

Diploma in Law

Lecture 15: Alternative Dispute Resolution (Part 2)

Lecturer: Dr. Désirée Attard
Date: Wednesday 6th May 2026



**Diploma in Law
(Malta)**

Today's lecture:

- Forms of ADR (Part 2)



ADR - quick revision

A process whereby a third neutral party (e.g. mediator) helps guide parties in a dispute to come to an agreement without entering into litigation before the courts.

ADR can include any system which acts as an alternative to litigation to resolve disputes between parties.

Litigation is not always the best option and does not always lead to the best outcome - disputes can be lengthy and expensive. ADR seeks to offer mechanisms that are reasonably quick and accessible to a wider group.

The process can be formal or flexible, voluntary or involuntary, and may result in a binding decision made by a third party, or by the parties themselves (adjudicative / non-adjudicative).



Last week's forms of ADR:

- Negotiation
Informal, flexible, can be used for most disputes
- Early Neutral Evaluation
Strengthens positions through an informed expert opinion - a reality check
- Conciliation
Through the conciliator, the dispute is assessed through an expert's eyes with advice on the matter and potential steps
- Ombudsmen
Offer ADR & investigations in Government maladministration
- Arbitration
A formal, but private forum with legally binding awards
- Financial Arbiter
A specialised ADR provider for consumers against financial service providers



Forms of ADR - *The Consumer Authority*



MCCAA

The Malta Competition and Consumer Affairs Authority is also an ADR provider for consumers and traders:

- Where there are no sector specific ADR bodies (e.g. the Arbiter for Financial Services)
- Addresses domestic & cross-border disputes
- Concerning contractual obligations from sales or services contracts between a trader and consumer established & residing in the EU respectively.

Process is voluntary = both parties must submit to the ADR process.

MCCAA

Procedure:

- Consumer must first attempt to contact the trader and resolve the matter directly
- Disputes are time-barred by 2 years from date of contact
- Consumer registers complaint online or in writing to the MCCAA
- Trader is notified and asked to confirm participation in the ADR within 10 days
- An ADR officer is appointed to analyse the complaint
- Officer ensures the dispute is within MCCAA's competence
- Ensures all information has been supplied
- There is no conflict



MCCAA

Procedure:

- The Officer may request further information
- A date for an ADR session is appointed
- During the session, the parties make submissions and present documents / expert opinions
- Other sessions are scheduled if necessary
- Once submissions are concluded, the Officer compiles a report



MCCAA

Procedure:

- The report:
 - Summarises facts of the case
 - Includes the documents submitted
 - Minutes of the sessions held
 - Formulates the outcome in the form of a proposed solution to the dispute
 - Gives a statement on the grounds backing the outcome

MCCAA

Procedure:

- The parties have 3 days to give their written consent to the proposed solution. In this case the solution becomes a written agreement with the legal effect of a private writing
- The entire process is to be concluded within 90 days
- The entire process is free of charge and legal assistance is optional
- Where the proposed solution is not consented to, ADR is still concluded and judicial redress may be sought

Forms of ADR - *Med-Arb*



Med-Arb

- A hybrid process combining mediation and arbitration
- Parties first agree that they will attempt mediation, and that if that fails, arbitration with a binding outcome is to follow
- Mediation begins - with sessions to make offers / counter-offers and discuss issues
- If mediation fails, the mediator assumes the role of an arbitrator, who then gives a binding decision

Med-Arb

- Benefits:
 - closure
 - an arbitrator that is already familiar with the dispute
- Pitfalls:
 - confidentiality concerns
 - lack of impartiality
 - pressure to settle (due to looming binding decision)

Forms of ADR - *Mediation*



Mediation

***Mediation** means a process in which a mediator facilitates negotiations between parties to assist them in reaching a voluntary agreement regarding their dispute (art. 2)*

- Regulated by Cap 474 of the Laws of Malta - the Mediation Act
- Negotiation assistance: a mediator (neutral third party) will assist in solving a dispute through compromise and a constructive outlook at the issues.
- For mediation to work, it cannot be focused on blame but on seeking solutions.
- Requires good faith from parties and a common goal to reach a settlement in order to succeed

Mediation

The Malta Mediation Centre is the legal entity which provides a mediation forum where all mediation may be referred to.

Disputes are referred for mediation:

1. Voluntarily - *the parties submit their request jointly*
2. By Court order or Decree - *where litigation has already started but the court considers it appropriate to attempt ADR through mediation*
3. By Law - *any law requiring mediation as a mandatory step, or by contractual clause obliging parties to enter into mediation to solve disputes*



Mediation

Disputes involving:

- civil
- family
- social
- commercial
- industrial

matters can be referred for mediation.

Mediation cannot apply for disputes requiring a legal ruling or punitive damages.



The Mediator

Mediator means a neutral, qualified, and impartial individual who conducts a mediation (art. 2)

- The Centre has a list of mediators who are qualified to carry out the duties & functions of a mediator in one or more sectors (M.A. Mediation, experience, training, competence).
- A mediator must observe high standards of conduct to ensure the integrity & fairness of the process.
- The mediator's principal role is to assist and facilitate a solution between the parties. They are to manage the process but not the discussion / outcome.
- They assist in the search and exploration for settlement, but they do not have the role of a judge.

The Mediator

Role of Mediators:

- set up the first meeting
- during said meeting, they will ask the parties to sign the Centre's model mediation agreement, setting out the terms for the process
- describe their role and explain the mediation process
- ask the parties whether they consent to separate meetings
- invite parties to briefly describe their perspective
- ask questions to clarify as necessary

The Mediator

Role of Mediators:

- as a negotiation facilitator, they will introduce exploration of different ways to solve the issue at hand
- identifies the parties' interests and aims, what is fixed and what is negotiable
- encourages parties to see each other's perspectives
- encourages parties to consider options that are of mutual benefit
- spells out the best and worst alternatives to a negotiated settlement
- actively listens to the parties and gives feedback to enhance collaboration
- creates a situation of trust in the mediator and the process



The Mediator

Role of Mediators:

- tests arguments, keeps parties grounded
- reminds them of the benefits of a negotiated settlement vs litigation
- keeps the important issues at the fore of the arguments made
- brainstorms solutions with the parties, encouraging collaboration
- must be able to diffuse tension, negative comments and crossfire and retains focus on the task
- must be able to acknowledge and empathise with highly emotional points and issues and keep a neutral state at all times
- must have patience and tact - mediation is a slow process

The Lawyer

Role of Lawyers in mediation:

- legal assistance is not mandatory in mediation, but when done right it can be of assistance
- litigation lawyers often feel unease in mediation, because the atmosphere is so different.

From guard dog → guide dog

- lawyers must make sure they change their mindset in order to be beneficial to their clients
- *Before mediation:* lawyers should -
 - prepare the client on the procedure to ease their mind on what they will be facing
 - actively encourage the client to voice their position respectfully while listening to the other party
 - remind them of their best and worst alternatives to ADR
 - prepare on the issue specifically

The Lawyer

Role of Lawyers in mediation:

- the lawyer also prepares the relevant documents / evidence to supply the mediation with correct facts
- be ready to adapt and seek flexible solutions to the dispute in collaboration with the other party
- be willing to be passive - in mediation it is the client that must speak - but assist in keeping discussions focused
- emphasise the client's flexibility and willingness to reach an agreement
- be ready to intervene to advise on legal positions, rights, and duties

The Lawyer

Role of Lawyers in mediation:

- maintain a positive environment both through their behaviour as well as their client's
- be ready to react to new information during mediation
- the lawyer is crucial when an agreement is reached to formalise the agreement in the appropriate manner after mediation
- explain to the client the next steps to implement the agreement



Confidentiality

- the cornerstone of the mediation process
- anything said during mediation is confidential and without prejudice
- nothing - including documents - can be admissible as evidence in litigation
- the mediator cannot be summoned to testify **but:**
 - may disclose to court any information with the parties' consent
 - or where it is necessary to prevent harm
 - or where it is necessary to implement or enforce the agreement reached

Confidentiality

- at the very outset of proceedings, the mediator must ensure that parties understand that confidentiality is paramount
- parties will be required to sign the mediation agreement containing confidentiality clauses
- if individual meetings are held, information so disclosed cannot be communicated to the other party by the mediator
- crucial to enable open dialogue and trust
- can also be prejudicial to the mediator - who may not be able to dispell accusations of misconduct, for example

The Mediation

- A mediator is appointed - *fees apply if chosen by the parties, free if court appointed*
- first meeting is held - parties may choose to be legally assisted
- further meetings are held as necessary
- mediation ends when:
 - parties execute a written agreement solving the dispute in whole or in part
 - mediator states in writing that the mediation is terminated
 - the mediator is of the opinion that the parties cannot solve their dispute
 - either one of the party abandons the process
 - 120 days have lapsed from the registration of the compulsory mediation

The Mediation

Tariffs:

- if mediator is court appointed = free
- if referred for mediation by a court or tribunal = €50
- family mediation = €35
- voluntary organisations = €35
- any authority established by law = €50
- disputes with no monetary value = €70
- any other dispute = €120





**Diploma in Law
(Malta)**



LERI PRI
VOCAT