CLAW 301

Chapter 4: Courts and Alternative Dispute Resolution

4–1. The Judiciary's Role in American Government

The body of American law includes the federal and state constitutions, statutes passed by legislative bodies, administrative law, and the case decisions and legal principles that form the common law.

The essential role of the judiciary—the courts—in the American governmental system is to interpret the laws and apply them to specific situations.

4–1a. Judicial Review

The judiciary branch can decide, among other things, whether the laws or actions of the other two branches are constitutional.

Judicial review - The process by which courts decide on the constitutionality of legislative enactments and actions of the executive branch.

- This enables the judicial branch to act as a check on the other two branches of government.

4–1b. The Origins of Judicial Review in the United States

Since the *Marbury v. Madison* decision, the power of judicial review has remained unchallenged.

Today, this power is exercised by both federal and state courts.

4–2. Basic Judicial Requirements

Before a lawsuit can be brought before a court, certain requirements must be met. These requirements relate to jurisdiction, venue, and standing to sue.

4–2a. Jurisdiction

Jurisdiction - The authority of a court to hear a case and decide a specific action.

Court must have jurisdiction:

- over the person (or company) against whom the suit is brought (the defendant) or
- over the property involved in the suit.
- must also have jurisdiction over the subject matter of the dispute.

Jurisdiction over Persons or Property

A particular court can exercise *in personam jurisdiction* (personal jurisdiction) over any person or business that resides in a certain geographic area.

- A state trial court normally has jurisdictional authority over residents (including businesses) of a particular area of the state, such as a county or district.
- A state's highest court (often called the state supreme court) has jurisdictional authority over all residents within the state.

A court can also exercise jurisdiction over property that is located within its boundaries.

- known as *in rem jurisdiction*, or "jurisdiction over the thing."

Long Arm Statutes and Minimum Contacts

Under the authority of a state long arm statute, a court can exercise personal jurisdiction over certain out-of-state defendants based on activities that took place within the state.

- it must be demonstrated that the defendant had sufficient contacts, or minimum contacts, with the state to justify the jurisdiction.
- minimum-contacts requirement means that the defendant must have sufficient connection to the state.

Corporate Contacts

A corporation normally is subject to personal jurisdiction in the state in which it is incorporated, has its principal office, and/or is doing business.

- corporations that do business in many states are not automatically subject to jurisdiction in all of them.
- only in states where it does such substantial business.

Jurisdiction over Subject Matter

Jurisdiction over subject matter is a limitation on the types of cases a court can hear.

In both the federal and the state court systems, there are courts of *general* (unlimited) *jurisdiction* and courts of *limited jurisdiction*.

- An example of a court of general jurisdiction is a *state trial court* or a *federal district court*.
- An example of a state court of limited jurisdiction is a *probate court*.
    - Probate courts are state courts that handle only matters relating to the transfer of a person's assets and obligations after that person's death, including matters relating to the custody and guardianship of children.
- An example of a federal court of limited subject-matter jurisdiction is a *bankruptcy court*.
    - Bankruptcy courts handle only bankruptcy proceedings, which are governed by federal bankruptcy law.

A court's jurisdiction over subject matter is usually defined in the statute or constitution creating the court.

In both the federal and the state court systems, a court's subject-matter jurisdiction can be limited by any of the following:

1. The subject of the lawsuit.

2. The sum in controversy.
3. Whether the case involves a felony (a more serious type of crime) or a misdemeanor (a less serious type of crime).
4. Whether the proceeding is a trial or an appeal.

Original and Appellate Jurisdiction

The distinction between courts of original jurisdiction and courts of appellate jurisdiction normally lies in whether the case is being heard for the first time.

Courts having original jurisdiction are courts of the first instance, or trial courts.

- courts in which lawsuits begin, trials take place, and evidence is presented.
- In the federal court system, the district courts are trial courts.

Courts having appellate jurisdiction act as reviewing, or appellate, courts.

- cases can be brought before appellate courts only on appeal from an order or a judgment of a trial court or other lower courts.

Jurisdiction of the Federal Courts

Because the federal government is a government of limited powers, the jurisdiction of the federal courts is limited.

Federal courts have subject-matter jurisdiction in two situations: when a federal question is involved and when there is diversity of citizenship.

Federal Questions

Article III of the U.S. Constitution establishes that whenever a plaintiff's cause of action is based, at least in part, on the U.S. Constitution, a treaty, or a federal law, a federal question arises.

Federal question - a question that pertains to the U.S. Constitution, acts of Congress, or treaties. A federal question provides a basis for federal jurisdiction.

Any lawsuit involving a federal question, such as a person's rights under the U.S. Constitution, can originate in a federal court.

In a case based on a federal question, a federal court will apply federal law.

Diversity of Citizenship

Federal district courts can also exercise original jurisdiction over cases involving *diversity of citizenship*.

The most common type of *diversity jurisdiction* requires both of the following:

1. The plaintiff and defendant must be residents of different states.
2. The dollar amount in controversy must exceed $75,000.

For purposes of diversity jurisdiction, a corporation is a citizen of both the state in which it is incorporated and the state in which its principal place of business is located.

A case involving diversity of citizenship can be filed in the appropriate federal district court.

If the case starts in a state court, it can sometimes be transferred, or "removed," to a federal court.

In a case based on diversity of citizenship, a federal court will apply the relevant state law (which is often the law of the state in which the court sits).

Exclusive versus Concurrent Jurisdiction

When both federal and state courts have the power to hear a case, as is true in lawsuits involving diversity of citizenship, *concurrent jurisdiction* exists.

When cases can be tried only in federal courts or only in state courts, *exclusive jurisdiction* exists.

- Federal courts have exclusive jurisdiction in cases involving federal crimes, bankruptcy, most patent and copyright claims, suits against the United States, and some areas of admiralty law.
- State courts also have exclusive jurisdiction over certain subjects—for instance, divorce and adoption.

When concurrent jurisdiction exists, a party may choose to bring a suit in either a federal court or a state court.

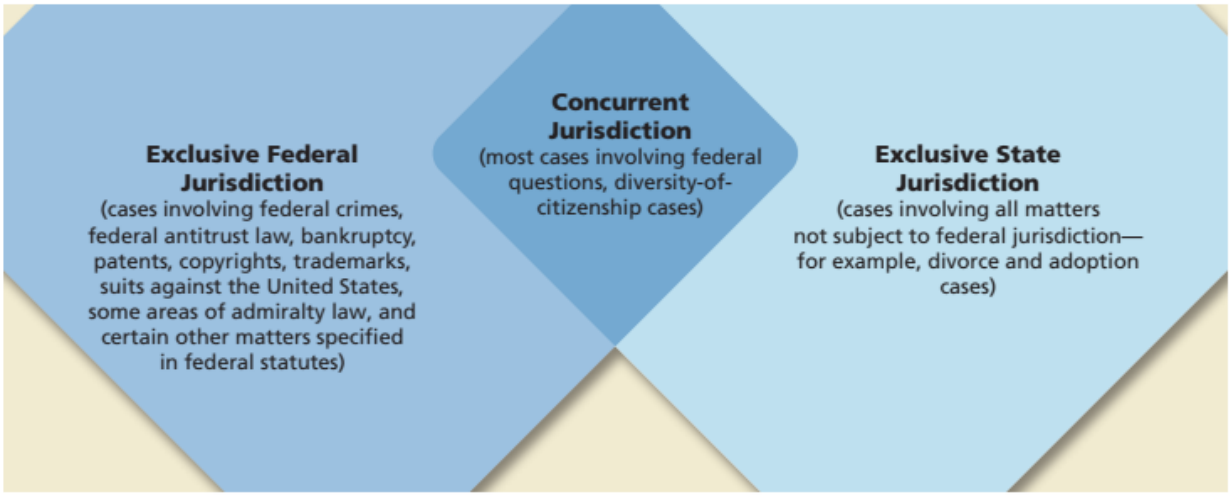
Many factors can affect a party's decision to litigate in a federal versus a state court.

Examples include:

- the availability of different remedies,
- the distance to the respective courthouses, or
- the experience or reputation of a particular judge.

For instance, a plaintiff might choose to litigate in a state court if the court has a reputation for awarding substantial amounts of damages or if the judge is perceived as being pro-plaintiff.

Exhibit 4–1 Exclusive and Concurrent Jurisdiction



Jurisdiction in Cyberspace

For a court to compel a defendant to come before it, the defendant must have a sufficient connection—that is, minimum contacts—with the state.

When a defendant's only contacts with the state are through a website, however, it can be difficult to determine whether these contacts are sufficient for a court to exercise jurisdiction.

The "Sliding-Scale" Standard

The courts have developed a "*sliding-scale*" standard to determine when they can exercise personal jurisdiction over an out-of-state defendant based on the defendant's Web activities.

The sliding-scale standard identifies three types of Internet business contacts and outlines the following rules for jurisdiction:

1. When the defendant conducts substantial business over the Internet (such as contracts and sales), jurisdiction is proper.
2. When there is some interactivity through a website, jurisdiction may be proper, depending on the circumstances. It is up to the courts to decide how much online interactivity is enough to satisfy the minimum-contacts requirement.
3. When a defendant merely engages in passive advertising on the Web, jurisdiction is never proper.

International Jurisdictional Issues

The world's courts seem to be developing a standard that echoes the requirement of minimum contacts applied by the U.S. courts.

Most courts are indicating that minimum contacts—doing business within the jurisdiction, for instance—are enough to compel a defendant to appear.

- The effect of this standard is that a business firm has to comply with the laws in any jurisdiction in which it targets customers for its products.

- This situation is complicated by the fact that many countries' laws on particular issues—free speech, for instance—are very different from U.S. laws.

Concept Summary 4.1

Jurisdiction

Personal	Exists when a defendant: • Is located in the court's territorial boundaries. • Qualifies under state long arm statutes. • Is a corporation doing business within the state. • Advertises, sells, or places goods into commerce within the state.
Property	Exists when the property that is subject to a lawsuit is located within the court's territorial boundaries.
Subject Matter	Limits the court's jurisdictional authority to particular types of cases. • *General jurisdiction*—Exists when a court can hear cases involving a broad array of issues. • *Limited jurisdiction*—Exists when a court is limited to a specific subject matter, such as probate or divorce.
Original	Exists with courts that have the authority to hear a case for the first time (trial courts, district courts).
Appellate	Exists with courts of appeal and review. Generally, appellate courts do not have original jurisdiction.
Federal	A federal court can exercise jurisdiction: • When the plaintiff's cause of action involves a federal question (is based at least in part on the U.S. Constitution, a treaty, or a federal law). • In cases between citizens of different states (or cases involving U.S. citizens and foreign countries or their citizens) when the amount in controversy exceeds $75,000 (diversity-of-citizenship jurisdiction).
Concurrent	Exists when both federal and state courts have authority to hear the same case.
Exclusive	Exists when only state courts or only federal courts have authority to hear a case.
Cyberspace	The courts have developed a sliding-scale standard to use in determining when jurisdiction over a website owner or operator in another state is proper.

4–2b. Venue

Venue is concerned with the most appropriate location for a trial.

The concept of venue reflects the policy that a court trying a case should be in the geographic neighborhood (usually the county) where the incident occurred or where the parties reside.

Venue in a civil case typically is where the defendant resides or does business, whereas venue in a criminal case normally is where the crime occurred.

In some cases, pretrial publicity or other factors may require a change of venue to another community, especially in criminal cases in which the defendant's right to a fair and impartial jury has been impaired.

Venue has lost some significance in today's world because of the Internet and 24/7 news reporting.

- Courts now rarely grant requests for a change of venue.
- Because everyone has instant access to the same information about a purported crime, courts reason that no community is more or less informed or prejudiced for or against a defendant.

4–2c. Standing to Sue

Before a party can bring a lawsuit to court, that party must have standing to sue, or a sufficient stake in a matter to justify seeking relief through the court system.

Standing means that the party that filed the action in court has a legally protected interest at stake in the litigation.

At times, a person can have standing to sue on behalf of another person, such as a minor (child) or a mentally incompetent person.

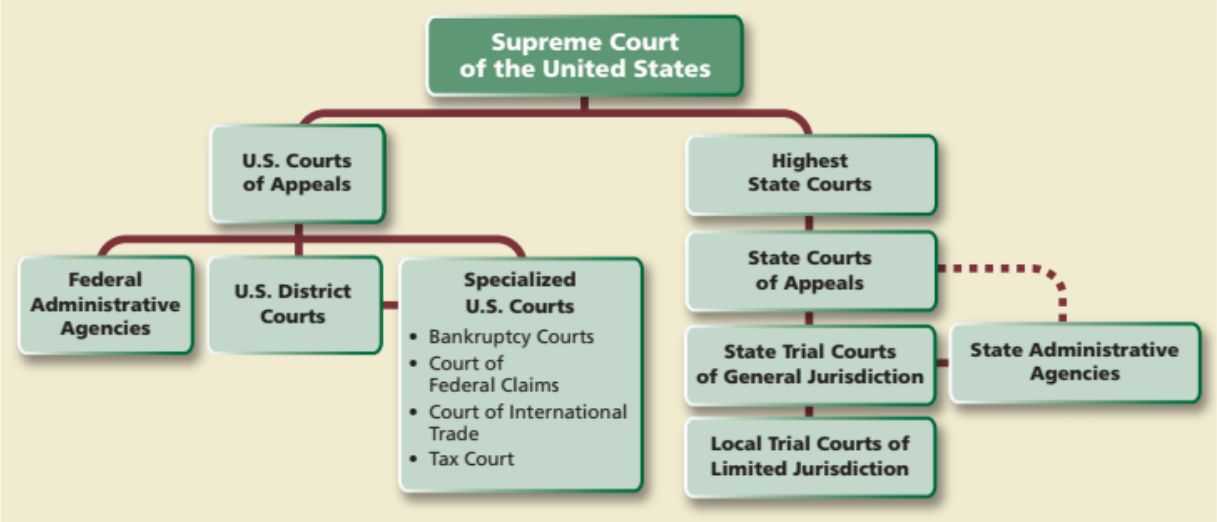
Standing can be broken down into three elements:

1. Harm. The party bringing the action must have suffered harm—an invasion of a legally protected interest—or must face imminent harm. The controversy must be real and substantial rather than hypothetical.
2. Causation. There must be a causal connection between the conduct complained of and the injury.
3. Remedy. It must be likely, as opposed to merely speculative, that a favorable court decision will remedy the injury suffered.

4–3. The State and Federal Court Systems

Each state has its own court system. Additionally, there is a system of federal courts.

Exhibit 4–2 The State and Federal Court Systems



4–3a. The State Court Systems

No two state court systems are the same.

State courts may include:

1. trial courts of limited jurisdiction,
2. trial courts of general jurisdiction,
3. appellate courts (intermediate appellate courts), and
4. the state's highest court (often called the state supreme court).

Any person who is a party to a lawsuit has the opportunity to plead the case before a trial court and then, if he or she loses, before at least one level of appellate court.

- If the case involves a federal statute or a federal constitutional issue, the decision of the state supreme court may be further appealed to the United States Supreme Court.

The states use various methods to select judges for their courts.

- voters elect judges, or
- in some states, judges are appointed.

The states usually specify the number of years that judges will serve.

Trial Courts

Trial courts are exactly what their name implies—courts in which trials are held and testimony is taken.

State trial courts have either general or limited jurisdiction.

General Jurisdiction

Trial courts that have general jurisdiction as to subject matter may be called county, district, superior, or circuit courts.

State trial courts of general jurisdiction have jurisdiction over a wide variety of subjects, including both civil disputes and criminal prosecutions.

In some states, trial courts of general jurisdiction may hear appeals from courts of limited jurisdiction.

Limited Jurisdiction

Courts of limited jurisdiction as to subject matter are generally inferior trial courts or minor judiciary courts.

Limited jurisdiction courts might include local municipal courts (which could include separate traffic courts and drug courts) and domestic relations courts (which handle divorce and child-custody disputes).

Small claims courts are inferior trial courts that hear only civil cases involving claims of less than a certain amount, such as $5,000 (the amount varies from state to state).

- Procedures in small claims courts are generally informal, and lawyers are not required (in a few states, lawyers are not even allowed).
- Decisions of small claims courts and municipal courts may sometimes be appealed to a state trial court of general jurisdiction.

Appellate, or Reviewing, Courts

Every state has at least one court of appeals (appellate court, or reviewing court), which may be an intermediate appellate court or the state's highest court.

- About three-fourths of the states have intermediate appellate courts.

Courts of appeals:

- do not conduct new trials, in which evidence is submitted to the court and witnesses are examined.
- an appellate court panel of three or more judges reviews the record of the case on appeal, which includes a transcript of the trial proceedings.
- the appellate court hears arguments from attorneys and determines whether the trial court committed an error.
- normally defer (give significant weight) to the trial court's findings on questions of fact.

Reviewing courts focus on questions of law, not questions of fact.

A **question of fact** deals with what really happened in regard to the dispute being tried—such as whether a party actually burned a flag.

A **question of law** concerns the application or interpretation of the law—such as whether flag-burning is a form of speech protected by the First Amendment to the U.S. Constitution.

- Only a judge, not a jury, can rule on questions of law.

Highest State Courts

The highest appellate court in a state is usually called the **supreme court** but may be designated by some other name.

- in both New York and Maryland, the highest state court is called the Court of Appeals.
- The highest state court in Maine and Massachusetts is the Supreme Judicial Court.
- In West Virginia, it is the Supreme Court of Appeals.

The decisions of each state's highest court on all questions of state law are final.

- Only when issues of federal law are involved can the United States Supreme Court overrule a decision made by a state's highest court.

4–3b. The Federal Court System

The federal court system is basically a three-tiered model consisting of:

1. U.S. district courts (trial courts of general jurisdiction) and various courts of limited jurisdiction,
2. U.S. courts of appeals (intermediate courts of appeals), and
3. the United States Supreme Court.

Unlike state court judges, who are usually elected, federal court judges—including the justices of the Supreme Court—are appointed by the president of the United States, subject to confirmation by the U.S. Senate.

Federal judges receive lifetime appointments under Article III of the U.S. Constitution.

- In the entire history of the United States, only a handful of federal judges have been removed from office through impeachment proceedings.

U.S. District Courts

At the federal level, the equivalent of a state trial court of general jurisdiction is the district court.

U.S. district courts have original jurisdiction in matters involving a federal question and concurrent jurisdiction with state courts when diversity jurisdiction exists.

Federal cases typically originate in district courts.

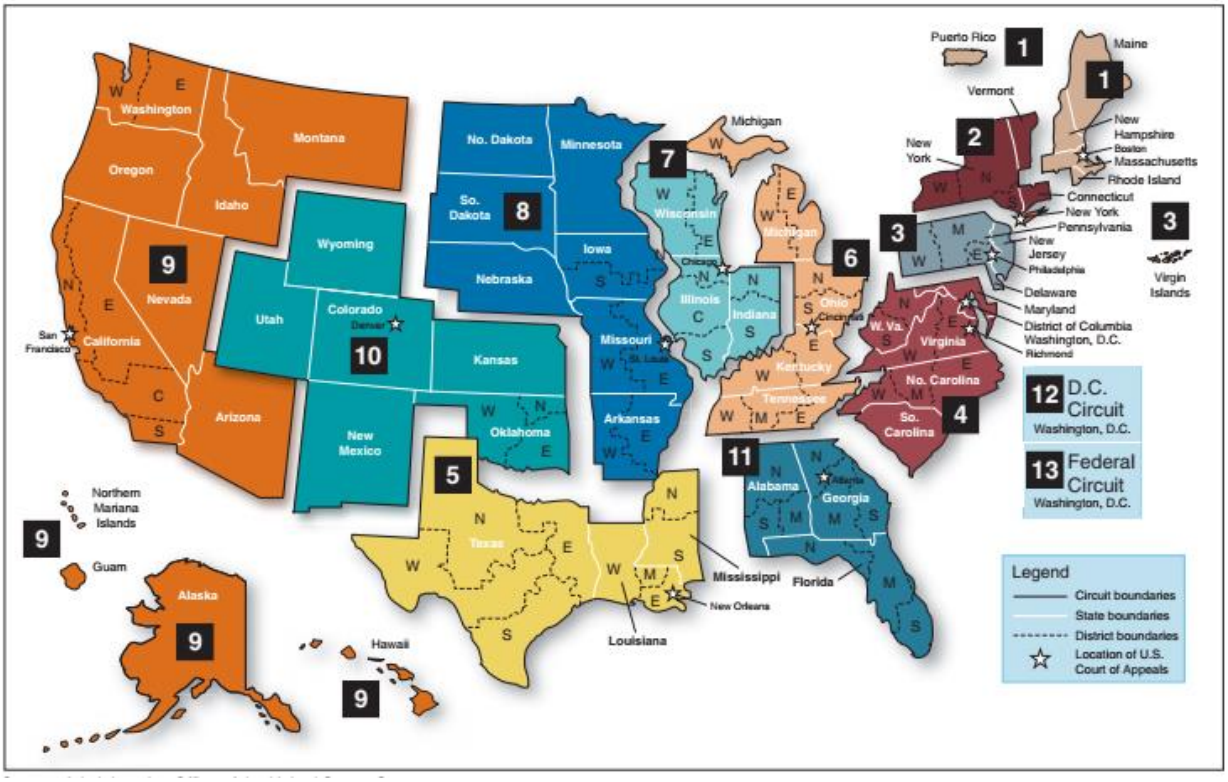
There are other federal courts with original, but special (or limited), jurisdiction, such as the federal bankruptcy courts and tax courts.

Every state has at least one federal district court.

The number of judicial districts can vary over time, primarily owing to population changes and corresponding changes in caseloads.

- Today, there are ninety-four federal judicial districts.

Exhibit 4–3 Geographic Boundaries of the U.S. Courts of Appeals and U.S. District Courts



U.S. Courts of Appeals

In the federal court system, there are thirteen U.S. courts of appeals—referred to as U.S. circuit courts of appeals.

Twelve of these courts (including the Court of Appeals for the D.C. Circuit) hear appeals from the federal district courts located within their respective judicial circuits.

The Court of Appeals for the Thirteenth Circuit, called the Federal Circuit, has national appellate jurisdiction over certain types of cases, including those involving patent law and those in which the U.S. government is a defendant.

The decisions of a circuit court of appeals are binding on all courts within the circuit court's jurisdiction. These decisions are final in most cases, but appeal to the United States Supreme Court is possible.

The United States Supreme Court

The highest level of the three-tiered federal court system is the United States Supreme Court.

According to the U.S. Constitution, there is only one national Supreme Court.

- All other courts in the federal system are considered "inferior."
- Congress is empowered to create inferior courts as it deems necessary.

- The inferior courts that Congress has created include the second tier in our model—the U.S. circuit courts of appeals—as well as the district courts and the various federal courts of limited, or specialized, jurisdiction.

The United States Supreme Court:

- consists of nine justices.
- it has original, or trial, jurisdiction in rare instances (set forth in Article III, Sections 1 and 2), but most of its work is as an appeals court.
- can review any case decided by any of the federal courts of appeals.
- has appellate authority over cases involving federal questions that have been decided in the state courts.
- is the final authority on the Constitution and federal law.

Appeals to the Supreme Court

To bring a case before the Supreme Court, a party requests the Court to issue a *writ of certiorari*.

- A *writ of certiorari* is an order issued by the Supreme Court to a lower court requiring the latter to send it the record of the case for review.
- The Court will not issue a *writ* unless at least four of the nine justices approve of it. This is called the *rule of four*.

Whether the Court will issue a writ of certiorari is entirely within its discretion, and most petitions for writs are denied.

- A denial of the request to issue a writ of certiorari is not a decision on the merits of the case, nor does it indicate agreement with the lower court's opinion.
- Denial of the writ has no value as a precedent.
- Denial simply means that the lower court's decision remains the law in that jurisdiction.

Petitions Granted by the Court

Typically, the Court grants petitions when cases raise important constitutional questions or when the lower courts have issued conflicting decisions on a significant issue.

The justices, however, never explain their reasons for hearing certain cases and not others, so it is difficult to predict which type of case the Court might select.

Types of Courts

Trial Courts	Trial courts are courts of original jurisdiction in which actions are initiated. • *State courts*—Courts of general jurisdiction can hear any case that has not been specifically designated for another court. Courts of limited jurisdiction include, among others, domestic relations courts, probate courts, municipal courts, and small claims courts. • *Federal courts*—The federal district court is the equivalent of the state trial court. Federal courts of limited jurisdiction include the bankruptcy courts and others shown in Exhibit 4–2.
Intermediate Appellate Courts	Courts of appeals are reviewing courts. Generally, appellate courts do not have original jurisdiction. • About three-fourths of the states have intermediate appellate courts. • In the federal court system, the U.S. circuit courts of appeals are the intermediate appellate courts.
Supreme Courts	• The highest state court is that state's supreme court, although it may be called by some other name. • Appeal from state supreme courts to the United States Supreme Court is possible only if a federal question is involved. • The United States Supreme Court is the highest court in the federal court system and the final authority on the Constitution and federal law.

4–4. Alternative Dispute Resolution

Litigation—the process of resolving a dispute through the court system—is expensive and time consuming.

- because of the backlog of cases pending in many courts, several years may pass before a case is actually tried.

Many businesspersons are turning to alternative dispute resolution (ADR) as a means of settling their disputes.

- ADR - The resolution of disputes in ways other than those involved in the traditional judicial process.
- Negotiation, mediation, and arbitration are forms of ADR.

The great advantage of ADR is its flexibility.

- Methods of ADR range from the parties sitting down together and attempting to work out their differences to multinational corporations agreeing to resolve a dispute through a formal hearing before a panel of experts.
- Normally, the parties themselves can control how they will attempt to settle their dispute.
- They can decide what procedures will be used, whether a neutral third party will be present or make a decision, and whether that decision will be legally binding or nonbinding.

ADR also offers more privacy than court proceedings and allows disputes to be resolved relatively quickly.

Today, more than 90 percent of civil lawsuits are settled before trial using some form of ADR.

4–4a. Negotiation

The simplest form of ADR is negotiation – a process in which the parties attempt to settle their dispute informally, with or without attorneys to represent them.

- Attorneys frequently advise their clients to negotiate a settlement voluntarily before they proceed to trial.
- Parties may even try to negotiate a settlement during a trial or after the trial but before an appeal.

Negotiation usually involves just the parties themselves and (typically) their attorneys.

4–4b. Mediation

In mediation, a neutral third party acts as a mediator and works with both sides in the dispute to facilitate a resolution.

- The mediator, who need not be a lawyer, usually charges a fee for his or her services (which can be split between the parties).
- States that require parties to undergo ADR before trial often offer mediation as one of the ADR options or (as in Florida) the only option.

During mediation,

- the mediator normally talks with the parties separately as well as jointly, emphasizes their points of agreement, and helps them to evaluate their options.
- the mediator may propose a solution (called a mediator's proposal), he or she does not make a decision resolving the matter.
- one of the biggest advantages of mediation is that it is less adversarial than litigation.
- the mediator takes an active role and attempts to bring the parties together so that they can come to a mutually satisfactory resolution.

The mediation process tends to reduce the antagonism between the disputants, allowing them to resume their former relationship while minimizing hostility.

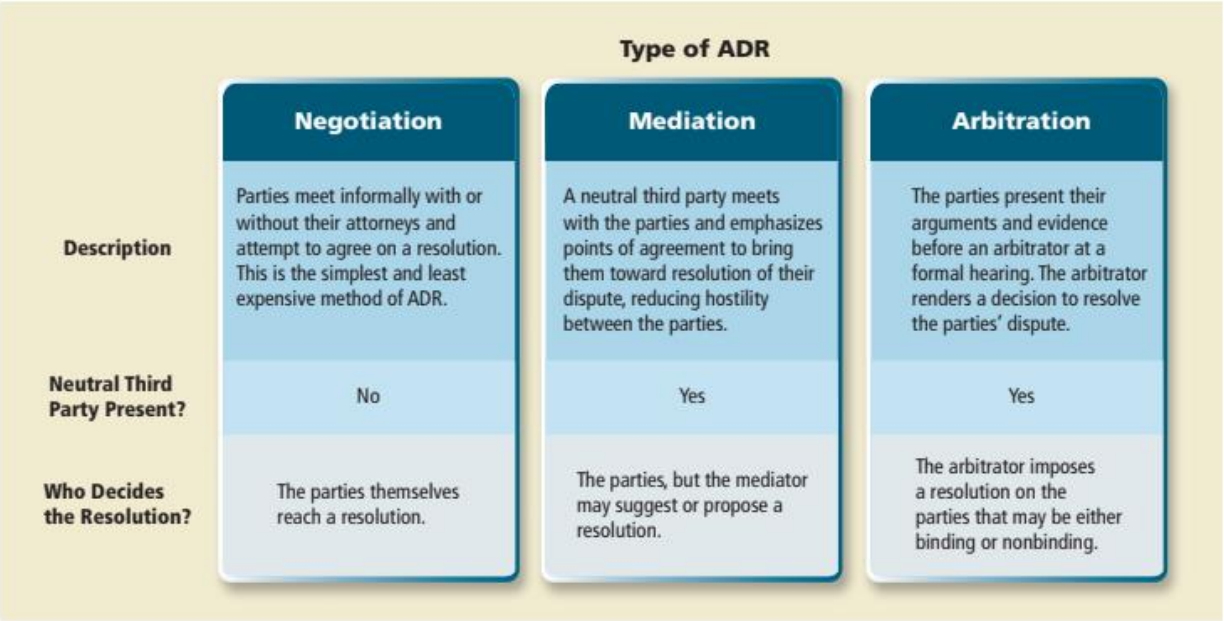
Mediation is often the preferred form of ADR for disputes between business partners, employers and employees, or other parties involved in long-term relationships.

4–4c. Arbitration

A more formal method of ADR is arbitration, in which an arbitrator (a neutral third party or a panel of experts) hears a dispute and imposes a resolution on the parties.

Arbitration differs from other forms of ADR in that the third party hearing the dispute makes a decision for the parties.

Exhibit 4–4 Basic Differences in the Traditional Forms of ADR



	Type of ADR		
	Negotiation	**Mediation**	**Arbitration**
Description	Parties meet informally with or without their attorneys and attempt to agree on a resolution. This is the simplest and least expensive method of ADR.	A neutral third party meets with the parties and emphasizes points of agreement to bring them toward resolution of their dispute, reducing hostility between the parties.	The parties present their arguments and evidence before an arbitrator at a formal hearing. The arbitrator renders a decision to resolve the parties' dispute.
Neutral Third Party Present?	No	Yes	Yes
Who Decides the Resolution?	The parties themselves reach a resolution.	The parties, but the mediator may suggest or propose a resolution.	The arbitrator imposes a resolution on the parties that may be either binding or nonbinding.

Usually, the parties in arbitration agree that the third party's decision will be legally binding, although the parties can also agree to nonbinding arbitration.

In nonbinding arbitration, the parties can go forward with a lawsuit if they do not agree with the arbitrator's decision.

Arbitration that is mandated by the courts often is not binding on the parties.

In some respects, formal arbitration resembles a trial, although usually the procedural rules are much less restrictive than those governing litigation.

In a typical arbitration,

- the parties present opening arguments and ask for specific remedies.
- both sides present evidence and may call and examine witnesses.
- the arbitrator then renders a decision.

The Arbitrator's Decision

The arbitrator's decision is called an award.

- It is usually the final word on the matter.
- the parties may appeal an arbitrator's decision, but a court's review of the decision will be much more restricted in scope than an appellate court's review of a trial court's decision.
- the general view is that because the parties were free to frame the issues and set the powers of the arbitrator at the outset, they cannot complain about the results.

A court will set aside an award only in the event of one of the following:

1. The arbitrator's conduct or "bad faith" substantially prejudiced the rights of one of the parties.
2. The award violates an established public policy.
3. The arbitrator exceeded her or his powers—that is, arbitrated issues that the parties did not agree to submit to arbitration.

Arbitration Clauses

Almost any commercial matter can be submitted to arbitration.

Frequently, parties include an arbitration clause in a contract specifying that any dispute arising under the contract will be resolved through arbitration rather than through the court system.

Parties can also agree to arbitrate a dispute after it arises.

Arbitration Statutes

Most states have statutes (often based, in part, on the Uniform Arbitration Act) under which arbitration clauses will be enforced.

- Some state statutes compel arbitration of certain types of disputes, such as those involving public employees.

At the federal level, the Federal Arbitration Act (FAA), enacted in 1925, enforces arbitration clauses in contracts involving maritime activity and interstate commerce.

- The courts have defined interstate commerce broadly, and so arbitration agreements involving transactions only slightly connected to the flow of interstate commerce may fall under the FAA.
- The FAA established a national policy favoring arbitration that the United States Supreme Court has continued to reinforce.

The Issue of Arbitrability

The terms of an arbitration agreement can limit the types of disputes that the parties agree to arbitrate.

When one party files a lawsuit to compel arbitration, it is up to the court to resolve the issue of arbitrability. That is, the court must decide whether the matter is one that must be resolved through arbitration.

- If the court finds that the subject matter in controversy is covered by the agreement to arbitrate, then it may compel arbitration.

Usually, a court will allow a claim to be arbitrated if the court finds that the relevant statute (the state arbitration statute or the FAA) does not exclude such claims.

- No party, however, will be ordered to submit a particular dispute to arbitration unless the court is convinced that the party has consented to do so.

Additionally, the courts will not compel arbitration if it is clear that the arbitration rules and procedures are inherently unfair to one of the parties.

Mandatory Arbitration in the Employment Context

A significant question for businesspersons has concerned mandatory arbitration clauses in employment contracts.

- Many employees claim they are at a disadvantage when they are forced, as a condition of being hired, to agree to arbitrate all disputes and thus waive their rights under statutes designed to protect employees.

The United States Supreme Court has held that mandatory arbitration clauses in employment contracts are generally enforceable.

4–4d. Other Types of ADR

The three forms of ADR just discussed are the oldest and traditionally the most commonly used forms.

A variety of newer types of ADR have emerged:

1. In early neutral case evaluation, the parties select a neutral third party (generally an expert in the subject matter of the dispute) and explain their respective positions to that person. The case evaluator assesses the strengths and weaknesses of each party's claims.
2. In a mini trial, each party's attorney briefly argues the party's case before the other party and a panel of representatives from each side who have the authority to settle the dispute. Typically, a neutral third party (usually an expert in the area being disputed) acts as an adviser. If the parties fail to reach an agreement, the adviser renders an opinion as to how a court would likely decide the issue.
3. Numerous federal courts hold summary jury trials, in which the parties present their arguments and evidence and the jury renders a verdict. The jury's verdict is not binding, but it does act as a guide to both sides in reaching an agreement during the mandatory negotiations that immediately follow the trial.
4. Other alternatives being employed by the courts include summary proceedings, which dispense with some formal court procedures, and the appointment of special masters to assist judges in deciding complex issues.

4–4e. Providers of ADR Services

ADR services are provided by both government agencies and private organizations.

A major provider of ADR services is the American Arbitration Association (AAA), which handles more than 200,000 claims a year in its numerous offices worldwide.

- Most of the largest U.S. law firms are members of this nonprofit association.
- Cases brought before the AAA are heard by an expert or a panel of experts in the area relating to the dispute and are usually settled quickly.
- About half of the panel members are lawyers.
- To cover its costs, the AAA charges a fee, paid by the party filing the claim.
- Each party to the dispute pays a specified amount for each hearing day, as well as a special additional fee in cases involving personal injuries or property loss.

Hundreds of for-profit firms around the country also provide dispute-resolution services.

- Typically, these firms hire retired judges to conduct arbitration hearings or otherwise assist parties in settling their disputes.
- The judges follow procedures similar to those of the federal courts and use similar rules.
- Usually, each party to the dispute pays a filing fee and a designated fee for a hearing session or conference.

4–4f. Online Dispute Resolution

An increasing number of companies and organizations are offering dispute-resolution services using the Internet.

The settlement of disputes in these forums is known as online dispute resolution (ODR).

- The disputes resolved have most commonly involved rights to domain names (website addresses) or the quality of goods sold via the Internet, including goods sold through Internet auction sites.
- Rules being developed in online forums may ultimately become a code of conduct for everyone who does business in cyberspace.
- Most online forums do not automatically apply the law of any specific jurisdiction.
- Instead, results are often based on general, universal legal principles.
- As with most offline methods of dispute resolution, any party may appeal to a court at any time.

ODR may be best for resolving small to medium-sized business liability claims, which may not be worth the expense of litigation or traditional ADR methods.

- Some cities use ODR as a means of resolving claims against them.

4–5. International Dispute Resolution

4–5a. Forum-Selection and Choice-of-Law Clauses

Parties to international transactions often include forum-selection and choice-of-law clauses in their contracts.

- These clauses designate the jurisdiction (court or country) where any dispute arising under the contract will be litigated and which nation's law will be applied.

When an international contract does not include such clauses, any legal proceedings arising under the contract will be more complex and attended by much more uncertainty.

- For instance, litigation may take place in two or more countries, with each country applying its own national law to the particular transactions.
- Even if a plaintiff wins a favorable judgment in a lawsuit litigated in the plaintiff's country, the defendant's country could refuse to enforce the court's judgment.
- The judgment may be enforced in the defendant's country for reasons of courtesy.

- The United States, for instance, will generally enforce a foreign court's decision if it is consistent with U.S. national law and policy.
- Other nations, however, may not be as accommodating as the United States, and the plaintiff may be left empty-handed.

4–5b. Arbitration Clauses

International contracts also often include arbitration clauses that require a neutral third party to decide any contract disputes.

Many of the institutions that offer arbitration, such as the International Chamber of Commerce and the Hong Kong International Arbitration Centre, have formulated model clauses for parties to use.

In international arbitration proceedings, the third party may be a neutral entity, a panel of individuals representing both parties' interests, or some other group or organization.

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards has been implemented in more than 145 countries, including the United States.

- Assists in the enforcement of arbitration clauses, as do provisions in specific treaties among nations.

The American Arbitration Association provides arbitration services for international as well as domestic disputes.