if he uses inaction?

Problem 1-5. Problem 1-5 is a follow-up to Problem 1.3 and Problem 1.4. Problem 1-3 and Problem 1-4 dealt with hypothetical sets of facts. Problem 1-5 asks students to reflect upon their own conduct. Have they ever used the "wait and see" version of inaction as their method of dispute resolution? Why did they choose that method over other methods?

Acquiescence is another common form of dispute resolution. Acquiescence occurs when one party gives up and accedes to the demands of the other.

Problem 1-6. Problem 1-6 relates back to the facts in Example 1-5 where the tenants terminated their lease prematurely and paid the penalty rather than pursue the matter with the apartment manager. Problem 1-6 probes the motives of the tenants. Why would they pay? Problem 1-6 also investigates negotiation as an alternative to acquiescence. If negotiation fails, is acquiescence still available or have the stakes been raised so a more aggressive form of dispute resolution is in order?

Problem 1-7. Problem 1-7 is a follow-up to Problem 1-6. Problem 1-6 dealt with a hypothetical set of facts. Problem 1-7 asks students to reflect upon their own conduct. Have they ever used acquiescence as their method of dispute resolution? Why did they choose that method over other methods?

Self-help is the opposite of inaction. Inaction abandons rights; self-help asserts rights. Under self-help, an aggrieved party pursues relief without the assistance of the courts.

Self-help often occurs when a contract has been breached. One party refuses to perform after the other party has breached.

Problem 1-8. Problem 1-8 relates backs to Example 1-6. Problem 1-8 probes the motives of Multiplex. Why would they withhold payment?

Problem 1-9. Problem 1-9 is a follow-up to Problem 1-8. Problem 1-8 dealt with a hypothetical set of facts. Problem 1-9 asks students to reflect upon their own conduct. Have they ever used self-help as their method of dispute resolution? Why did they choose that method over other methods?

BILATERAL ACTION IN DISPUTE RESOLUTION

Negotiation is a bilateral method of dispute resolution. The parties participate in the process, and the parties resolve their own dispute.

Problem 1-10. Problem 1-10 relates back to Example 1-8. Problem 1-10 probes the motives of Roberto and Isabella. Why would they prefer negotiation as their method of dispute resolution?

If Isabella had refused to negotiate and had unilaterally selected inaction (thereby keeping both the ring and the BMW), what would Roberto's options have been?

- Is doing nothing and letting Isabella keep the ring and the BMW a viable option for Roberto?
- Could Roberto exercise self-help and seize either the ring or the BMW without committing a violation of the criminal law or a civil wrong such as trespass or conversion?
- Should Roberto file a civil action against Isabella? What would be his cause of action? Does he have a reasonable opportunity to prevail? Could filing the civil action lead to settlement discussions?

If Isabella had refused to negotiate and had unilaterally selected acquiescence (thus giving Roberto both the ring and the BMW), Roberto would be sitting in the catbird seat and would need to take no further action. He has what he wants.

Acquiescence and negotiation may blend together. Acquiescence may be viewed as negotiation with little debate. One party states his or her terms, and the other agrees.

Problem 1-11. Problem 1-11 is a follow-up to Problem 1-10 and focuses students on their own experiences with negotiation. Students will discover that most interaction involves negotiation. Situations may range from when or where to go to lunch to buying a car or a house.

THIRD-PARTY EVALUATION AS A PRELUDE TO DISPUTE RESOLUTION

The title "Prelude to Dispute Resolution" was chosen because neither *early neutral evaluation* nor *summary jury trial* has the resolution of the dispute as the last step in the process. Both processes lead up to the opportunity for the parties to discuss the resolution of the dispute, but this opportunity is not a part of the process. Therefore, both processes take the parties to the doorstep of resolution. Early neutral evaluation ends with the parties receiving the evaluation from the neutral third party. Summary jury trial ends with the parties receiving the jury's verdict (if one is reached) and the jurors' evaluation of the case. In both processes, the parties must then evaluate what they have heard and enter settlement discussions.

THIRD-PARTY ASSISTANCE IN DISPUTE RESOLUTION

Ombuds, private mediation, court-sponsored mediation, and mini-trial take the parties beyond evaluation and into dispute resolution.

Ombuds may be categorized as classical ombuds, organizational ombuds, and advocate ombuds. Classical ombuds are found in the public sector. They receive complaints from the general public or from members of a governmental agency concerning the performance of the agency or individuals within the agency. Organizational ombuds are found in both the public and private sector. They receive complaints from members of the organization concerning the organization or members of the organization. Both the classical ombuds and the organizational ombuds conduct informal inquiries, discuss organizational policies and options with those seeking their assistance, and may, if appropriate, suggest modifications in policies or

procedures within the organization. Advocate ombuds may be found in either the public or private sector. They listen to complaints and advocate on the part of individuals or groups for change in policies or procedures.

Although ombuds offices vary a great deal, all share the same essential characteristics: independence, impartiality in conducting inquiries, and confidentiality.

Problem 1-12. Problem 1-12 involves the student in the world around him or her. Do students know whether their school has an ombuds, whether their employer has an ombuds, whether their city or county government has an ombuds, and whether any of their state agencies has an ombuds?

They may find this information by using the telephone (i.e., calling the central switchboard of their school or city hall) or by searching the Internet.

In addition to finding ombuds offices, a student might be asked to classify the office: classical ombuds, organizational ombuds, or advocate ombuds.

Private mediation introduces a third party as an intermediary between disputing parties. The private mediator is hired by the parties, is neutral, and directs the process. The parties retain the power to resolve the dispute.

Problem 1-13. Problem 1-13 relates to Example 1-10 that dealt with a dispute between a pilots' union and its airline's management over contact renegotiation. Example 1-10 illustrates the use of mediation in a contract renegotiation dispute. Problem 1-13 probes why either party selected private mediation as its method of dispute resolution. Several facts should be considered: relatively modest cost of this process when compared to other processes, such as strike; the need to maintain a continuing relationship, which includes good will; the ability to retain control over the outcome; the ability to design an outcome whereby their interests are best served; the speed of the process (initiating the process, conducting the process, reaching the outcome, and implementing the outcome).

Problem 1-14. Problem 1-14 has the students relate private mediation to their personal experiences. Have they been involved in a private mediation? Often a parent will mediate a dispute between siblings. This private mediation is informal, and the disputants may not consider that they have participated in a mediation. A number of schools have implemented peer mediation to help students resolve their disputes with their peers.

When would students perceive private mediation to be useful?

Court-sponsored mediation may be offered by a court and becomes part of the litigation process. Therefore, the overall process begins with a formal complaint stating a legal cause of action that is filed with the clerk of the court. A court-appointed mediator (sometimes called a settlement judge) controls the mediation process, and the parties control the outcome of their dispute.

Mini-trial is not a trial, is designed for corporate type disputes, and has two stages. Mini-trials are usually private processes and not court-sponsored, although there is no reason why a judge could not host a mini-trial and be the neutral third party. The first stage is the summary presentation of evidence by the attorneys for each corporation to the panel (a decision maker from each corporation and a neutral third party). The second stage is a negotiation between the two corporate representatives who were members of the panel or a mediation that includes the neutral third party as the mediator.

The mini-trial is discussed after court-sponsored mediation because the first stage of the mini-trial, with its opening statement, formal presentation of facts, and closing argument, appears more adversarial than mediation. The mediation may occur in the second stage when the panel members discuss possible settlement.

THIRD-PARTY ADJUDICATION IN DISPUTE RESOLUTION

Third-party adjudication completes the spectrum that began with unilateral action. Third-party adjudication includes the adversarial methods of dispute resolution. Some processes permit more control over the process by the disputants than do others. In all third party adjudication processes, the neutral third-party resolves the dispute. When selecting one of these methods, the parties know that the dispute will have a resolution at the end of the process.

Private arbitration employs an arbitrator or a panel of arbitrators to resolve the dispute.

Problem 1-15. Problem 1-15 introduces the mandatory arbitration provision, one of many boilerplate terms that appear in reprinted form contracts.

Alice must arbitrate, rather than litigate, unless the clause is not mandatory; the provision is unenforceable (e.g., unconscionable or violates a consumer protection statute); or the state legislature prohibits such provisions (which is unlikely). If Alice refuses to arbitrate, she forgoes her claim.

Alice cannot unilaterally select another method of dispute resolution. She might, for example, convince Aqua Marine to negotiate rather than arbitrate. If the negotiations are unsuccessful, then the dispute will be arbitrated.

Another method such as mediation might have been better for Alice because she will be at a disadvantage in arbitration. She will probably be a first-time user of arbitration, while Aqua Marine may be a frequent user. In mediation, Alice might be able to work out a compromise that would get her what she needs and reduce the costs to Aqua Marine. Mediation would also give Alice control over the outcome; whereas, with arbitration, she faces a win/lose outcome.

Negotiation or mediation may also have been better for Aqua Marine. Arbitration will run up the costs for resolving this dispute and will create ill will with a customer. Aqua Marine also faces a win/lose outcome in arbitration.

Problem 1-16. Problem 1-16 is a follow-up to Problem 1-15. Where Problem 1-15 involved a predispute arbitration provision,

Problem 1-16 involves postdispute arbitration. Alice now has the choice of whether to arbitrate or seek another form of dispute resolution.

- Will Alice be at a disadvantage if she agrees to arbitration?
- Should she consider costs (including costs for the process and attorney fees), lack of control over the outcome, risks of an adverse decision, and time until resolution and finality before accepting Aqua Marine's offer to arbitrate?

Problem 1-17. Problem 1-17 ties back to Example 1-11 where the Firefighters' Union and the City agreed to private arbitration as the method for resolving a contract dispute. Problem 1-17 questions why each party would select private arbitration and why each would select the American Arbitration Association. Factors include costs of the process and attorney fees, time to reach decision, opportunity to present its side of the case, and the fact that a decision will be reached at the end of the process.

Problem 1-18. seeks information whether a student has used private arbitration or, if not, where a student would use private arbitration? A student who has been involved in private arbitration may have some insights to share with the class.

Court-annexed arbitration, when available, is a part of the pretrial process.

Problem 1-19. Problem 1-19 relates back to Example 1-12 and the Ford Explorer rollover accident. Problem 1-19 raises the question of whether these facts presented the proper case for court-annexed arbitration. Do the facts fit within the court's arbitration rules? See Appendix G, Appendix H, or Appendix I. Does the jurisdiction amount and the subject matter fit within the rules for court-annexed arbitration?

Note that, under the court rules, a party can seek a trial de novo. Do you believe that one of the parties could improve its position so as to justify a trial de novo?

Mediation-arbitration is explained with text only. The process begins with mediation; and, if the parties with the assistance of the mediator cannot resolve their own dispute, the process changes to arbitration where a third party will resolve the dispute for the parties.

Litigation includes two problems. As its name suggests, the process begins with private mediation and, if the parties cannot resolve the dispute, the process changes to private arbitration with the arbitrator resolving the dispute for the parties.

Problem 1-20. Problem 1-20 relates back to Example 1-14, a dispute between the Railroad and a village over whistle blowing. The village elected to litigate. Problem 1-20 probes why the village selected litigation. Consider costs, time to resolution, and the type of outcome sought. Also consider whether litigation was initiated to encourage another method of dispute resolution.

Although the village was the party that initiated the lawsuit, did the Railroad have opportunities to use other methods to resolve this dispute? Consider negotiation, mediation (private or court-sponsored), or arbitration.

Problem 1-21. Problem 1-21 asks students to list three disputes where litigation has been used. Focus the discussion on civil rather than criminal litigation. Students may use the newspapers or newsmagazines for reference.

Private judging divides into private judging by contract and private judging by court referral.

Problem 1-22. Problem 1-22 refers back to Example 1-15, which is built on the facts of Example 1-14, the train whistle blowing case. Example 1-15 changes the facts so the parties agree upon private judging (private judging by contract) rather than litigation. Would private judging be better for the parties than would litigation? Will the parties receive a more timely decision at a lower cost? Will the process be less confrontational and involve less discovery?

Problem 1-23. Problem 1-23 asks students to identify a dispute where private judging by contract would be appropriate. Students could return to their answer in Problem 1-21. Would private judging provide the parties with a better process and outcome than litigation? Check costs, degree of discovery, timeliness of outcome, finality, and the impact on the parties' continuing relationship.

ANSWERS TO THE REVIEW QUESTIONS

True/False Questions

1. False
2. True
3. False
4. True
5. True (although trials of equitable issues may result in decrees)
6. False
7. True
8. True
9. False (private arbitration awards are final with a few exceptions)
10. True

Fill-in-the-Blank Questions

1. litigation (could also be private judging)
2. summary jury trial
3. inaction
4. mini-trial
5. negotiation
6. court-annexed arbitration
7. private judging by contract
8. private arbitration
9. acquiescence
10. negotiation; private mediation; court-sponsored mediation

Multiple-Choice Questions

1. (a) inaction
   (e) acquiescence
2. (e) negotiation
3. (a) summary jury trial
   (d) early neutral evaluation
4. (e) settlement conference
5. (a) private arbitration
   (c) private judging
   (e) mediation-arbitration
6. (a) acquiescence
   (b) ombuds
   (c) court-sponsored mediation
7. (e) private judging
   (f) negotiation
8. (b) court-annexed arbitration
   (c) litigation
9. (c) negotiation
   (d) private mediation
10. (a) court-annexed arbitration
    (b) litigation

Short-Answer Questions

1. cost and delay
2. *Unilateral action.* Does not require the other party's cooperation. Unilateral action includes inaction, acquiescence, and self-help.
   Bilateral action. Requires the cooperation of both disputing parties. They must agree on the process and the outcome. A bilateral action is negotiation.
   Third-party evaluation. Is not a dispute resolution process in and of itself. Third-party evaluation prepares the parties for another dispute resolution process such as negotiation or mediation. Third-party evaluation includes early neutral evaluation and summary jury trial.
   Third-party assistance. Involves a neutral third party as a facilitator and not as the decision maker. Third-party assistance includes ombuds, mediation (private and court-sponsored), and mini-trial.
   Third-party adjudication. Involves a neutral third party who makes the decision for the parties. Third-party adjudication includes arbitration (private and court-annexed), mediation-arbitration, litigation, and private judging (by contract and by court referral).
3. Most commonly used ADR process: *inaction.* Most disputes are not worth more expense than required for inaction.
4. Least commonly used ADR process: *mini-trial* or *summary jury trial.* A mini-trial is limited to disputes between large corporations. In a summary jury trial costs are involved in a process that is not designed in itself to produce an outcome. Parties may not present their best case and use the process as discovery.

5. Arbitration is an adjudication process because a neutral third party hears the evidence and decides the outcome for the parties.
6. Court-annexed arbitration versus court-sponsored mediation: personal preference and why. This requires balancing availability, who participates, amount of preparation, nature of the process, fairness, creativity in formulating the outcome, costs, precedential value, and impact on the relationship.