

Brief Comparison between Mediation, Adjudication, Arbitration and Litigation

	MEDIATION	ADJUDICATION	ARBITRATION	LITIGATION
Definition	Negotiation with assistance of a third party (the mediator).	Submission of disputes by consensual agreement to a third party (the adjudicator) for an interim decision which will be binding unless the Court refuses leave to enforce decision or it is substituted by a final arbitral award or Court judgment. Legislation will introduce compulsory adjudication for the construction industry soon.	Submission of disputes by consensual agreement to a third party (the arbitrator) for a binding decision.	Process of making a civil claim in a Court of Law.
Time	Shortest period, may be as short as 1-2 days but depends on the skills of the mediator.	Very much shorter than arbitration and litigation. Adjudicator has 30 days to decide dispute.	May extend over a long period if hearing protracted; it may take months or even years to conclude. Procedure and time frame to be agreed by parties.	Longest period because of backlog of cases in Court.
Costs	Lower than arbitration costs.	Lower than arbitration costs because of faster hearing.	Higher than mediation and generally higher than litigation because of thoroughness and expediency.	Expensive because it takes a long period.
Confidentiality	Private.	Private for consensual adjudication but may become public for compulsory adjudication as the adjudication decision has to be enforced through the Courts.	Private but may become public if there is Court intervention.	Public, judgment reported.
Formalities	Very informal.	Less formal than arbitration, strict rules of evidence do not apply. Procedural rules may be imposed by nominating body.	Less formal than litigation, strict rules of evidence do not apply but procedural rules may be based on institutional rules. Otherwise parties to agree or arbitrator to decide.	Formal, rigid, strict evidential and procedural rules are prescribed

Involvement of third party & control by parties	A third party, the mediator, facilitates the process but parties are in control of content and outcome.	A third party, the adjudicator, controls content and outcome of proceedings but parties have some degree of control choice of adjudicator, language, time, venue, applicable law and procedural rules.	A third party, the arbitrator, controls content and outcome of proceedings but parties have no control over choice of judge, language, time, venue applicable law and procedural rules.	A third party, the judge controls outcome of proceedings, parties have no control over choice of judge, language, time, venue of processing and procedural rules.
Remedies	Wide ranging, with assistance of mediator, parties need not confine themselves to strict legal remedies, creative remedies possible.	Monetary remedies only usually. Adjudicator's decision on non-monetary issues may not be binding.	More restricted, must be a legal remedy capable of being performed, subject to arbitrability, legislation and rules, creative remedies not possible.	Strict, only legal remedies, creative remedies not possible but judges can grant remedies which arbitrators cannot e.g. injunctions, security, subpoena, etc.
Degree of parties satisfaction with outcome	High because parties work together to reach settlement unless allegation of lack of independence on mediator, a win / win outcome	Low because decision imposed by adjudicator, win/lose outcome.	Medium despite win/lose outcome because decided by chosen trade or specialist arbitrator because award imposed by arbitrator, win / lose outcome.	Low because judgment imposed by Court, win /lose outcome.
Effect on relationship of parties	Preserves relationship.	May destroy relationship.	May destroy relationship.	High chance of destroying relationship because can be very acrimonious.
Communications	Mediator usually communicates with one party without the presence of the other during the process known as 'caucus'.	Generally both parties are expected to participate in proceedings. May even involve owner in proceedings although he is not the respondent. May proceed <i>ex-parte</i> if respondent doesn't participate. Legal representation is allowed.	General prohibition against <i>ex-parte</i> communications. Test of justifiable doubt on impartiality and independence of arbitrator.	Strict, <i>ex-parte</i> communications with judge only allowed during <i>ex-parte</i> hearings, parties to communicate with each other through their respective lawyers.
Certainty of achieving settlement	With assistance of mediator, there is more certainty of achieving settlement than in arbitration; depends heavily on skills of mediator.	Certainty in getting a decision at the end of the adjudication. Decision is interim in the sense that it may be replaced by a final arbitral award or Court judgment.	Certainty in getting an award at the end of the arbitration.	Certainty on getting a judgment at the end of trial.