

LW2903 Business and Law

Lecture 12

Alternative Dispute Resolution

Alternative Dispute Resolution

- Traditional way to solve disputes is by litigation
- Disadvantages of litigation

Alternative Dispute Resolution – ADR

ADR needed for various reasons:

- i) Complexity of cases
- ii) Trials can be excessively long and formal
- iii) Cost of litigation rose dramatically in recent years
- iv) People not qualified for legal aid
- v) ^{訴訟} Litigation can be extremely stressful
- vi) Litigation might not always be the most useful tool
- vii) Private matters will be disclosed in open court
all personal matters will be disclosed

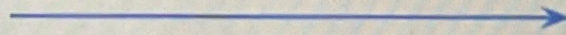
LLB (4)

PCLL (1)

Training Contract (2)

Pupillage (1)

Solicitor - Client



Barrister - Trial



Judge

Alternative Dispute Resolution – ADR

- Three main forms of ADR:
 - Arbitration
 - Mediation
 - Negotiation

Alternative Dispute Resolution – ADR

- Arbitration is defined as:
- “[a] method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.” Black’s Law Dictionary (2004)

Alternative Dispute Resolution – ADR

- Arbitration
- The most formal alternative method of ADR
- Involves a third party to act as an arbitrator 和解人員 (不幫任何一邊)
- Decision is **binding** upon parties
- Mostly used for commercial disputes
- Hong Kong International Arbitration Centre (HKIAC)
- Governed by the Arbitration Ordinance (Cap 609)

Arbitration Ordinance (Cap 609)

- Provides the basic framework for the conduct of arbitrations in Hong Kong
- UNCITRAL Model Law
- Parties are free to agree on how the dispute should be resolved

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Alternative Dispute Resolution – ADR

Advantages of arbitration *(serve both side)*

- i) The decision is binding and final and are not usually subject to challenge (as opposed to the courts)
- ii) Arbitral awards enjoy great international recognition
- iii) Parties have more freedom: language, place, procedures to be followed
- iv) Arbitrators are have specialized skills
- v) Confidentiality

Alternative Dispute Resolution – ADR

Disadvantages of arbitration

- i) All formalities are **bypassed**
- ii) Can fairness be always ensured?
- iii) May not be possible to review the decision
- iv) Rule by law or man?

Alternative Dispute Resolution – ADR

- Mediation
- Neutral third party appointed to achieve a resolution without recourse to the courts
- An independent person helps to reach an agreement
- Parties are free to accept or reject
- If accepted between parties, it will become an agreement between the parties

Alternative Dispute Resolution – ADR

- High Court Practice Direction 31

≠ negotiation (∵ nego have no third party)

- mediation not mandatory but courts may penalise a party who unreasonably fails to enter into mediation

plaintiff can sue first / choose to mediation, but the defendant reject, and the plaintiff finally win, court will punish defendant (fee)

Alternative Dispute Resolution – ADR

- Negotiation
- Voluntary informal process
- No third party is involved

