

Chapter 02 - Alternative Dispute Resolution

**Chapter 02**  
**Alternative Dispute Resolution**

**True / False Questions**

1. Resolving a dispute with the help of an alternative dispute resolution mechanism is more expensive and time-consuming than resolving it with the help of litigation.

True   False

2. Conciliation simply involves the parties talking to each other about their dispute, either orally or in writing, in an effort to reach a resolution of the conflict.

True   False

3. Arbitration is the easiest and cheapest method of dispute resolution.

True   False

4. If conciliation doesn't work, the next logical step after conciliation is summary jury trial.

True   False

5. Conciliation involves intervention of a disinterested third party.

True   False

6. FMCS is a government agency that can be used by parties to conduct mediation of a dispute.

True   False

7. If two parties involved in a dispute try to resolve their conflict using the ADR mechanism then they cannot proceed to the court litigation even if they are not satisfied with the ADR result.

True   False

8. The Equal Employment Opportunity Commission (EEOC), has instituted mandatory mediation of all suitable claims filed with the agency.

True False

9. The decision reached by an arbitrator is called an award.

True False

10. Arbitration involves the intervention of a disinterested third party into a dispute.

True False

11. In the case of binding arbitration, parties can decide to use the courts as another chance to resolve the dispute if they do not like the award.

True False

12. In the case of binding agreement, the awards should be consistent with the concept of *stare decisis*.

True False

13. Nonbinding arbitration agreements are almost always included in international commercial transactions as a way of avoiding international litigation.

True False

14. Mediation and arbitration tend to be more expensive than litigation.

True False

15. Generally panels of arbitrators comprise an odd number of arbitrators.

True False

16. There is a Securities and Exchange Commission rule that securities disputes be handled by arbitration if possible.

True False

17. Commercial arbitration addresses those employer/employee disputes where no union or collective bargaining agreement is in effect.

True False

18. The alternative dispute resolution method used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue is mock trial.

True False

19. In the case of minitrials, generally, parties look at the problem as one of a business nature rather than a legal nature.

True False

20. Minitrial is generally carried out after the case has been filed with the court.

True False

#### Multiple Choice Questions

21. Which of the following statements is true regarding the alternative dispute resolution (ADR) mechanism?

- A. Usually it is more expensive than litigation.
- B. ADR outcomes are crafted by the parties.
- C. Very few disputes are resolved by the ADR mechanism.
- D. Usually it is more time consuming than litigation.

22. Arbitration was primarily utilized:

- A. for baseball disputes.
- B. by unions.
- C. for international trade disputes.
- D. by public limited companies.

23. The ADR mechanism is:

- A. pursued after litigation.
- B. very expensive.
- C. very flexible.
- D. time-consuming.

24. Because of its flexibility, the alternative dispute resolution system is also called \_\_\_\_\_ dispute resolution system.

- A. universal
- B. special
- C. parallel
- D. appropriate

25. Under the statutory scheme of Title VII of the Civil Rights Act of 1964 and its administrative regulations, by law the parties must first attempt to \_\_\_\_\_ claims of employment discrimination before proceeding further.

- A. mediate
- B. conciliate
- C. arbitrate
- D. use minitrials for

26. Conciliation is also known as \_\_\_\_\_.

- A. mediation
- B. arbitration
- C. negotiation
- D. mitigation

27. The very first thing a party with a conflict should do is to attempt \_\_\_\_\_ with the other party to the dispute.

- A. conciliation
- B. arbitration
- C. summary jury trial
- D. mediation

28. Which of the following methods of dispute resolutions can be considered as the easiest and the cheapest?

- A. Arbitration
- B. Summary jury trial
- C. Mediation
- D. Conciliation

29. If conciliation doesn't work, the next logical step after conciliation is \_\_\_\_\_.

- A. arbitration
- B. summary jury trial
- C. mediation
- D. minitrial

30. Which of the following statements is true regarding conciliation?

- A. It is also known as mediation.
- B. It is the easiest and the cheapest ADR method.
- C. It is the last ADR method a party with a conflict should attempt and it is generally used just before litigation.
- D. If conciliation doesn't work, the next logical step after conciliation is arbitration.

31. Apex Corporation has a disagreement over the terms of an agreement with the national distributor of their product. Apex Corporation and the distributor talk to each other about their dispute, in an effort to reach a resolution of the conflict without involving intermediation by a disinterested third party. This is an example of \_\_\_\_\_.

- A. conciliation
- B. mediation
- C. mock trial
- D. arbitration

32. You have conflict with a friend and a common friend of both of you talks to each of you separately and tries to get you to see the other's side of things or to look at things a different way in order to resolve the conflict. It is most likely to be an example of \_\_\_\_\_.

- A. arbitration
- B. conciliation
- C. mediation
- D. summary jury trial

33. \_\_\_\_\_ is the most useful alternative dispute resolution method when the parties wish to maintain an ongoing relationship but simply need help resolving the present conflict.

- A. Mediation
- B. Conciliation
- C. Litigation
- D. Coalition

34. In union negotiations, often the parties become so angry with each other, perceiving the other side to be recalcitrant and unwilling to be open to effective discussion of a given point, that it is more productive to allow a disinterested third party to go back and forth between the parties, speaking to each, to get them to focus on the real issues and reach an agreement. This is an example of \_\_\_\_\_.

- A. conciliation
- B. mediation
- C. mock trial
- D. arbitration

35. Most often the mediator goes back and forth between the two parties and listens to their concerns and tries to find a way for each to get what he or she wants from the situation. This is known as \_\_\_\_\_.

- A. piggybacking
- B. skimming
- C. social engineering
- D. shuttle diplomacy

36. Which of the following statements is true regarding an ADR program attached to the court?

- A. It increases court docket congestion.
- B. It lightens the court's caseload.
- C. It increases wait for court dates for litigants.
- D. It increases the cost of dispute resolution.

37. Agreements the EEOC (Equal Employment Opportunity Commission) makes with employers locally, regionally, or nationally, under which the employer has an identified contact point with EEOC for scheduling the mediation of claims filed by employees with EEOC are known as \_\_\_\_\_.

- A. Universal Agreements to Litigate
- B. General Agreements for Claim Resolution
- C. Universal Agreements to Mediate
- D. General Agreements for Equal Employment Opportunity

38. \_\_\_\_\_ allow EEOC, to hold off on proceeding with the claim filed by the employee with EEOC and instead refer it back to the employer for handling by the employer's own internal EEOC approved mediation program.

- A. Referral Back programs
- B. Universal Agreements to Mediate
- C. Federal Mediation and Conciliation Services
- D. The Federal Arbitration Act

39. After mediation, the next most frequent ADR mechanism is \_\_\_\_\_.  
A. shuttle diplomacy  
B. litigation  
C. conciliation  
D. arbitration
40. Which of the following is an ADR mechanism that involves the intervention of a disinterested third party into a dispute and the third party can impose a decision, much like a judge does?  
A. Conciliation  
B. Mediation  
C. Arbitration  
D. Litigation
41. Which of the following statements is true regarding arbitration?  
A. It does not involve a third party.  
B. It may be binding or nonbinding.  
C. The parties involved in the dispute attempt to resolve their conflict on their own.  
D. It is the cheapest and the easiest ADR mechanism.
42. The decision reached by an arbitrator is called a(n) \_\_\_\_\_.  
A. endorsement  
B. award  
C. agreement  
D. prize
43. In which of the following ADR mechanisms, the arbitrator's award is virtually final, and can be reviewed only by a court of law for reasons involving unconstitutionality, abuse, collusion, or fraud in the third party's decision?  
A. Conciliation  
B. Nonbinding arbitration  
C. Mediation  
D. Binding arbitration



44. In binding arbitration, the arbitrator's award cannot be reviewed if:
- A. the award involves abuse and collusion.
  - B. the award is unconstitutional.
  - C. the only reason is that the parties do not like the award.
  - D. the award involves a fraud in the arbitrator's decision.
45. Which of the following is true regarding the decision reached by the arbitrator in the case of binding arbitration?
- A. The decision need not be consistent with the concept of *stare decisis*.
  - B. For binding agreements the arbitrator should be a lawyer.
  - C. The decision can be reviewed if the parties do not like the decision.
  - D. The decision reached by the arbitrator is known as an endorsement.
46. \_\_\_\_\_ agreements are almost always included in international commercial transactions as a way of avoiding international litigation.
- A. Conciliation
  - B. Binding arbitration
  - C. Mediation
  - D. Nonbinding arbitration
47. Which of the following is the largest arbitration organization in the U.S?
- A. Federal Mediation & Conciliation Service
  - B. Chicago International Dispute Resolution Association
  - C. American Arbitration Association
  - D. Commercial Arbitration and Mediation Centre for the Americas (CAMCA)
48. If two parties involved in a dispute, decide to take help of The American Arbitration Association then the matters of scheduling the arbitration and hearing and paying for the arbitrator's services are arranged with the arbitrator by the \_\_\_\_\_.
- A. Arbitration and Mediation Center
  - B. federal government
  - C. American Arbitration Association
  - D. parties involved in the dispute

49. Which of the following is most likely to address virtually all disputes to be arbitrated other than those where a union or a collective bargaining agreement is in effect?

- A. Shuttle diplomacy
- B. Commercial arbitration
- C. Social engineering
- D. Labor arbitration

50. In this method of dispute resolution, the attorney assembles ordinary citizens, asks them to act as jury, presents the case as if in court, and then requests them to make a decision. Hearing the decision and questioning the "jury" about their deliberations can be very instructive for the attorney in deciding how best to proceed with the case and whether to seek a path other than litigation. Identify the dispute resolution method in the discussion.

- A. Mock trials
- B. Minitrials
- C. Regulatory Negotiation
- D. Summary jury trial

51. In this alternative method of dispute resolution lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business. Generally the parties look at the problem as one of a business nature rather than a legal nature and then go into settlement negotiations afterwards. Identify the dispute resolution method in the discussion.

- A. Mock trials
- B. Minitrials
- C. Regulatory Negotiation
- D. Summary jury trial

52. Which of the following statements is true regarding a mock trial?

- A. This mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue.
- B. It involves assembling ordinary citizens and then asking them to act like a jury.
- C. It is generally carried out after the case has been filed with the court.
- D. Lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business.

53. Which of the following statements is true regarding a minitrial?

- A. Lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business.
- B. This method involves selecting a small jury just as a regular jury without telling them that their decision is not binding.
- C. It involves assembling ordinary citizens and then asking them to act like a jury.
- D. This mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue.

54. Which of the following methods of dispute resolution is most likely to be used by a regulatory agency to negotiate the provisions of the regulations with the interested groups so that there is less likelihood of a challenge once the regulations are promulgated?

- A. Mock trials
- B. Minitrials
- C. Regulatory Negotiation
- D. Summary jury trial

55. This mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue. Identify the dispute resolution method in the discussion.

- A. Summary jury trial
- B. Minitrials
- C. Mock trials
- D. Regulatory Negotiation

56. Which of the following statements is true regarding regulatory negotiation?

- A. It is generally carried out after the case has been filed with the court.
- B. It involves assembling ordinary citizens and then asking them to act like a jury.
- C. It is used by administrative agencies wishing to avoid protracted litigation with interested groups.
- D. Lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business.

57. Some jurisdictions provide for \_\_\_\_\_ after cases have been filed if the case will require a great deal of time for trial and is unlikely to be settled by negotiation.

- A. mock trials
- B. summary jury trials
- C. minitrials
- D. regulatory negotiation

58. Which of the following is true regarding summary jury trial?

- A. Lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business.
- B. This method involves selecting a small jury just as a regular jury without telling them that their decision is not binding.
- C. It involves assembling ordinary citizens and then asking them to act like a jury.
- D. This mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue.

#### **Essay Questions**

59. Define alternative dispute resolution (ADR).

60. Discuss the need for alternative dispute resolution (ADR).

61. What are the various advantages of alternative dispute resolution (ADR)?

62. Discuss conciliation.

63. Explain with an example, mediation.

64. What is shuttle diplomacy?

65. What are the various advantages of using a disinterested third party for mediation?

66. What is arbitration?

67. What is the major difference between arbitration and mediation?

68. Explain binding arbitration.

69. Discuss the structure and functioning of the American Arbitration Association.

70. What is labor arbitration?

71. What is commercial arbitration?

72. What is a mock trial? Explain its advantages.

73. Discuss minitrials. How is it different from mock trials?

74. Discuss regulatory negotiation.

75. Discuss summary jury trial.



## Chapter 02 Alternative Dispute Resolution **Answer Key**

### **True / False Questions**

1. (p. 25) Resolving a dispute with the help of an alternative dispute resolution mechanism is more expensive and time-consuming than resolving it with the help of litigation.

**FALSE**

Resolving a dispute with the help of litigation is more expensive and time-consuming than resolving it with the help of an alternative dispute resolution mechanism.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-01 Define what ADR is.*

*Topic: Introduction and Background*

2. (p. 28) Conciliation simply involves the parties talking to each other about their dispute, either orally or in writing, in an effort to reach a resolution of the conflict.

**TRUE**

Conciliation simply involves the parties talking to each other about their dispute, either orally or in writing, in an effort to reach a resolution of the conflict.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-03 Tell what the most popular types of ADR are.*

*Topic: What Is Conciliation and How Is It Done?*

3. (p. 28) Arbitration is the easiest and cheapest method of dispute resolution.

**FALSE**

Conciliation is the easiest and cheapest method of dispute resolution and if it is successful, nothing else needs to be done and the conflict ends at this point.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: What Is Conciliation and How Is It Done?*

4. (p. 28) If conciliation doesn't work, the next logical step after conciliation is summary jury trial.

**FALSE**

If conciliation doesn't work, the next logical step after conciliation is mediation.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: What Is Conciliation and How Is It Done?*

5. (p. 28) Conciliation involves intervention of a disinterested third party.

**FALSE**

Conciliation is between the parties to the conflict without the intervention of a disinterested third party.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: Must I Mediate and How Is It Done?*

6. (p. 29) FMCS is a government agency that can be used by parties to conduct mediation of a dispute.

**TRUE**

FMCS is a government agency that can be used by parties to conduct mediation of a dispute.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-05 Determine the appropriateness of different types of ADR for various disputes.*

*Topic: Federal Mediation and Conciliation Service*

7. (p. 30) If two parties involved in a dispute try to resolve their conflict using the ADR mechanism then they cannot proceed to the court litigation even if they are not satisfied with the ADR result.

**FALSE**

In many court schemes the use of court-annexed ADR is optional. In most, parties still retain the option of proceeding to court if they are not satisfied with the ADR result.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Agency- and Court-Annexed ADR*

8. (p. 30) The Equal Employment Opportunity Commission (EEOC), has instituted mandatory mediation of all suitable claims filed with the agency.

**TRUE**

The Equal Employment Opportunity Commission (EEOC), has instituted mandatory mediation of all suitable claims filed with the agency.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Agency- and Court-Annexed ADR*

9. (p. 31) The decision reached by an arbitrator is called an award.

**TRUE**

The decision reached by an arbitrator is called an award.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

10. (p. 31) Arbitration involves the intervention of a disinterested third party into a dispute.

**TRUE**

Arbitration involves the intervention of a disinterested third party into a dispute. In arbitration, the role of the third party is to listen to the concerns and evidence of both parties and impose a decision, much like a judge does.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

11. (p. 33) In the case of binding arbitration, parties can decide to use the courts as another chance to resolve the dispute if they do not like the award.

**FALSE**

In binding arbitration, the arbitrator's award is virtually final, and can be reviewed only by a court of law for reasons involving unconstitutionality, abuse, collusion, or fraud in the arbitrator's decision and like bases attacking the validity of the award itself. However, parties who simply do not like the award cannot decide to use the courts as another chance to resolve the dispute.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty Level: Hard*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

12. (p. 33) In the case of binding agreement, the awards should be consistent with the concept of *stare decisis*.

**FALSE**

In the case of binding agreement, there is generally no requirement that the awards should be consistent with the concept of *stare decisis*.

AACSB: Analytic

Bloom's: Remember

Difficulty Level: Medium

Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.

Topic: Arbitration

13. (p. 33) Nonbinding arbitration agreements are almost always included in international commercial transactions as a way of avoiding international litigation.

**FALSE**

Binding arbitration agreements are almost always included in international commercial transactions as a way of avoiding international litigation.

AACSB: Analytic

Bloom's: Remember

Difficulty Level: Easy

Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.

Topic: Arbitration

14. (p. 34) Mediation and arbitration tend to be more expensive than litigation.

**FALSE**

Mediation and arbitration tend to be less expensive than litigation.

AACSB: Analytic

Bloom's: Remember

Difficulty Level: Easy

Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.

Topic: Arbitration

15. (p. 34) Generally panels of arbitrators comprise an odd number of arbitrators.

**TRUE**

Generally panels comprise an odd number of arbitrators so that the decision will not be evenly split and therefore will not result in a tied decision.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

16. (p. 35) There is a Securities and Exchange Commission rule that securities disputes be handled by arbitration if possible.

**TRUE**

Some specific statutes contain arbitration provisions. For instance, there is a Securities and Exchange Commission rule that securities disputes be handled by arbitration if possible.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

17. (p. 35) Commercial arbitration addresses those employer/employee disputes where no union or collective bargaining agreement is in effect.

**TRUE**

Commercial arbitration addresses virtually all disputes to be arbitrated other than labor. It includes employer/employee disputes where no union or collective bargaining agreement is in effect.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

18. (p. 36) The alternative dispute resolution method used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue is mock trial.

**FALSE**

The regulatory negotiation mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue.

*AACSB: Analytic*  
*Bloom's: Remember*  
*Difficulty Level: Easy*  
*Learning Objective: 02-08 Suggest ways that ADR can help business.*  
*Topic: Other Alternatives*

19. (p. 36) In the case of minitrials, generally, parties look at the problem as one of a business nature rather than a legal nature.

**TRUE**

Lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business. Agreements vary, but generally the parties look at the problem as one of a business nature rather than a legal nature.

*AACSB: Analytic*  
*Bloom's: Remember*  
*Difficulty Level: Medium*  
*Learning Objective: 02-08 Suggest ways that ADR can help business.*  
*Topic: Other Alternatives*

20. (p. 36) Minitrial is generally carried out after the case has been filed with the court.

**FALSE**

Some jurisdictions provide for summary jury trials after cases have been filed if the case will require a great deal of time for trial and is unlikely to be settled by negotiation. Minitrials are generally used for business cases so as to avoid expensive litigations.

*AACSB: Analytic*  
*Bloom's: Understand*  
*Difficulty Level: Hard*  
*Learning Objective: 02-08 Suggest ways that ADR can help business.*  
*Topic: Other Alternatives*

**Multiple Choice Questions**

21. (p. 25) Which of the following statements is true regarding the alternative dispute resolution (ADR) mechanism?

- A. Usually it is more expensive than litigation.
- B. ADR outcomes are crafted by the parties.**
- C. Very few disputes are resolved by the ADR mechanism.
- D. Usually it is more time consuming than litigation.

Litigations are costly and time-consuming as compared to the ADR mechanism. An overwhelming majority of disputes are resolved without resort to costly court trials. ADR outcomes are crafted by the parties.

*AACSB: Analytic*  
*Bloom's: Understand*  
*Difficulty Level: Medium*  
*Learning Objective: 02-01 Define what ADR is.*  
*Topic: Introduction and Background*

22. (p. 27) Arbitration was primarily utilized:

- A. for baseball disputes.
- B. by unions.**
- C. for international trade disputes.
- D. by public limited companies.

Arbitration was primarily utilized by unions and later the securities industry.

*AACSB: Analytic*  
*Bloom's: Remember*  
*Difficulty Level: Easy*  
*Learning Objective: 02-01 Define what ADR is.*  
*Topic: Introduction and Background*



23. (p. 28) The ADR mechanism is:

- A. pursued after litigation.
- B. very expensive.
- C. very flexible.**
- D. time-consuming.

ADR is very flexible and the mechanisms need not be used in any particular order, though they tend to lend themselves to a natural logic.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-03 Tell what the most popular types of ADR are.*

*Topic: Types of Alternative Dispute Resolution*

24. (p. 28) Because of its flexibility, the alternative dispute resolution system is also called \_\_\_\_\_ dispute resolution system.

- A. universal
- B. special
- C. parallel
- D. appropriate**

Because of its flexibility, some have come to call ADR "appropriate dispute resolution."

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-03 Tell what the most popular types of ADR are.*

*Topic: Types of Alternative Dispute Resolution*

25. (p. 28) Under the statutory scheme of Title VII of the Civil Rights Act of 1964 and its administrative regulations, by law the parties must first attempt to \_\_\_\_\_ claims of employment discrimination before proceeding further.

A. mediate

**B.** conciliate

C. arbitrate

D. use minitrials for

Under the statutory scheme of Title VII of the Civil Rights Act of 1964 and its administrative regulations, by law the parties must first attempt to conciliate claims of employment discrimination before proceeding further.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-03 Tell what the most popular types of ADR are.*

*Topic: What Is Conciliation and How Is It Done?*

26. (p. 28) Conciliation is also known as \_\_\_\_\_.

A. mediation

B. arbitration

**C.** negotiation

D. mitigation

Conciliation is also known as negotiation.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-03 Tell what the most popular types of ADR are.*

*Topic: What Is Conciliation and How Is It Done?*

27. (p. 28) The very first thing a party with a conflict should do is to attempt \_\_\_\_\_ with the other party to the dispute.

- A. conciliation
- B. arbitration
- C. summary jury trial
- D. mediation

The very first thing a party with a conflict should do is to attempt conciliation, also called negotiation, with the other party to the dispute.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: What Is Conciliation and How Is It Done?*

28. (p. 28) Which of the following methods of dispute resolutions can be considered as the easiest and the cheapest?

- A. Arbitration
- B. Summary jury trial
- C. Mediation
- D. Conciliation

The very first thing a party with a conflict should do is to attempt conciliation, also called negotiation, with the other party to the dispute. It is the easiest, cheapest thing to do, and if it is successful, nothing else need be done and the conflict ends at this point.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: What Is Conciliation and How Is It Done?*

29. (p. 28) If conciliation doesn't work, the next logical step after conciliation is \_\_\_\_.

- A. arbitration
- B. summary jury trial
- C. mediation**
- D. minitrial

The next logical step after conciliation is mediation.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: What Is Conciliation and How Is It Done?*

30. (p. 28) Which of the following statements is true regarding conciliation?

- A. It is also known as mediation.
- B. It is the easiest and the cheapest ADR method.**
- C. It is the last ADR method a party with a conflict should attempt and it is generally used just before litigation.
- D. If conciliation doesn't work, the next logical step after conciliation is arbitration.

The very first thing a party with a conflict should do is to attempt conciliation, also called negotiation, with the other party to the dispute. It is the easiest, cheapest thing to do. If conciliation does not work, the parties can move on to the next logical step, mediation.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty Level: Medium*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: What Is Conciliation and How Is It Done?*

31. (p. 28) Apex Corporation has a disagreement over the terms of an agreement with the national distributor of their product. Apex Corporation and the distributor talk to each other about their dispute, in an effort to reach a resolution of the conflict without involving intermediation by a disinterested third party. This is an example of \_\_\_\_\_.

- A. conciliation
- B. mediation
- C. mock trial
- D. arbitration

Conciliation simply involves the parties talking to each other about their dispute, either orally or in writing, in an effort to reach a resolution of the conflict. Conciliation does not involve intermediation by a disinterested third party.

*AACSB: Analytic*

*Bloom's: Apply*

*Difficulty Level: Medium*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: What Is Conciliation and How Is It Done?*

32. (p. 29) You have conflict with a friend and a common friend of both of you talks to each of you separately and tries to get you to see the other's side of things or to look at things a different way in order to resolve the conflict. It is most likely to be an example of \_\_\_\_\_.

- A. arbitration
- B. conciliation
- C. mediation
- D. summary jury trial

This is an example of mediation. Mediation brings an outsider into the conflict for the first time. The purpose of the third party is for the outsider to try to facilitate the parties' reaching a resolution on their own.

*AACSB: Analytic*

*Bloom's: Apply*

*Difficulty Level: Medium*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: Must I Mediate and How Is It Done?*

33. (p. 29) \_\_\_\_\_ is the most useful alternative dispute resolution method when the parties wish to maintain an ongoing relationship but simply need help resolving the present conflict.

- A.** Mediation
- B. Conciliation
- C. Litigation
- D. Coalition

Mediation is most useful when the parties wish to maintain an ongoing relationship but simply need help resolving the present conflict. Mediation brings an outsider into the conflict for the first time. The purpose of the third party is for the outsider to try to facilitate the parties' reaching a resolution on their own.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: Must I Mediate and How Is It Done?*

34. (p. 29) In union negotiations, often the parties become so angry with each other, perceiving the other side to be recalcitrant and unwilling to be open to effective discussion of a given point, that it is more productive to allow a disinterested third party to go back and forth between the parties, speaking to each, to get them to focus on the real issues and reach an agreement. This is an example of \_\_\_\_\_.

- A. conciliation
- B.** mediation
- C. mock trial
- D. arbitration

This is an example of mediation. Mediation brings an outsider into the conflict for the first time. The purpose of the third party is for the outsider to try to facilitate the parties' reaching a resolution on their own.

*AACSB: Analytic*

*Bloom's: Apply*

*Difficulty Level: Medium*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: Must I Mediate and How Is It Done?*

35. (p. 29) Most often the mediator goes back and forth between the two parties and listens to their concerns and tries to find a way for each to get what he or she wants from the situation.

This is known as \_\_\_\_\_.

- A. piggybacking
- B. skimming
- C. social engineering
- D.** shuttle diplomacy

Most often the mediator engages in a type of "shuttle diplomacy" wherein the mediator goes back and forth between the two parties and listens to their concerns and tries to find a way for each to get what he or she wants from the situation.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-05 Determine the appropriateness of different types of ADR for various disputes.*

*Topic: Federal Mediation and Conciliation Service*

36. (p. 30) Which of the following statements is true regarding an ADR program attached to the court?

- A. It increases court docket congestion.
- B.** It lightens the court's caseload.
- C. It increases wait for court dates for litigants.
- D. It increases the cost of dispute resolution.

In an attempt to lighten their caseloads, relieve court docket congestion, decrease the wait for court dates for litigants, decrease the cost of dispute resolution, and to reserve the courts only for those matters which actually need court disposition, some courts have instituted some form of an ADR program attached to the court itself.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Agency- and Court-Annexed ADR*

37. (p. 31) Agreements the EEOC (Equal Employment Opportunity Commission) makes with employers locally, regionally, or nationally, under which the employer has an identified contact point with EEOC for scheduling the mediation of claims filed by employees with EEOC are known as \_\_\_\_\_.

- A. Universal Agreements to Litigate
- B. General Agreements for Claim Resolution
- C. Universal Agreements to Mediate
- D. General Agreements for Equal Employment Opportunity

Universal Agreements to Mediate (UAMs), are agreements the EEOC makes with employers locally, regionally, or nationally, under which the employer has an identified contact point with EEOC for scheduling the mediation of claims filed by employees with EEOC.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Agency- and Court-Annexed ADR*

38. (p. 31) \_\_\_\_\_ allow EEOC, to hold off on proceeding with the claim filed by the employee with EEOC and instead refer it back to the employer for handling by the employer's own internal EEOC approved mediation program.

- A. Referral Back programs
- B. Universal Agreements to Mediate
- C. Federal Mediation and Conciliation Services
- D. The Federal Arbitration Act

Referral Back programs allow EEOC, with the permission of the employee filing the claim with EEOC, to hold off on proceeding with the claim filed by the employee with EEOC and instead refer it back to the employer for handling by the employer's own internal EEOC approved mediation program.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Agency- and Court-Annexed ADR*



39. (p. 31) After mediation, the next most frequent ADR mechanism is \_\_\_\_\_.

- A. shuttle diplomacy
- B. litigation
- C. conciliation
- D.** arbitration

After mediation, the next most frequent ADR mechanism is arbitration. If mediation between the parties is not satisfactory to the parties in terms of resolving the dispute, they may then proceed to arbitration.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

40. (p. 31) Which of the following is an ADR mechanism that involves the intervention of a disinterested third party into a dispute and the third party can impose a decision, much like a judge does?

- A. Conciliation
- B. Mediation
- C.** Arbitration
- D. Litigation

In arbitration, the role of the third party is to listen to the concerns and evidence of both parties and impose a decision, much like a judge does.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

41. (p. 31) Which of the following statements is true regarding arbitration?

- A. It does not involve a third party.
- B. It may be binding or nonbinding.**
- C. The parties involved in the dispute attempt to resolve their conflict on their own.
- D. It is the cheapest and the easiest ADR mechanism.

Arbitration may be binding or nonbinding. If the arbitration is binding, the parties agree to abide by the decision reached by the arbitrator, thus ending the dispute. If it is nonbinding arbitration, a party not satisfied with the arbitrator's decision can proceed to litigation to resolve the dispute.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

42. (p. 31) The decision reached by an arbitrator is called a(n) \_\_\_\_\_.

- A. endorsement
- B. award**
- C. agreement
- D. prize

The decision reached by an arbitrator is called an award.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

43. (p. 33) In which of the following ADR mechanisms, the arbitrator's award is virtually final, and can be reviewed only by a court of law for reasons involving unconstitutionality, abuse, collusion, or fraud in the third party's decision?

- A. Conciliation
- B. Nonbinding arbitration
- C. Mediation
- D.** Binding arbitration

In binding arbitration, the arbitrator's award is virtually final, and can be reviewed only by a court of law for reasons involving unconstitutionality, abuse, collusion, or fraud in the arbitrator's decision and like bases attacking the validity of the award itself. However, parties who simply do not like the award cannot decide to use the courts as another chance to resolve the dispute.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

44. (p. 33) In binding arbitration, the arbitrator's award cannot be reviewed if:

- A. the award involves abuse and collusion.
- B. the award is unconstitutional.
- C.** the only reason is that the parties do not like the award.
- D. the award involves a fraud in the arbitrator's decision.

In binding arbitration, the arbitrator's award is virtually final, and can be reviewed only by a court of law for reasons involving unconstitutionality, abuse, collusion, or fraud in the arbitrator's decision and like bases attacking the validity of the award itself. However, parties who simply do not like the award cannot decide to use the courts as another chance to resolve the dispute.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

45. (p. 33) Which of the following is true regarding the decision reached by the arbitrator in the case of binding arbitration?

- A.** The decision need not be consistent with the concept of *stare decisis*.
- B. For binding agreements the arbitrator should be a lawyer.
- C. The decision can be reviewed if the parties do not like the decision.
- D. The decision reached by the arbitrator is known as an endorsement.

There is generally no requirement that an arbitrator be a lawyer or have any legal training, or that their awards be consistent as with the concept of *stare decisis* and precedent as in legal cases.

AACSB: Analytic

Bloom's: Remember

Difficulty Level: Medium

Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.

Topic: Arbitration

46. (p. 33) \_\_\_\_\_ agreements are almost always included in international commercial transactions as a way of avoiding international litigation.

- A. Conciliation
- B.** Binding arbitration
- C. Mediation
- D. Nonbinding arbitration

Binding arbitration agreements are almost always included in international commercial transactions as a way of avoiding international litigation.

AACSB: Analytic

Bloom's: Remember

Difficulty Level: Easy

Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.

Topic: Arbitration

47. (p. 33) Which of the following is the largest arbitration organization in the U.S?

- A. Federal Mediation & Conciliation Service
- B. Chicago International Dispute Resolution Association
- C. American Arbitration Association**
- D. Commercial Arbitration and Mediation Centre for the Americas (CAMCA)

The American Arbitration Association, the largest arbitration organization in the U.S., maintains a roster of over 7,000 arbitrators which anyone can use to choose an arbitrator for a dispute.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

48. (p. 34) If two parties involved in a dispute, decide to take help of The American Arbitration Association then the matters of scheduling the arbitration and hearing and paying for the arbitrator's services are arranged with the arbitrator by the \_\_\_\_\_.

- A. Arbitration and Mediation Center
- B. federal government
- C. American Arbitration Association
- D. parties involved in the dispute**

The matters of scheduling the arbitration hearing and paying for the arbitrator's services are arranged with the arbitrator directly by the parties.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

49. (p. 35) Which of the following is most likely to address virtually all disputes to be arbitrated other than those where a union or a collective bargaining agreement is in effect?

- A. Shuttle diplomacy
- B. Commercial arbitration**
- C. Social engineering
- D. Labor arbitration

Commercial arbitration addresses virtually all disputes to be arbitrated other than labor. It includes employer/employee disputes where no union or collective bargaining agreement is in effect.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

50. (p. 35) In this method of dispute resolution, the attorney assembles ordinary citizens, asks them to act as jury, presents the case as if in court, and then requests them to make a decision. Hearing the decision and questioning the "jury" about their deliberations can be very instructive for the attorney in deciding how best to proceed with the case and whether to seek a path other than litigation. Identify the dispute resolution method in the discussion.

- A. Mock trials**
- B. Minitrials
- C. Regulatory Negotiation
- D. Summary jury trial

The alternative dispute resolution method described above is called mock trials.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-08 Suggest ways that ADR can help business.*

*Topic: Other Alternatives*

51. (p. 35) In this alternative method of dispute resolution lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business. Generally the parties look at the problem as one of a business nature rather than a legal nature and then go into settlement negotiations afterwards. Identify the dispute resolution method in the discussion.

- A. Mock trials
- B. Minitrials**
- C. Regulatory Negotiation
- D. Summary jury trial

The alternative dispute resolution method described above is called minitrials.

*AACSB: Analytic*  
*Bloom's: Remember*  
*Difficulty Level: Easy*  
*Learning Objective: 02-08 Suggest ways that ADR can help business.*  
*Topic: Other Alternatives*

52. (p. 35) Which of the following statements is true regarding a mock trial?

- A. This mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue.
- B. It involves assembling ordinary citizens and then asking them to act like a jury.**
- C. It is generally carried out after the case has been filed with the court.
- D. Lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business.

In the case of mock trial the attorney assembles a mock jury made up of ordinary citizens, presents the case as if in court, and then requests them to make a decision.

*AACSB: Analytic*  
*Bloom's: Understand*  
*Difficulty Level: Medium*  
*Learning Objective: 02-08 Suggest ways that ADR can help business.*  
*Topic: Other Alternatives*

53. (p. 35) Which of the following statements is true regarding a minitrial?

- A. Lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business.
- B. This method involves selecting a small jury just as a regular jury without telling them that their decision is not binding.
- C. It involves assembling ordinary citizens and then asking them to act like a jury.
- D. This mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue.

In the case of minitrials, lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty Level: Medium*

*Learning Objective: 02-08 Suggest ways that ADR can help business.*

*Topic: Other Alternatives*

54. (p. 36) Which of the following methods of dispute resolution is most likely to be used by a regulatory agency to negotiate the provisions of the regulations with the interested groups so that there is less likelihood of a challenge once the regulations are promulgated?

- A. Mock trials
- B. Minitrials
- C. Regulatory Negotiation
- D. Summary jury trial

Regulatory negotiation is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-08 Suggest ways that ADR can help business.*

*Topic: Other Alternatives*



55. (p. 36) This mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue. Identify the dispute resolution method in the discussion.

- A. Summary jury trial
- B. Minitrials
- C. Mock trials
- D.** Regulatory Negotiation

Regulatory negotiation is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-08 Suggest ways that ADR can help business.*

*Topic: Other Alternatives*

56. (p. 36) Which of the following statements is true regarding regulatory negotiation?

- A. It is generally carried out after the case has been filed with the court.
- B. It involves assembling ordinary citizens and then asking them to act like a jury.
- C.** It is used by administrative agencies wishing to avoid protracted litigation with interested groups.
- D. Lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business.

This mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue. In this way there is less likelihood of a challenge once the regulations are promulgated.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty Level: Medium*

*Learning Objective: 02-08 Suggest ways that ADR can help business.*

*Topic: Other Alternatives*

57. (p. 36) Some jurisdictions provide for \_\_\_\_\_ after cases have been filed if the case will require a great deal of time for trial and is unlikely to be settled by negotiation.

- A. mock trials
- B. summary jury trials**
- C. minitrials
- D. regulatory negotiation

Some jurisdictions provide for summary jury trial after cases have been filed if the case will require a great deal of time for trial and is unlikely to be settled by negotiation.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty Level: Medium*

*Learning Objective: 02-08 Suggest ways that ADR can help business.*

*Topic: Other Alternatives*

58. (p. 36) Which of the following is true regarding summary jury trial?

- A. Lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business.
- B. This method involves selecting a small jury just as a regular jury without telling them that their decision is not binding.**
- C. It involves assembling ordinary citizens and then asking them to act like a jury.
- D. This mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue.

In the summary jury trial method, a small jury is chosen just as a regular jury would be, the case is presented in summary fashion by the parties, and the jury renders a verdict. Based on the jury's input, the parties are urged to negotiate a settlement if it is appropriate.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty Level: Medium*

*Learning Objective: 02-08 Suggest ways that ADR can help business.*

*Topic: Other Alternatives*

### Essay Questions

59. (p. 26) Define alternative dispute resolution (ADR).

Not every dispute will be litigated in court. Litigation is the heavy artillery of the conflict resolution arena and should be used most judiciously. Ideally it should be used only as a means of last resort. Conflicts which do not need litigation can be resolved using several alternatives. These mechanisms have come to be known as alternative dispute resolution.

*AACSB: Analytic*  
*Bloom's: Remember*  
*Difficulty Level: Easy*  
*Learning Objective: 02-01 Define what ADR is.*  
*Topic: Introduction and Background*

60. (p. 26) Discuss the need for alternative dispute resolution (ADR).

Our becoming a more litigious society has had a tremendous impact on the options available when we have a dispute. The immediate issue was that the startling increase in lawsuits greatly clogged the court system. Litigants could languish for years while waiting to get on a busy court's calendar. Litigation was virtually the only recourse for those with disputes, and that route was time-consuming and expensive. Because of these reasons it is important to use alternative dispute resolution mechanisms.

*AACSB: Analytic*  
*Bloom's: Remember*  
*Difficulty Level: Easy*  
*Learning Objective: 02-01 Define what ADR is.*  
*Topic: Introduction and Background*

61. (p. 28) What are the various advantages of alternative dispute resolution (ADR)?

ADR is very flexible and the mechanisms need not be used in any particular order. It offers considerable cost-saving and time saving to the parties and court. It also offers considerable privacy to the parties.

*AACSB: Analytic*  
*Bloom's: Remember*  
*Difficulty Level: Easy*  
*Learning Objective: 02-03 Tell what the most popular types of ADR are.*  
*Topic: Types of Alternative Dispute Resolution*

62. (p. 28) Discuss conciliation.

Conciliation is one of the three most common types of ADR. The very first thing a party with a conflict should do is to attempt conciliation also called negotiation, with the other party to the dispute. It is the easiest, cheapest thing to do. Conciliation simply involves the parties talking to each other about their dispute, either orally or in writing, in an effort to reach a resolution of the conflict.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: What Is Conciliation and How Is It Done?*

63. (p. 29) Explain with an example, mediation.

Mediation is one of the three most common types of ADR. Mediation brings an outsider into the conflict for the first time. The purpose of the third party is for the outsider to try to facilitate the parties' reaching a resolution on their own. Mediation is most useful when the parties wish to maintain an ongoing relationship but simply need help resolving the present conflict. A third party outsider may well be able to make headway where the parties themselves were not able to.

For example, In union negotiations, often the parties become so angry with each other, perceiving the other side to be recalcitrant and unwilling to be open to effective discussion of a given point, that it is more productive to allow a mediator to go back and forth between the parties, speaking to each, to get them to focus on the real issues and reach an agreement.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty Level: Medium*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: Must I Mediate and How Is It Done?*

64. (p. 30) What is shuttle diplomacy?

Shuttle diplomacy is a type of mediation. Most often the mediator engages in a type of "shuttle diplomacy" wherein the mediator goes back and forth between the two parties and listens to their concerns and tries to find a way for each to get what he or she wants from the situation.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-04 Give the pros and cons of different types of ADR.*

*Topic: Must I Mediate and How Is It Done?*

65. (p. 30) What are the various advantages of using a disinterested third party for mediation?

Mediation brings an outsider into the conflict for the first time. The purpose of the third party is for the outsider to try to facilitate the parties' reaching a resolution on their own. The mediator can "hear" the parties' concerns better than they can hear each other because the mediator is not involved in the dispute and does not evaluate information with an eye toward trying to gain an advantage, keeping from being embarrassed, saving face, or appearing weak. The result is that the mediator can generally get the parties to reach an agreement with each other even though they were initially so angry that they may not have even wanted to be in the same room together.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty Level: Medium*

*Learning Objective: 02-05 Determine the appropriateness of different types of ADR for various disputes.*

*Topic: Must I Mediate and How Is It Done?*

66. (p. 31) What is arbitration?

Arbitration is one of the three most common types of ADR. Arbitration also involves the intervention of a disinterested third party into a dispute. In arbitration, the role of the third party is to listen to the concerns and evidence of both parties and impose a decision, much like a judge does. The parties will not be resolving their own conflict, but instead they contractually agree between themselves to have a resolution imposed by an outsider to the conflict.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

67. (p. 31) What is the major difference between arbitration and mediation?

In mediation the disinterested third party attempts to get the parties to reach a resolution of their conflict on their own. In arbitration, the role of the third party is to listen to the concerns and evidence of both parties and impose a decision, much like a judge does. The parties will not be resolving their own conflict, but instead they contractually agree between themselves to have a resolution imposed by an outsider to the conflict.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

68. (p. 33) Explain binding arbitration.

Arbitration may be binding or nonbinding. If the arbitration is binding, the parties agree to abide by the decision reached by the arbitrator, thus ending the dispute.

In binding arbitration, the arbitrator's award is virtually final, and can be reviewed only by a court of law for reasons involving unconstitutionality, abuse, collusion, or fraud in the arbitrator's decision and like bases attacking the validity of the award itself. However, parties who simply do not like the award cannot decide to use the courts as another chance to resolve the dispute. They frequently are included in employment agreements or consumer purchase agreements. They are almost always included in international commercial transactions as a way of avoiding international litigation.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

69. (p. 34) Discuss the structure and functioning of the American Arbitration Association.

The American Arbitration Association, the largest arbitration organization in the U.S., maintains a roster of over 7,000 arbitrators which anyone can use to choose an arbitrator for a dispute. Arbitrators on the roster have been vetted by AAA and meet certain requirements, such as experience with arbitrating a certain number of disputes. Much as with mediators, at the client's request the AAA will send to the parties a list of potential arbitrators to decide the dispute. Each party views the list and strikes persons they do not want until agreement is finally reached. The matters of scheduling the arbitration hearing and paying for the arbitrator's services are arranged with the arbitrator directly by the parties. The cost of the arbitrator's fees is usually split equally between the parties by prior agreement. AAA handles about 55,000 commercial arbitrations per year, but they arbitrate all types of disputes.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Hard*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

70. (p. 35) What is labor arbitration?

Collective bargaining agreements between labor unions and employers commonly contain a provision for binding arbitration requiring that contract disputes will be handled by an arbitrator rather than a court. This is labor arbitration. This permits the parties to the collective bargaining agreement to dispose of disagreements arising under the contract without resort to the time-consuming method of litigating every disagreement.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

71. (p. 35) What is commercial arbitration?

Commercial arbitration addresses virtually all disputes to be arbitrated other than labor. It includes employer/employee disputes where no union or collective bargaining agreement is in effect.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Easy*

*Learning Objective: 02-06 Explain how administrative agencies have increasingly mandated ADR.*

*Topic: Arbitration*

72. (p. 35) What is a mock trial? Explain its advantages.

A mock trial is an alternative dispute resolution method. An attorney may wish to use this to determine how a jury might react to his or her case. The attorney assembles a mock jury made up of ordinary citizens, presents the case as if in court, and then requests them to make a decision. Hearing the decision and questioning the "jury" about their deliberations can be very instructive for the attorney in deciding how best to proceed with the case and whether to seek a path other than litigation.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-08 Suggest ways that ADR can help business.*

*Topic: Other Alternatives*



73. (p. 35) Discuss minitrials. How is it different from mock trials?

A minitrial is an alternative dispute resolution method. In a minitrial, lawyers for both sides assemble a panel of a neutral advisors and high-ranking business executives with settlement authority from each business. Agreements vary, but generally the parties look at the problem as one of a business nature rather than a legal nature, then go into settlement negotiations afterwards, incorporating what the results of the minitrial have disclosed. The major difference between mock trials and minitrials is that minitrials are used for business cases and are presented to top business executives rather than ordinary citizens.

*AACSB: Analytic*  
*Bloom's: Remember*  
*Difficulty Level: Medium*  
*Learning Objective: 02-08 Suggest ways that ADR can help business.*  
*Topic: Other Alternatives*

74. (p. 35) Discuss regulatory negotiation.

Regulatory negotiation is an alternative dispute resolution mechanism. This mechanism is used by administrative agencies wishing to avoid protracted litigation with interested groups over regulations which the agency wants to issue. The agency meets with these groups before formally proposing the regulations, often with a third party such as a mediator present, and attempts to negotiate the provisions of the regulations. In this way there is less likelihood of a challenge once the regulations are promulgated.

*AACSB: Analytic*  
*Bloom's: Remember*  
*Difficulty Level: Medium*  
*Learning Objective: 02-08 Suggest ways that ADR can help business.*  
*Topic: Other Alternatives*

Chapter 02 - Alternative Dispute Resolution

75. (p. 35) Discuss summary jury trial.

Some jurisdictions provide for summary jury trials after cases have been filed if the case will require a great deal of time for trial and is unlikely to be settled by negotiation. Without telling them that their decision is not binding, a small jury is chosen just as a regular jury would be, the case is presented in summary fashion by the parties, and the jury renders a verdict. Based on the jury's input, the parties are urged to negotiate a settlement if it is appropriate.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty Level: Medium*

*Learning Objective: 02-08 Suggest ways that ADR can help business.*

*Topic: Other Alternatives*