

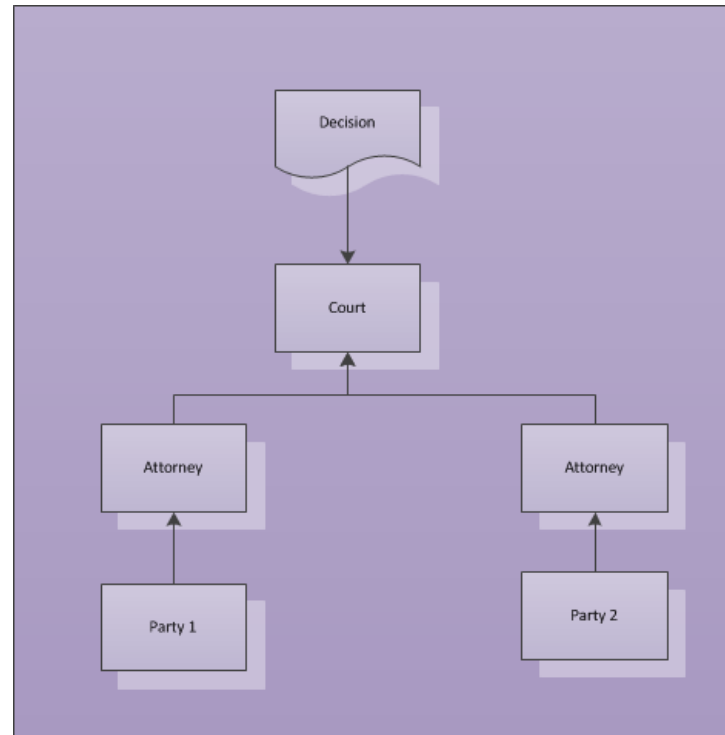


JUS5650 - Enforcement and Dispute Resolution in a Digital Context

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Master Lecture 1 January 2012

Alternative Dispute Resolution

Alternative
to what?





Advantages and disadvantages

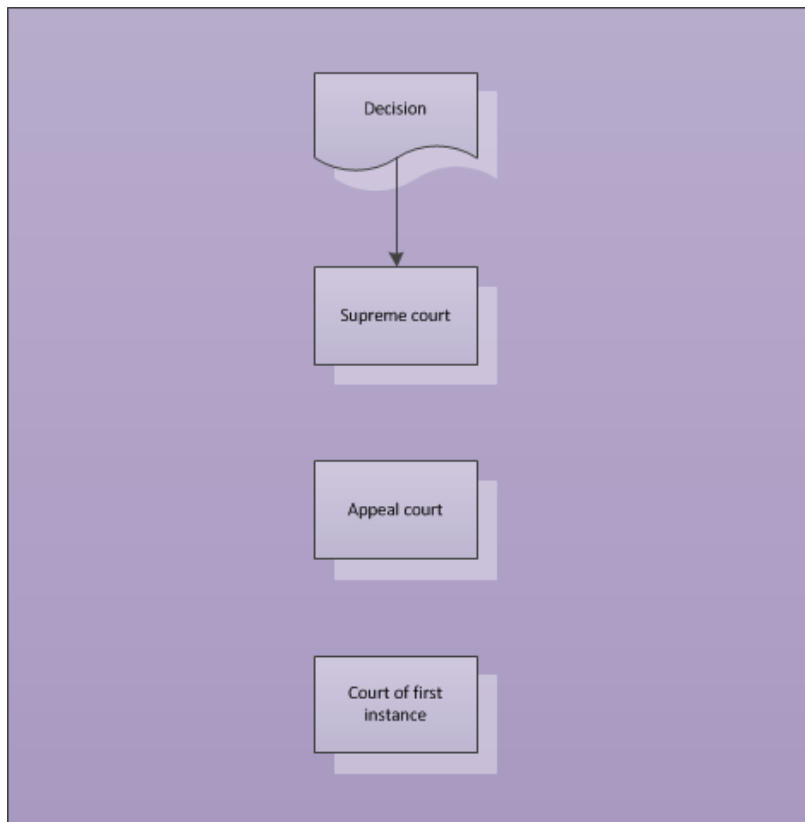
Advantages

- High degree of the quality of examination - both law and fact
- Enforcability

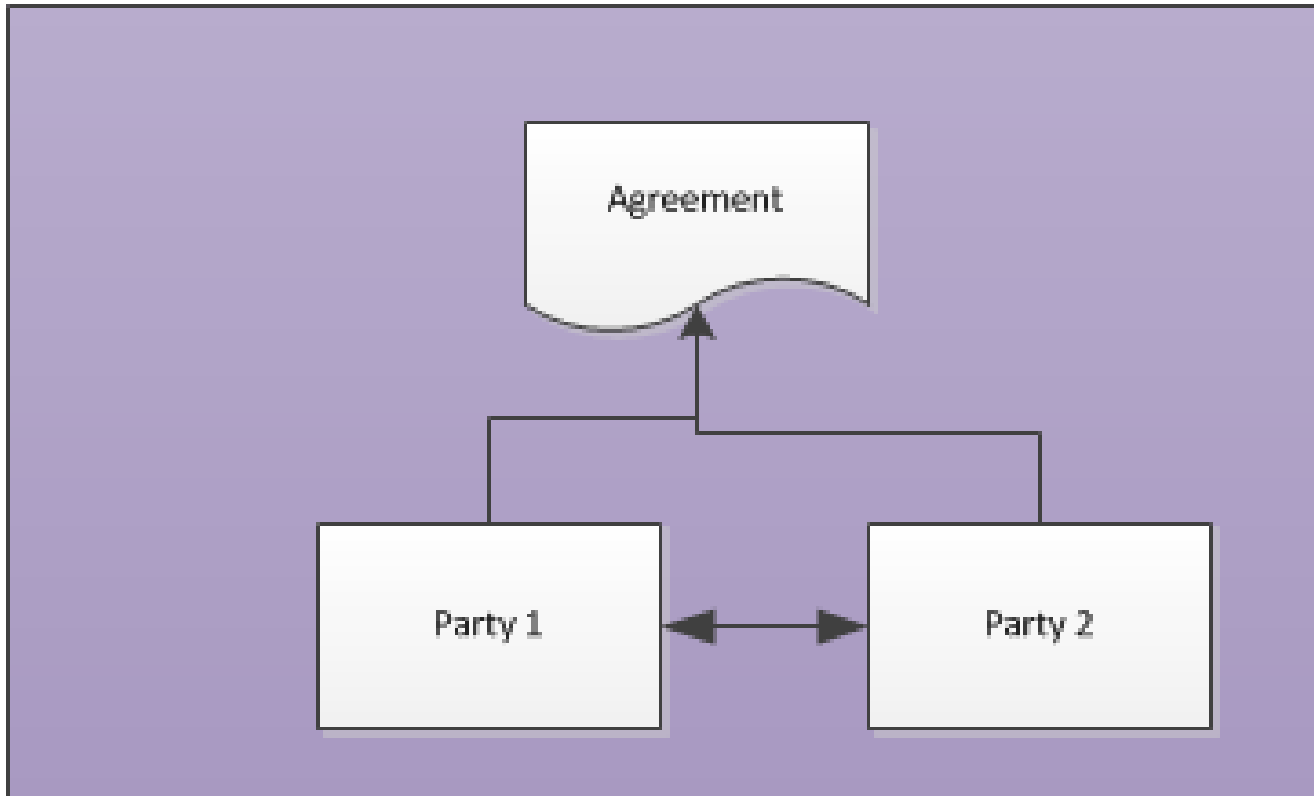
Disadvantages

- Cost
- Time
- Appeal – not necessarily final

Typical hierachical structure of courts



Negotiations





Negotiations

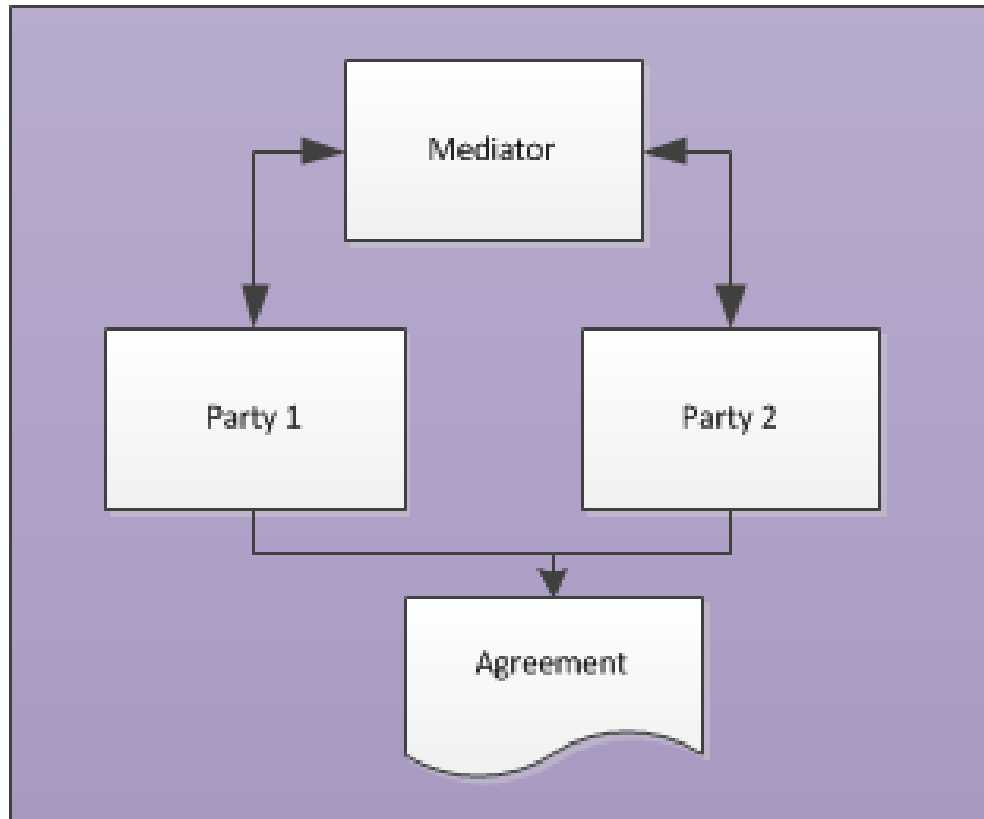
Advantages

- Informal
- Control of time (to some extent)
- Less costly

Disadvantages

- Not final
- Based on agreement, either *ex ante* or *ex post*

Mediated process





Mediation

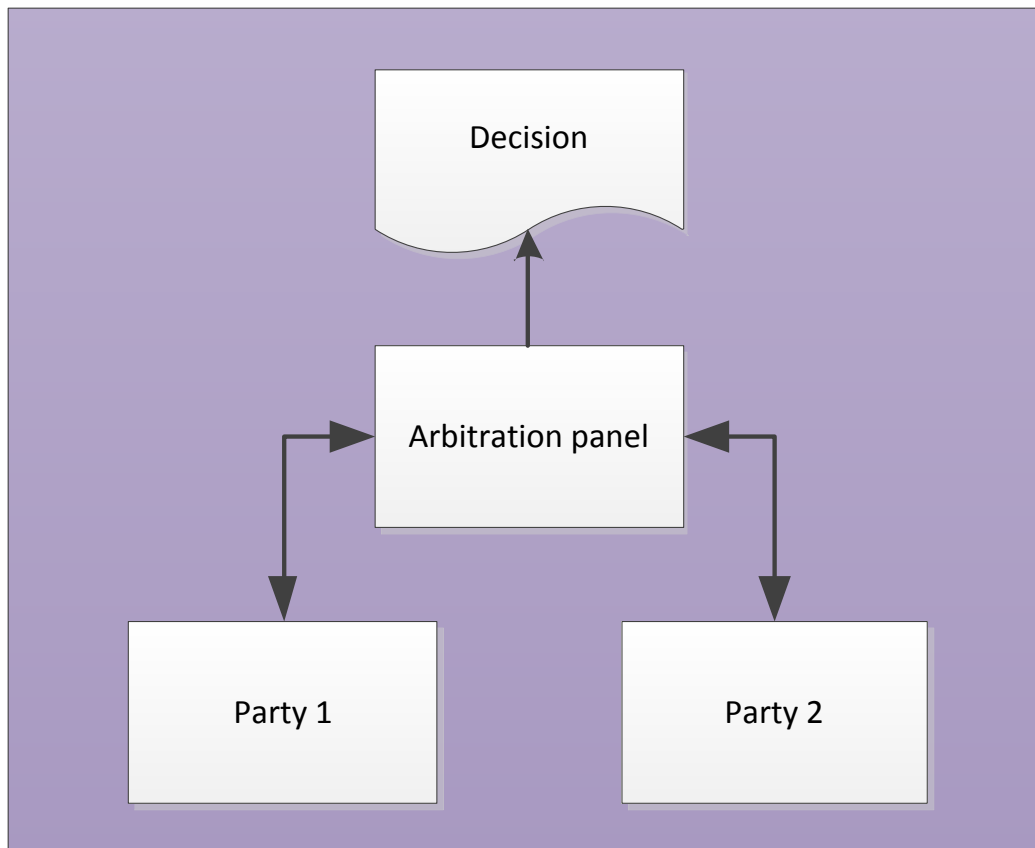
Advantages

- The flexibility of negotiations
- Third party view and suggestions

Disadvantages

- Not final
- Based on *ex ante* or *ex post* agreement

Arbitration





Arbitration

Advantages

- Final and enforceable
- Control of time
- To some extent control of costs

Disadvantages

- Based on *ex ante* or *ex post* agreement
- Costs higher than at court



New York Convention

- New York konvensjon of 1958
- Respect national arbitration decisions
- Execute national arbitration decisions



Self-regulatory

- Dispute resolution mechanism
- Established by the organisation itself
- Based on contractual authority
- Simplified procedure (often very simplified)
- Deadlines may be short
- Dispute resolution service provided by the organisation itself or a third party
- Generally can be appealed to a court
- ICANN UDRP



Administrative tribunals

- Based on authority in statutes or regulations
- Simplified procedure
- Tribunal independent of public authority (cannot be instructed)
- Appeal of administrative decisions (for instance national data protection authority)
- Decision of the tribunal final within the public administration
- Decision of the tribunal can be appealed to a court
- Alternative to appeal to superior agency



Consumer councils etc

- Dispute resolution mechanisms
- Based on multi-stakeholder agreement
- May include government agencies
- Simplified procedures – generally only written arguments
- No formally binding authority
- Rely on stakeholders' loyalty



On-line Dispute Resolution

- Using the Net for communication
- Using computerised methods to sort disputes
- Using computerised methods to decide disputes
- Using computerised methods to assist a panel



Reasons for having ADR in electronic commerce

- International contracts – several jurisdictions may be involved
- Consumer contracts – cost of transaction (dispute resolution) out of proportion to the purchase of goods or service
- Problems in executing a decision
- May be a barrier to increased «ecommerce»