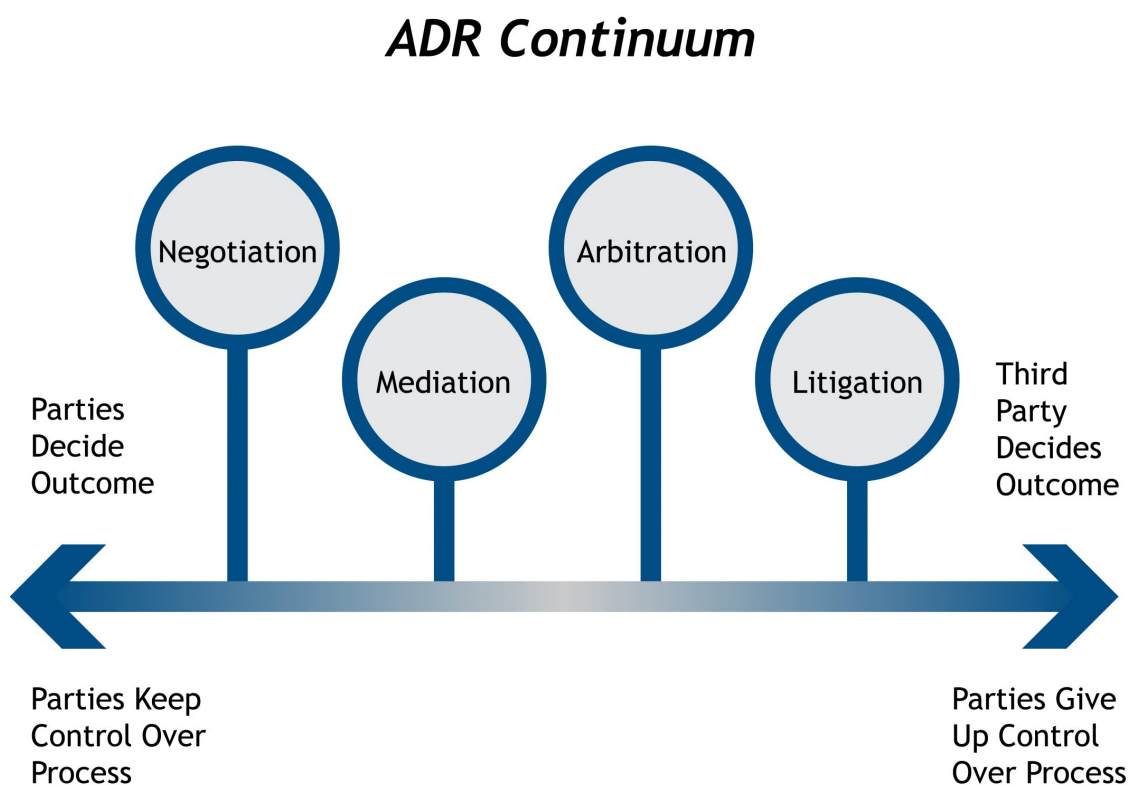


## 4.1: Introduction

Imagine that someone has a legal claim against a supplier, employer, or a business where he or she is a customer. What will happen? They probably don't want to immediately initiate litigation because litigation is very expensive and time consuming. Besides, they may want to continue doing business with the supplier, employer, or business. Perhaps the matter is of a private nature, and they do not want to engage in a public process to determine the outcome. They would like the dispute to be resolved, but do not want to engage in a public, time-consuming, expensive process like litigation to do it.

A common method of dispute resolution that avoids many of the challenges associated with litigation is alternative dispute resolution. **Alternative dispute resolution (ADR)** encompasses many different methods of resolving disputes outside of the judicial process. Some ADR methods vest power to resolve the dispute in a neutral third party, while other strategies vest that power in the parties themselves.

Figure 4.1 Alternative Dispute Resolution Continuum



The most common methods of ADR are negotiation, mediation, and arbitration. ADR is often used to resolve disputes among businesses, employers and employees, and businesses and consumers.

ADR methods are used outside of the courtroom, but participation in ADR has important legal consequences. For instance, parties that have agreed by contract to be subject to binding arbitration give up their constitutional right to go to court. The **Federal Arbitration Act (FAA)** is a federal statute that requires parties to participate in arbitration when they have agreed by contract to do so, even in state court matters. The FAA preempts state power to create a judicial forum for disputes arising under contracts with mandatory arbitration clauses. The FAA encompasses transactions within the broadest permissible exercise of congressional power under the Commerce Clause in the US Constitution. This means that the FAA requires mandatory arbitration clauses to be

enforceable for virtually any transaction involving interstate commerce, which is very broadly construed. This is an example of federal preemption exercised through the Supremacy Clause in the US Constitution.

**Counselor's Corner** “Alternative dispute resolution.” The term suggests that litigation is the primary means of dispute resolution and that mediation, arbitration, and other means are “alternatives.” But, actually, negotiation is the primary means of dispute resolution and the others are the alternative means—with litigation being the last (legal) alternative. In negotiation and mediation, the participants make decisions based on their values and predispositions, needs, criteria for satisfying those needs, pertinent information they are aware of, and available ways to satisfy their needs. Negotiation is the most used means of resolving disputes. It is an invaluable life skill. Don’t wing it—learn how to do it well. ~Russell C., judge

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