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Lesson Seven

Before you go to court

Alternative Dispute Resolution (Pozasądowe rozstrzyganie sporów)

Litigation is not the only way of **handling disputes**. The alternative is Alternative Dispute Resolution - ADR. Over the last several years ADR has greatly developed and has become an important first step in the dispute resolution process before starting the litigation process, i.e. a **lawsuit** and **court proceedings**. ADR refers to any means of resolving the controversies outside of the courtroom.

The rising popularity of ADR can be explained by the increasing **caseload** and queues in traditional courts, rising **costs** of litigation, time delays in the processing of lawsuits, greater confidentiality, and greater control over the selection of the individuals who will decide their dispute.

ADR typically includes, but is not limited to, negotiation, conciliation, mediation, and arbitration. Some of these programs are **voluntary**; others are **mandatory**.

While the two most common forms of ADR are arbitration and mediation, negotiation is almost always attempted first to resolve a dispute. It is the **preeminent** mode of dispute resolution.

In negotiation, participation is voluntary and there is no **third party** who facilitates the resolution process or **imposes a resolution**. Negotiation allows the parties to meet face to face in order to **settle a dispute**. The main advantage this form of dispute settlement is that it allows the parties themselves to control the process and the solution. Negotiation is a give-and-take process in which **concessions** should not be **made** for nothing in return. The most satisfying will be win-win solution when both parties feel they have **achieved** the satisfying **settlement**. The outcome of negotiation or the **reached compromise** should be confirmed in writing, since **gentlemen agreements** do not work in most cultures nowadays.

In mediation, there is a third party, a mediator, who facilitates the resolution process (and may even suggest a resolution, typically known as a "mediator's proposal"), but does *not* impose a resolution on the parties. Mediators are individuals trained in negotiations, who bring opposing parties together and attempt to find a **common ground** and work out a settlement or agreement that both parties



accept or reject. They are paid by the parties themselves. In some countries (for example, the United Kingdom), ADR is synonymous with what is generally referred to as mediation in other countries.

Arbitration is a simplified version of a trial involving limited discovery and simplified rules of **evidence**. In arbitration, participation is typically voluntary, and there is a third party, an **arbitrator** or an **arbitration panel**, who, as a private judge, imposes a resolution. To comprise a panel, either both sides agree on one arbitrator, or each side selects one arbitrator and the two arbitrators elect the third. Arbitration **hearings** usually last between a few days to a week, and the panel only meets for a few hours per day. The panel then deliberates and issues a written decision, or **arbitration award**. Opinions are not public record. Arbitration has long been used in labour, construction, and securities regulation, but is now gaining popularity in other business disputes. Arbitrations often occur because parties agree in contracts that any future dispute concerning the agreement will be resolved by arbitration. This **arbitration clause** is known as a 'Scott Avery Clause', i.e. in the contract parties promise not to take any legal action when handling any disputes that may arise between them. Although parties may appeal **arbitration outcomes** to courts when they do not honour the award, such appeals face an exacting standard of review. After the appeal the successful party is entitled to the **relief** specified in the award.

In collaborative law or collaborative divorce, each party has an attorney who facilitates the resolution process within specifically contracted terms. The parties reach agreement with support of the attorneys (who are trained in the process) and mutually-agreed experts. No one imposes a resolution on the parties. However, the process is a formalized process that is part of the litigation and court system.



Glossary

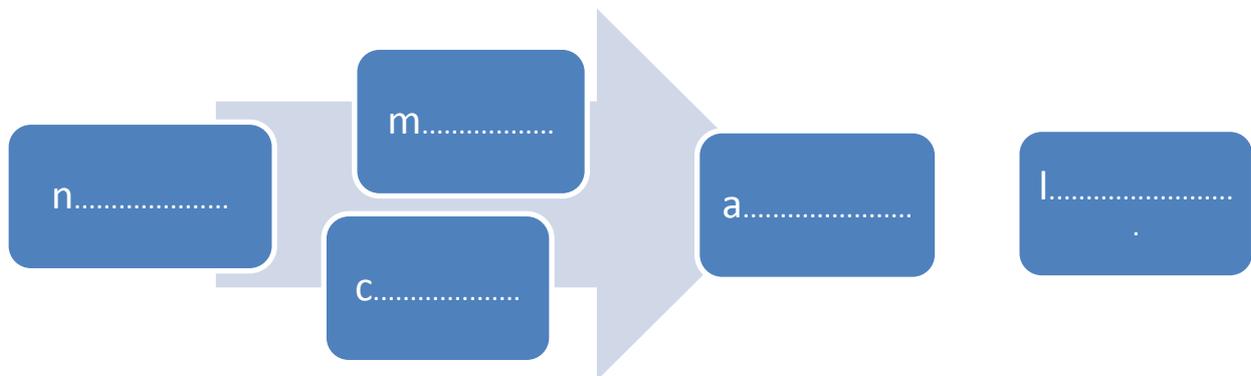
to achieve settlement	- osiągnąć porozumienie
alternative dispute resolution	- pozasądowe rozstrzygnięcie sporów
arbitration award	- orzeczenie arbitrażowe / sądu polubownego
arbitration clause	- klauzula arbitrażowa
arbitration outcome	- orzeczenie arbitrażowe
arbitration panel	- komisja arbitrażowa
arbitrator	- rozjemca / sędzia polubowny
caseload	- klienci
common ground	- wspólna płaszczyzna
court proceedings	- postępowanie sądowe
evidence	- przesłuchanie
gentlemen agreements	- umowa dżentelmeńska
to handle disputes	- rozwiązywać spory
hearing	- rozprawa / przesłuchanie
to impose a resolution	- narzucić rozwiązanie
lawsuit	- proces sądowy
litigation	- spór sądowy

to make a concession	- czynić ustępstwa
mandatory	- obowiązkowy
preeminent	- przodujący
to reach a compromise	- osiągnąć kompromis
relief	- rekompensata
to settle a dispute	- rozwiązać spór
third party	- osoby trzecie
voluntary	- nieobowiązkowy, dobrowolny

Exercises

Reading Comprehension

- After reading the text above fill in the names of the principal stages of the Dispute Resolution Process



Lexis

- Fill in the gaps in the table below with the words related to the given verbs

VERB	NOUN (PERSON)	NOUN	ADJECTIVE
to negotiate	1..... 2.
to mediate
to arbitrate	1. 2.
to conciliate
to litigate

- His work as a paid (negotiate) caused him to travel through most of New South Wales (arbitrate) in disputes, taking part in (conciliate) and talking, talking, talking...
- The papal (mediate), the Archbishop of Ravenna, proposed a meeting between English and French (negotiate) at Bruges in March 1375.
- The terms of employment are (negotiate) and could include secondment (i.e. temporary relocation) for a period of not less than three years.

4. 'Scott Avery Clause' is an (arbitrate) clause of the contract, i.e. a promise not to take any legal action when handling any disputes arising between parties to contract.

2. Divide the words that can be used to describe different kinds of disputes into the following groups or create your own “umbrella terms” which will help you remember the collocations.

financial legal industrial labour domestic commercial religious

territorial pay trade ideological boundary land border family political

DISPUTE			
COMPANY LAW	FAMILY LAW	POLITICS	OTHER

3. Below you will find the list of verbs that can go into partnerships with the noun DISPUTE. Use some them in the sentences below as synonyms to the verbs used in the original text.

deal with, handle, adjudicate, decide, resolve, settle, solve, lose, win, avoid,
prevent, be open to, enter, lead to, provoke, arise, begin, erupt, escalate

The Polish Football Association has settled 1. (.....) a dispute with its government that threatened its right to co-host Euro 2012.

Uniform Video Services Local Franchise Act sets up a process to handle 2. (.....) disputes between cable television customers and a service provider

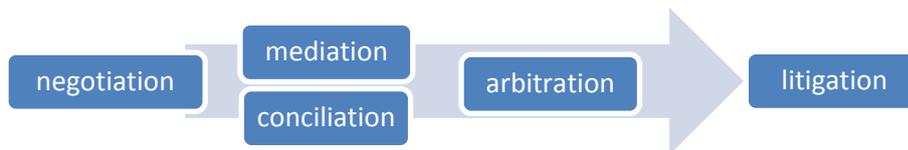
In partnerships disputes can arise 3. (.....) between partners and third parties as well as between partners.

KERC did not have any jurisdiction to adjudicate 4. (.....) disputes between a consumer and a supply company under provision 86 (F) of the Electricity Act.

Rising healthcare costs provoke 5. (.....) a dispute between employers and pharmaceutical companies.

Answers

Reading Comprehension



Lexis

1.

Verb	Noun (person)	Noun	Adjective
to negotiate	negotiator	negotiation	1. negotiating 2. negotiable
to mediate	mediator	mediation	mediatory
to arbitrate	1. arbiter 2. arbitrator	arbitration	arbitrary
to conciliate	conciliator	conciliation	conciliatory
to litigate	litigant	litigation	litigious

1. His work as a paid negotiator caused him to travel through most of New South Wales arbitrating in disputes, taking part in conciliations and talking, talking, talking...
2. The papal mediator, the Archbishop of Ravenna, proposed a meeting between English and French negotiators at Bruges in March 1375.
3. The terms of employment are negotiable and could include secondment for a period of not less than three years.
4. 'Scott Avery Clause' is an arbitration clause of the contract, i.e. a promise not to take any legal action when handling any disputes arising between parties to contract.

2.

DISPUTE			
COMPANY LAW	FAMILY LAW	POLITICS	OTHER
Industrial	Domestic	Border	Legal
Labour	Family	Boundary	
Pay		Land	
Trade		Territorial	
Commercial		Political	
Financial		Ideological	
		Religious	

3.

1. solved / resolved / adjudicated
2. deal with / adjudicate / decide / solve / resolve / settle
3. begin / erupt
4. decide / solve / resolve / deal with / settle
5. lead to / escalate