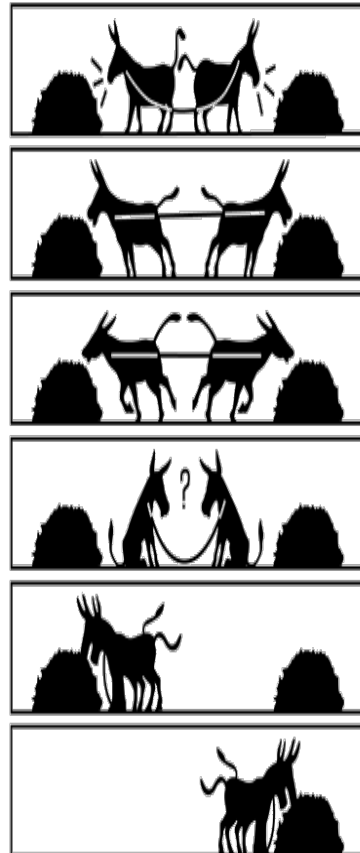


An Introduction to **Alternative Dispute Resolution**

Prepared By: Professor Joshua E. Bienstock
For Presentation at NYIT School of Management

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Resolving Disputes through Alternative Dispute Resolution



The ADR Continuum



The Dispute Resolution Continuum

Who limits the range of options and remedies available to the parties (the parties or a third-party neutral), and is the outcome the product of the parties' mutual assent or is it imposed on them by a third-party neutral?

Consensual

Adjudicative

Parties Decide Outcome

Neutral Decides Outcome



Parties Retain Control Over

**Facilitation
Negotiation**

Mediation

**Litigation
Arbitration**

Parties Cede

(Early) Neutral Evaluation

Summary Jury Trial

Settlement Conference

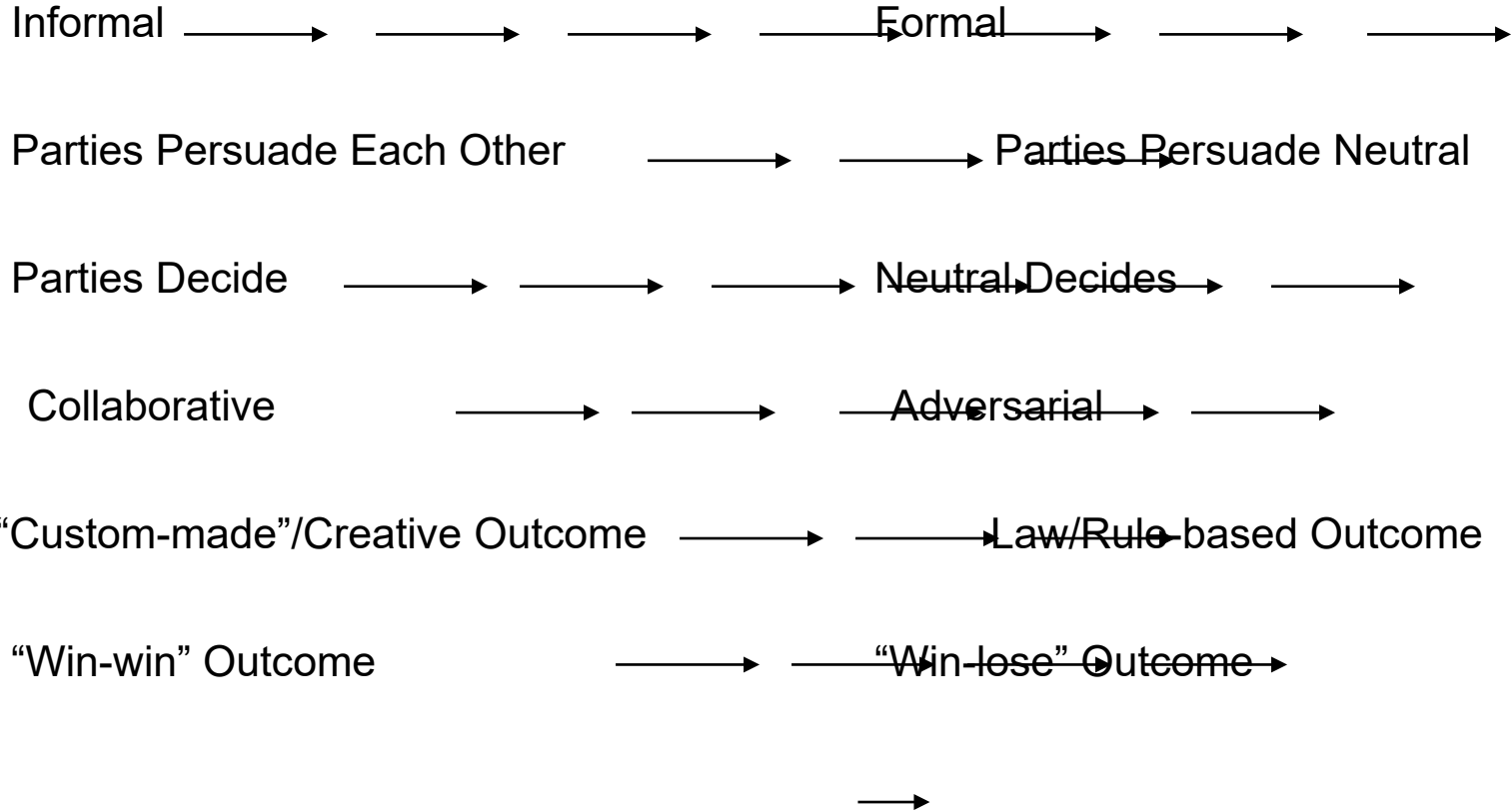


Informal

Extent to which the parties control entry into the process and the rules governing the process.

Formal

Process Continuum



Negotiation → Mediation → Neutral Evaluation → Non-binding Arbitration → Arbitration → Litigation

DISPUTE RESOLUTION PROCESS

DEFINITIONS

- **Mediation**: A private, voluntary dispute resolution process in which a third party neutral, invited by all parties, assists the disputants in: identifying issues of mutual concern, developing options for resolving those issues, and finding resolutions acceptable to all parties.
- **Arbitration**: A private, voluntary dispute resolution process where the parties to a dispute agree in writing to submit the dispute for binding resolution to a third party neutral, chosen pursuant to the agreement of the parties.
- **Litigation**: An involuntary, formal, public process for dispute resolution, where a government-appointed or elected judge and/or jury determines facts and decrees an outcome to legal causes of action based on adversarial presentations by each party.

DISPUTE RESOLUTION PROCESS

DEFINITIONS (Cont'd)

- **Collective Bargaining:** A negotiation process between an employer and a labor union, with respect to the wages, hours and working conditions of the employees represented by the union. The process culminates in the execution of a legally binding contract, which clearly delineates employees' rights and responsibilities.



MEDIATION:

ADVANTAGES, DISADVANTAGES AND SITUATIONAL USE

Advantages:

- ✓ Mediation is least intrusive form of third party involvement in a dispute. Parties remain control over vital decisions affecting their lives.
- ✓ Outcomes are tailored to the needs and interests of the parties, and represent the parties' own preferences.
- ✓ Since parties create the resolution and since mediators have a duty to ensure "durable" agreements, there is greater satisfaction with the outcome and higher level of compliance than with judicial decrees.
- ✓ Process addresses all negotiating issues raised by the parties and is not limited to legal causes of action.
- ✓ "Empowers" parties in that disputants understand the process and control the outcome.
- ✓ Improves parties capacity to resolve future disputes. Helps disputants learn to work together.
- ✓ Process is confidential. Parties can keep their affairs private.
- ✓ Process may be faster and cheaper than litigation.

Disadvantages:

- Process does not create precedents, and hence not “efficient” in that the same types of disputes are resolved again and again. (This criticism ignores the fact that mediation focuses on future arrangements between the parties, and, since each party’s needs and interests will vary, “precedents” are of little value.)
- Process does not create/refine and/or enforce societal norms for behavior.
- Process may advantage a more skillful or “powerful” party.
- Since mediation is voluntary, it is difficult to get another party to mediate. Suggesting mediation may indicate weakness.
- Process does not guarantee an end to the dispute. Mediation may result in no resolution.

Situational Use:

- Disputes among persons with an ongoing relationship.
- Disputes raising issues not easily to categorize into legal causes of action.
- Disputes where integrative/"win-win" solutions seem particularly appropriate.
- Disputes in which an enhanced level of understanding will facilitate future dealings.
- Disputes with many issues, suggesting the potential for beneficial trade-offs.

ARBITRATION:

ADVANTAGES, DISADVANTAGES AND SITUATIONAL USE

Advantages:

- ✓ Parties control process and select a mutually satisfactory neutral.
- ✓ Neutral has special expertise or “wisdom” appropriate for the subject matter of the dispute.
- ✓ Process is confidential. Parties can keep their affairs private.
- ✓ Arbitration can be faster and less expensive than litigation if the parties so tailor the process.
- ✓ Parties are assured a final, binding resolution.

Disadvantages:

- No formal precedents created. The process does not help define/refine societal norms.
- A “bad” decision cannot be appealed (except on very narrow grounds). (The free market is a check on the quality of arbitrators; those who render poor decisions will not be chosen in the future.
- Outcomes are “win/lose”. There is no possibility of integrative solutions.
- Adversarial nature of process inhibits parties’ ability to understand one another or create beneficial future arrangements.
- Process can only address legal causes of action, which the arbitrator has been given the power to resolve by the parties.

Situational Use:

- Disputes where publicity would disadvantage parties.
- Disputes where “expert” or a particularly trusted third party would render a more acceptable decision.
- Disputes where parties do not want to create a precedent.
- Disputes where parties want a fast, binding decision by a third party.
- Disputes where there is limited potential for an integrative resolution.

LITIGATION:

ADVANTAGES, DISADVANTAGES AND SITUATIONAL USE

Advantages:

- ✓ Process creates precedents, which help define/refine social norms. Thus, it is “efficient”, as same issues/cases need not be decided again and again.
- ✓ The process is involuntary, allowing a mechanism for forcing another party to resolve a dispute.
- ✓ Unsatisfactory decisions can be appealed.
- ✓ The public nature of the process is an advantage where dispute involves issue impacting on important societal concerns.
- ✓ 5. Adversarial process is an advantage for party seeking to “punish” his/her adversary and not wanting to further communications or relationship.

Disadvantages:

- Adversarial process inhibits parties' ability to understand or cooperate with one another and may foreclose mutually advantageous future relationships.
- Disputants are dependant on the discretion of a judge they cannot chose.
- The skill of the parties' advocates is of crucial importance. This disadvantages parties unable to pay or unsophisticated in finding skilled advocates.
- The process is expensive and time-consuming.
- Litigation only resolves issues which can be translated into legal causes of action. The parties' real concerns may be neglected.
- Process is "win/lose", sometimes "lose/lose". It does not allow for creative, integrative solutions.
- It is difficult for parties to understand the process ("disempowering"), which may result in lower compliance with judgments.

Situational Use:

- Disputes where there is a need for a precedent.
- Disputes where there is an important social issue at stake where a public forum is most appropriate.
- Disputes where the extreme adversarialness of the parties precludes a voluntary process.

Contrasts Between Negotiation/ Mediation and Arbitration/ Litigation

Negotiation/Mediation

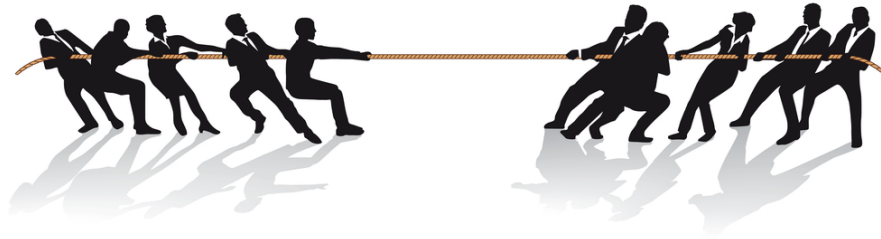
- less formal
- less costly
- less time consuming
- relationships preserved
- parties retain ownership of the issues
- parties persuade each other
- parties decide
- parties select the neutral in mediation
- predictable resolutions
- win-win resolutions
- customized resolutions
- parties control outcome
- confidentiality preserved
- compliance more likely
- resolution is more enduring

Arbitration/ Litigation

- more formal
- more costly
- time intensive
- relationships are threatened
- parties abdicate control over their outcome
- parties persuade a neutral
- neutral decides
- In litigation neutral is appointed
- outcome is uncertain
- win-lose resolutions
- law/rule based outcomes
- no control over neutrals decision
- open to public scrutiny
- compliance less likely
- Resolution is more precarious

FIVE APPROACHES TO DEALING WITH CONFLICT

- Accommodate
- Avoid
- Compromise
- Compete
- Collaborate



ACCOMMODATE (I LOSE, YOU WIN)

- Putting aside your needs and desires and acquiescing to the other person's requests and/or demands

APPROPRIATE:

- When a high value is placed on your relationship with the other party.
- When outcome is of low importance to you, but is of high importance to the other party.

AVOID

(I LOSE, YOU LOSE)

- Side-stepping or withdrawing from the conflict situation.
- When you prevent/postpone conflict, it remains unresolved and neither party wins.

APPROPRIATE:

- When you are unprepared for the conflict. Can be used as a short-term strategy for buying time and figuring out how to handle the conflict.

COMPROMISE (WE BOTH WIN, WE BOTH LOSE)

- Resolving the conflict quickly and efficiently by seeking a fair and equitable split between the two positions.
- Each side concedes on some of their issues in order to win others. Both parties must be flexible and willing to settle for a satisfactory resolution of their major issue.

APPROPRIATE:

- When there is a degree of trust between both parties and/or the facts of the real needs of both parties are mutually understood.

COMPETE (I WIN, YOU LOSE)

- Seeking to win your position at the expense of the other party losing theirs.

APPROPRIATE:

- When only one party can achieve their desired outcome.
- Best used when outcome is extremely important and relationship is of low importance.

COLLABORATE (I WIN, YOU WIN)

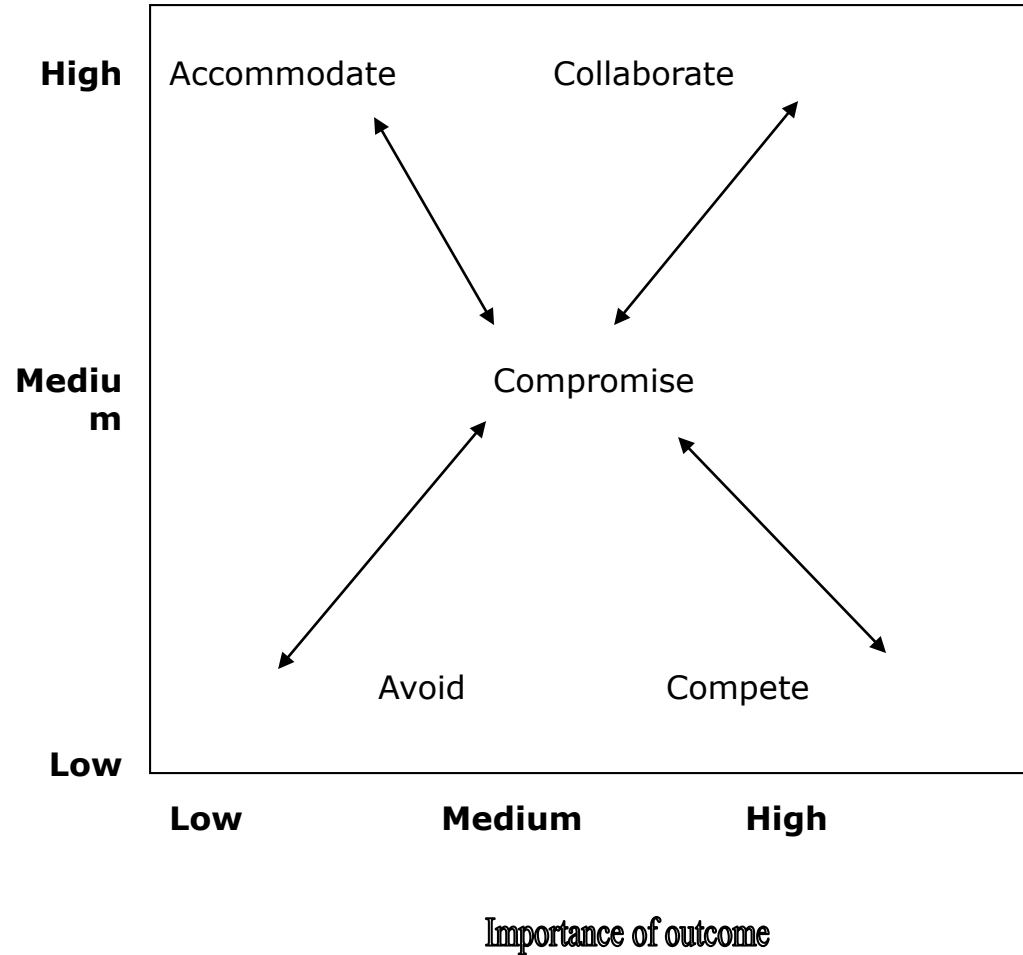
- Cooperating with the other party to try to resolve a common problem to a mutually satisfying outcome.

APPROPRIATE:

- When you join with the other party to compete against the situation, instead of each other.
- Each side must feel that the outcomes gained through collaboration are better than they could achieve on their own.

The Five Conflict Resolution Styles

Importance of relationship



WHICH STYLE SHOULD YOU USE?

- 1. Recognize all five styles and be prepared to counter any of them.
- 2. Know which style is most comfortable for you and which ones you are least comfortable with.
- 3. Develop basic skills in the five styles so that you can choose among them.
- 4. Learn to diagnose situations in order to pick the best style for each.

DIAGNOSING THE SITUATION

There are two basic questions we should ask when we are involved in any negotiating situation:

1. How important is it for me to get the outcome I want in this situation?
2. How important is it for me to take care of the other person's interests and make sure the conflict helps our relationship rather than hurting it?



Thank You!

Questions.....

