





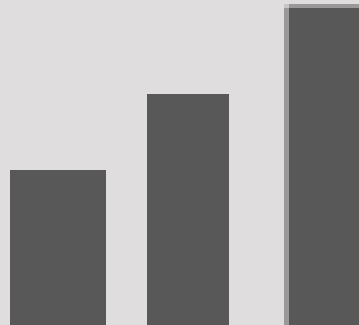


Construction Disputes Resolution



Outline of the Presentation

-  Definitions
-  Sources of Disputes
-  Forms of Dispute Resolution
 - Negotiation
 - Mediation
 - Arbitration
 - Litigation
-  Procedures in Dispute Management
-  Avoiding Dispute
-  Experience Sharing – Actual Dispute Case



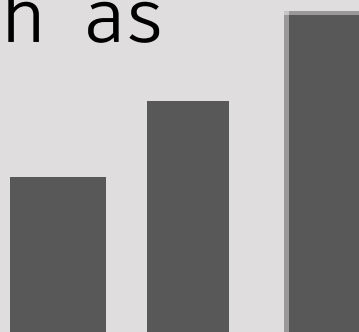
1. Definition

Dispute

Business Definition

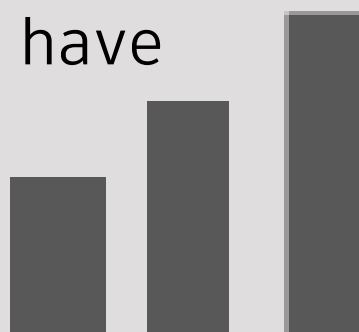
- Dispute is a disagreement or argument between business partners of some kind regarding a certain issue.

Legal Definition

- A dispute is a disagreement, argument, or controversy—often one that gives rise to a legal proceeding (such as arbitration, mediation, or a lawsuit).
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1. Definition

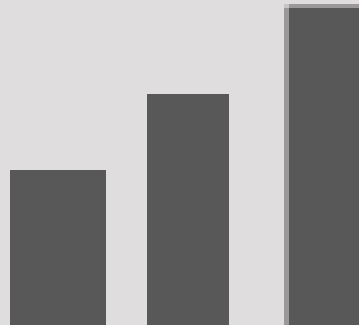
Disputes in Construction Contracts

- A contractual dispute is usually when a party in a contract has a disagreement concerning its actions, non-actions, terms or definitions of a contract etc...
 - All too often a formal letter is the first indication that a party to a contract feels aggrieved about an issue and wishes to pursue it further which triggers a formal written response.
 - The dispute can escalate without the parties having met to discuss any misunderstandings or misinterpretations that might have given rise to the issue in question.
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1. Definition

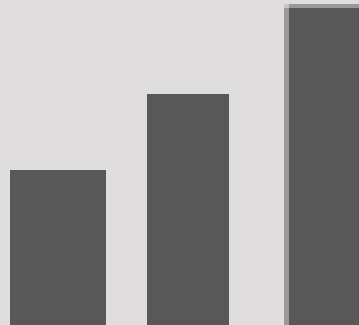
Disputes Resolution

- Dispute resolution describes generally recognized procedures that can be used to settle disputes.
- Crucially, dispute resolution can be a way of solving a conflict without having to go to court.



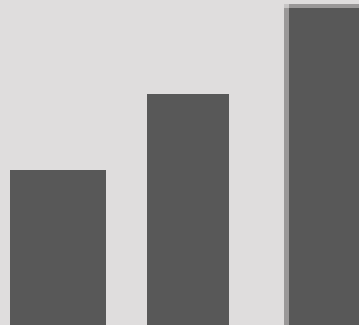
2. Sources of Dispute

- A contract is only valid when both parties are willing to accept its terms and conditions but if one or both disagree, a contract dispute occurs.
 - Breach of Contract (Material/Minor)
 - Differing terms
 - Poor construction of a contract or agreement
 - Ambiguity within a contract
 - Negligence
 - Fraud




3. Forms of Dispute Resolution

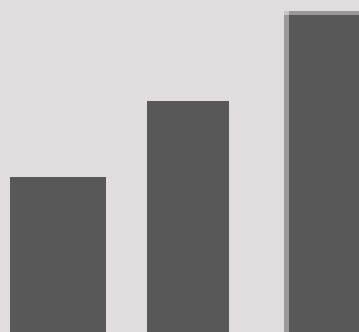
- Litigation;
- Arbitration;
- Adjudication
- Expert determination;
- Dispute boards;
- Early neutral evaluation;
- Negotiation; and
- Mediation.



3.1. Negotiation

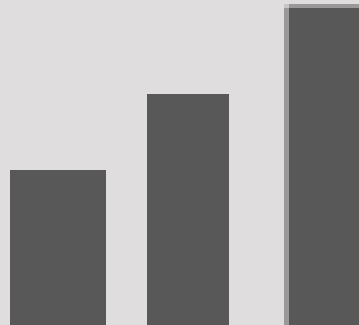
- A starting point with dispute resolution can be negotiation. Both sides seek to find common ground on a dispute. Crucially, dispute resolution can be a way of solving a conflict without having to go to court.
 - It is consensual dispute resolution, where the parties involved consent to a resolution, rather than getting an independent party to resolve the matter. This is a cheaper and quicker method of dispute resolution than adjudication, as only the disputing parties are involved.
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3.2. Mediation

- Mediation is a process by which the parties involved in the dispute come together, but with an independent party present - **the mediator** - who tries to help the disputing parties come to a resolution that both sides can live with.
 - The Mediator is a professional, neutral third party that is appointed to help both parties resolve the dispute. The mediator is not a judge, but is an expert at facilitating negotiation between you and the other party.
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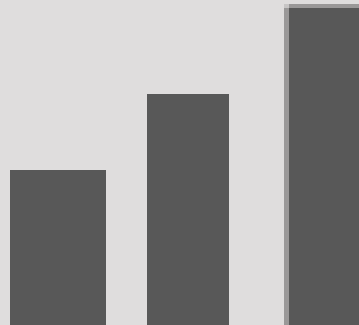
3.2. Mediation

- The mediator is impartial and it is not their role to come to a decision, but rather to help both sides agree to a resolution. Mediation is not as formal as the arbitration and litigation processes and as a result, it is usually much cheaper.
- In mediation, a settlement agreement is drafted after a resolution, detailing what both sides have agreed to comply with.



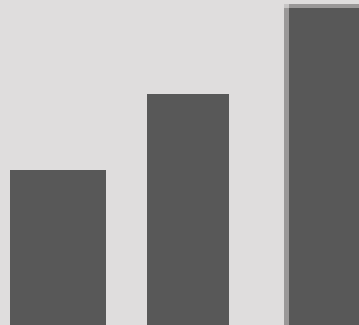
3.3. Arbitration

- Arbitration is a more formal legal process. This uses an independent **arbitrator** to make a decision about the dispute. All parties provide evidence and the arbitrator uses this information to come to a conclusion, seeking to resolve the dispute.
- The arbitration process involves appointing a trained and neutral third party, otherwise known as an arbitrator, to decide the dispute for the parties.



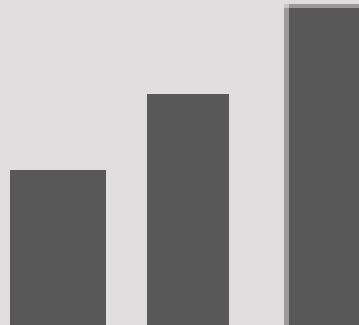
3.3. Arbitration

- This form of dispute resolution allows all parties to have an influence on the process. As there are no court-imposed deadlines, it can be more flexible. It is also generally cheaper than litigation.
- Arbitration decisions are legally binding and they are generally able to be enforced in a similar way to court judgments, so taking legal advice is highly recommended



3.4. Litigation

- Litigation is generally thought of as the process of resolving rights-based disputes through the [court system](#), from filing a law suit through arguments on legal motions, a discovery phase involving formal exchange of information, courtroom trial and appeal.



Difference Between Arbitration and Litigation

ARBITRATION



Arbitration is confidential and private

Arbitrator is selected based on expertise

Arbitration typically provides a speedier resolution than litigation

The arbitrator's decision is final and cannot be appealed except in limited circumstances

Arbitration can be less costly; however, both the arbitration association and arbitrator charge fees

LITIGATION



Litigation is a public procedure

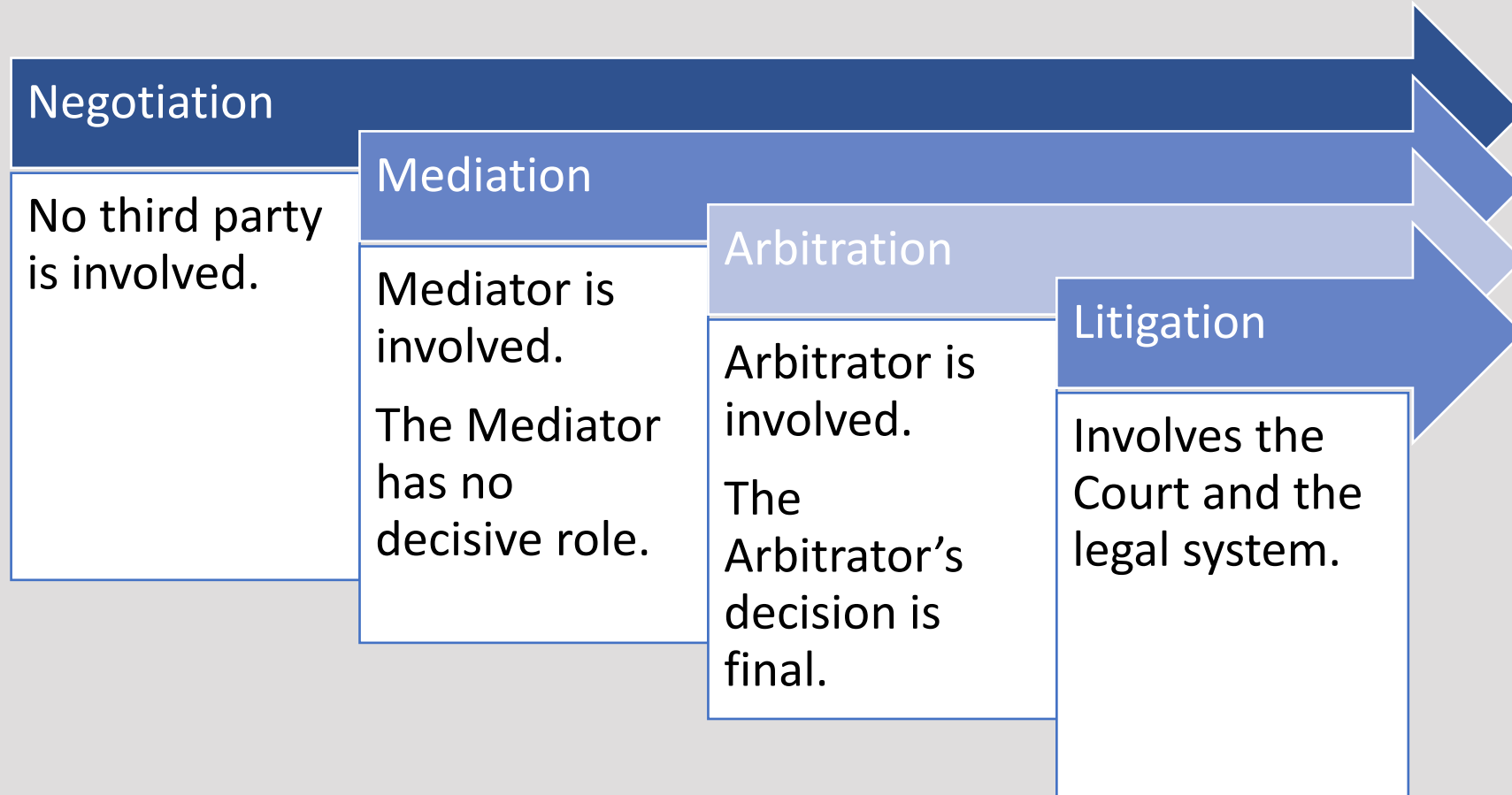
Trial judge is assigned without input from parties

Litigation may take longer due to pre-trial discovery and appeals process and backlog of the courts

Either party may appeal the court's decision

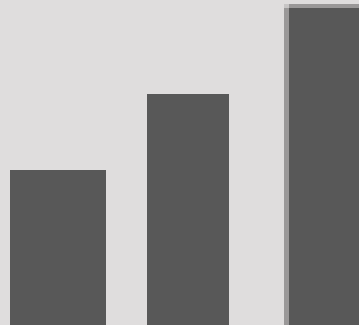
Litigation can be more expensive than arbitration

4. Procedures in Dispute Management



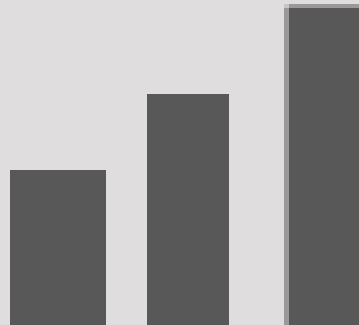
5. Dispute Resolution Board

- In this procedure a dispute board (DB) is appointed at the start of a project. The DB is a panel of three engineers, although a lawyer may be appointed to one of the positions. The DB visits the project several times during its currency and deals with any disputes.
- This usually prevents a dispute escalating to arbitration.



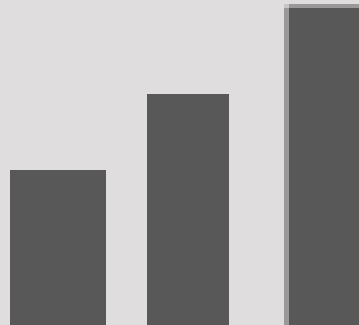
5. Dispute Resolution Board

- Both FIDIC and the International Chamber of Commerce (ICC) have introduced DB rules into their procedures.
- Each time the DB makes a decision it is similar to the result of adjudication and is binding unless either party challenges it by starting arbitration within a specified time.



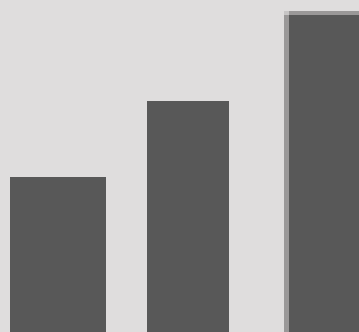
6. Avoiding Dispute

- Contract Finalisation
- Clear Definition of the Scope and Quality of Work
- Clear and Equitable Contract
- Clear Provision for Dispute Resolution
- Effective Contract Management



6. Case Review

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Thank
You!

