

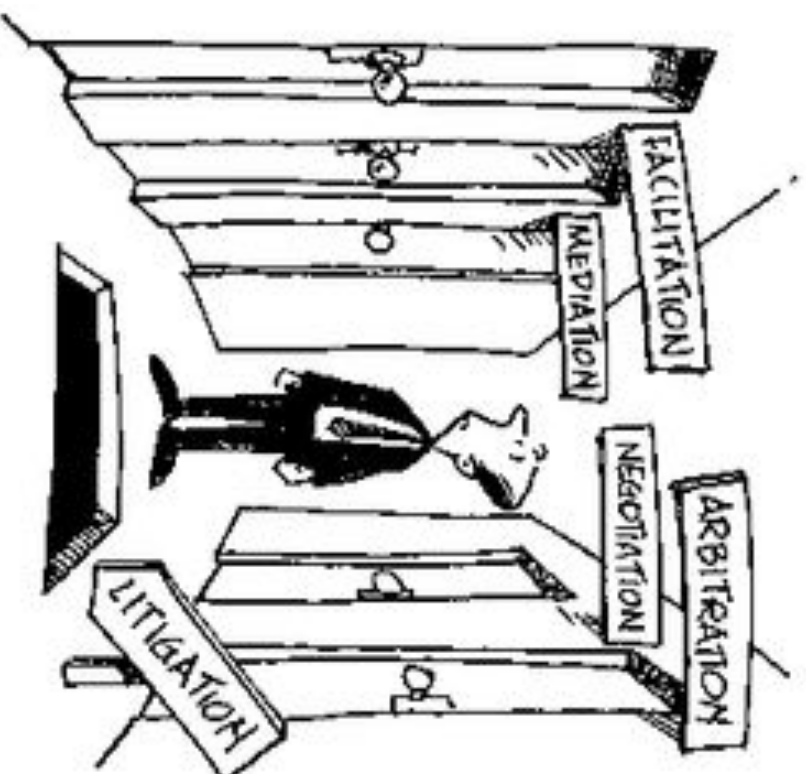
# An introduction to mediation and other dispute resolution mechanisms

Delivered by Adam Gersch & Ian Cain

# Litigation: The first choice?

- ▶ 'Alternative' dispute resolution ['ADR'] mechanisms have gained in popularity due to delays, complexities and costs of litigation.
- ▶ Civil Procedure Rules 1998
  - ▶ CPR 1.3
  - ▶ CPR 26.4 & CPR 26.4A
  - ▶ CPR 44.2
- ▶ “*The Courts take the view that litigation should be a last resort*”

# Litigation: The first choice?



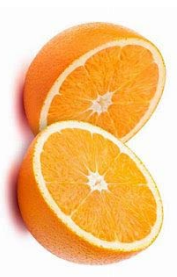
# What is ADR?

- ▶ *“a collective description of methods of resolving disputes other than through the normal trial process”*
- ▶ Binding
- ▶ Non-Binding

# ADR Mechanisms

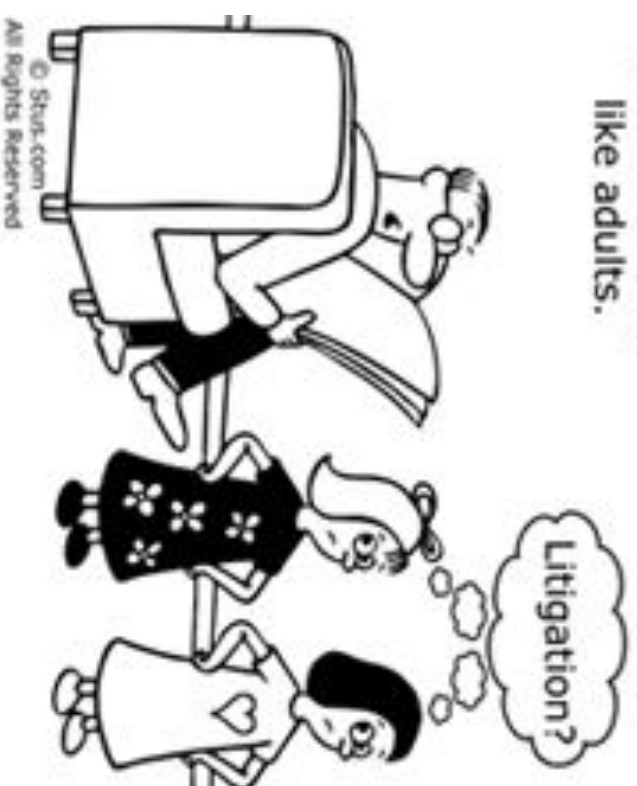
- ▶ *Mediation*
- ▶ *Negotiation*
- ▶ *Arbitration*
- ▶ *Conciliation*
- ▶ *Executive tribunal*
- ▶ *Early neutral evaluation*
- ▶ *Expert determination*
- ▶ *Adjudication*
- ▶ *Dispute review board*
- ▶ *Med-Arb*
- ▶ *Ombudsman*

# ADR in action



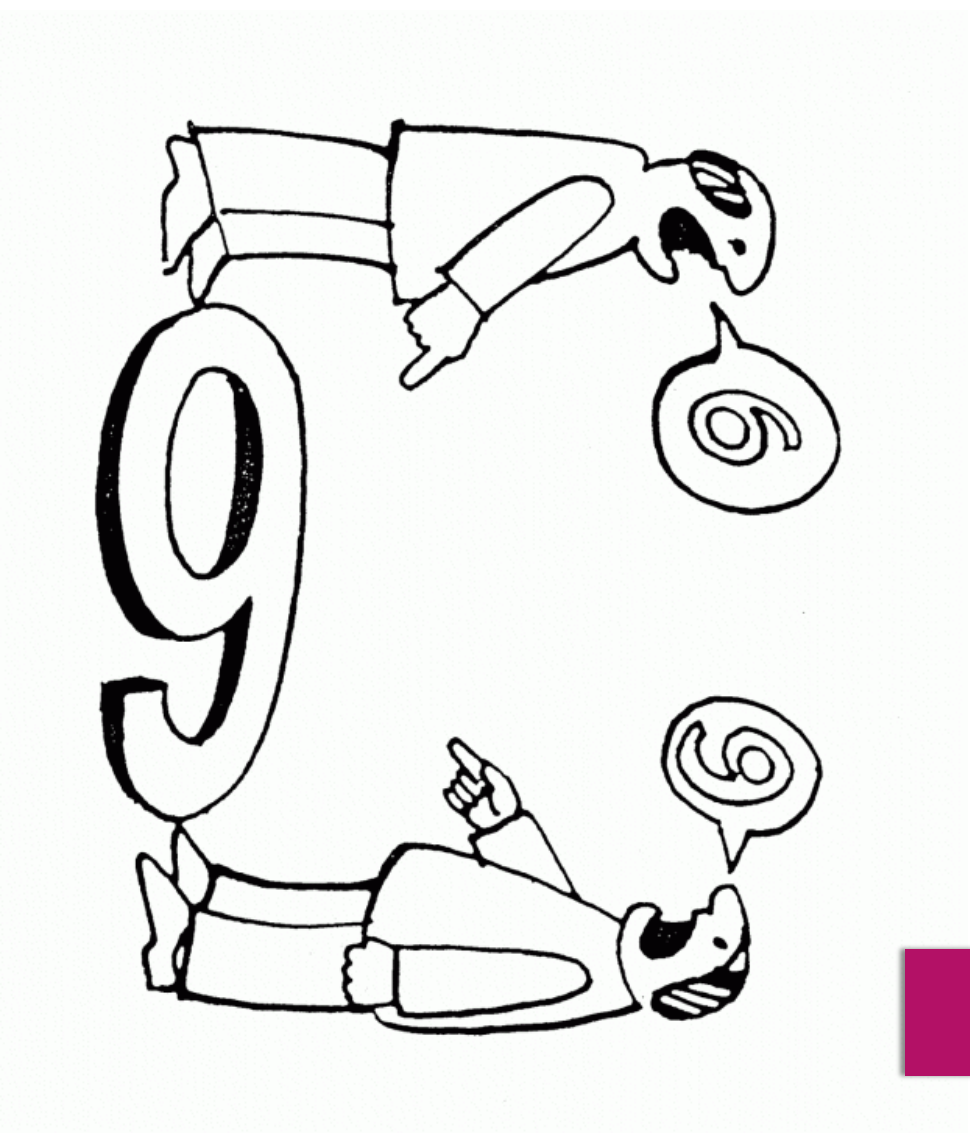
# A better approach?

Children,  
let's settle this  
like adults.



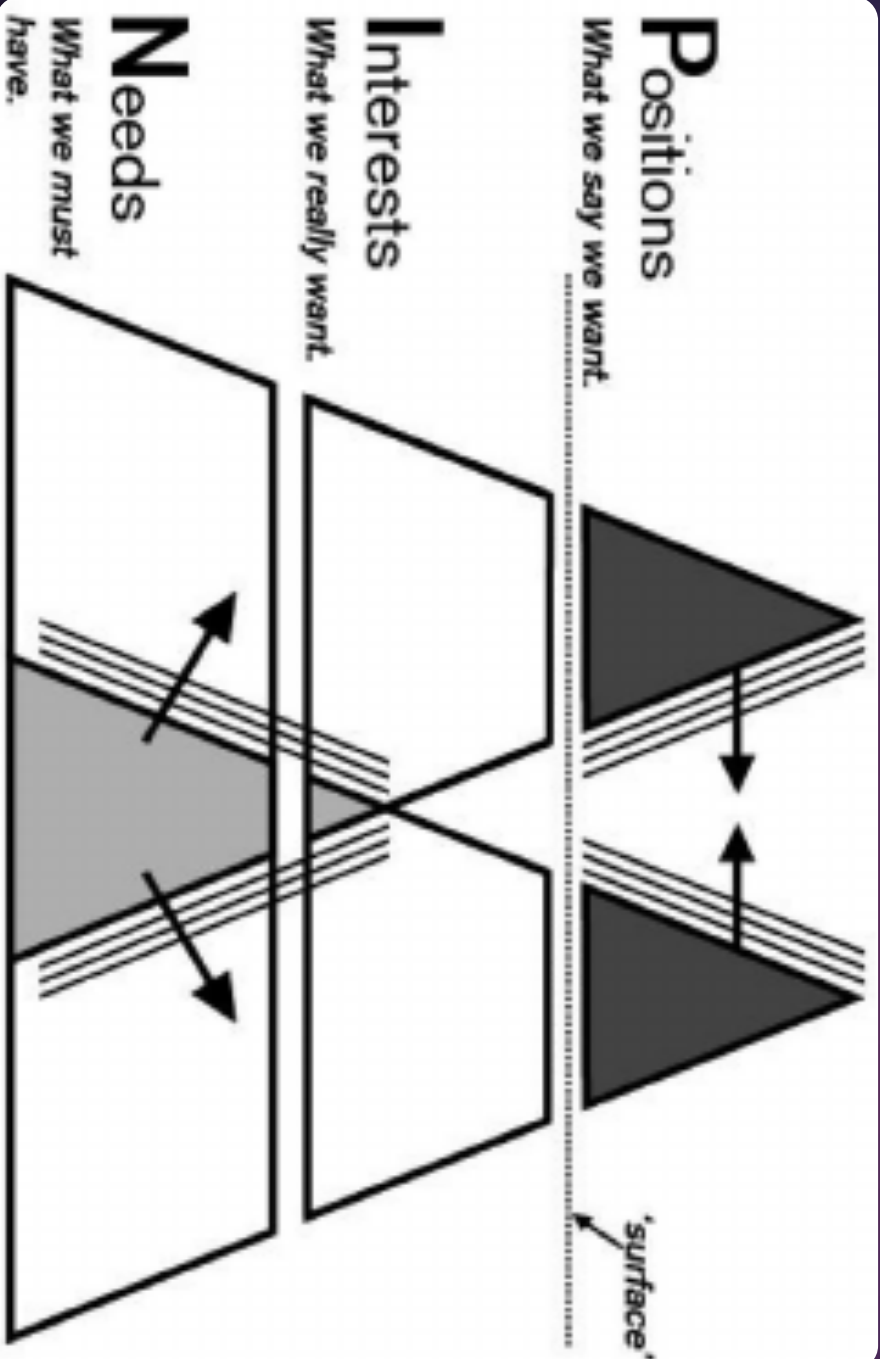
# Mediation

- ▶ “Mediation is a voluntary, non-binding and confidential dispute resolution process using an independent and neutral third party (the mediator) to assist the parties in reaching a negotiated settlement agreement.”





# PIN Model



# Advantages and Disadvantages

## Advantages

- ▶ Saving costs
- ▶ Saving time
- ▶ Confidentiality
- ▶ Maintaining positive relationships
- ▶ Flexibility and control
- ▶ Client involvement
- ▶ Increased settlement chance
- ▶ Benefits without settlement

## Disadvantages

- ▶ Unsuitability for some disputes
- ▶ Limitation issues
- ▶ Showing your case
- ▶ Showing weakness
- ▶ Risk of delay to trial
- ▶ Increased scrutiny
- ▶ Misleading success rates
- ▶ Need to act in good faith

# Confidentiality

- ▶ Without prejudice rules
- ▶ Legal privilege
- ▶ Confidentiality clauses
  - ▶ Exceptions apply!

# 7 Top Tips

1. **Select a good mediator or mediation service provider**
2. **Know your case**
3. **Prepare a short case summary**
4. **Make a list of the strengths and weaknesses of your case and that of your opponent**
5. **Determine who should attend**
6. **Prepare an opening statement**
7. **Consider the points of agreement and disagreement throughout**

# Covid-19 and the future

- ▶ Increased co-operation and willingness to resolve disputes
- ▶ Inability to settle at the door of the court
- ▶ Increased use in video/telephone Mediation
- ▶ Civil Justice Working Group on ADR
  - ▶ December 2018
  - ▶ 24 recommendations
  - ▶ Mediation will not be mandatory

*"If you do what you've always done, you'll get what you always got." - Mark Twain*

# Contact Details

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