

Settling Disputes



Chapter Overview Visit glencoe.com and enter **QuickPass** code **StreetLaw8u1** for an overview, a quiz, and other chapter resources.

Effective community advocates work to solve problems in their community by proposing and lobbying for better laws and public policies. In doing so, they often use the legislative process to resolve conflict. Conflict in the public arena—sometimes called controversy—creates an important opportunity to learn about issues that are of public concern in a democracy. The ability to collect the facts about an issue, formulate an opinion, listen to competing ideas, and discuss and debate the best course of action are all valuable civic skills in settling conflict. As you will learn later in this unit, courts can also help resolve conflicts, but most conflict is settled before it ever gets to court.

Because conflict is a natural part of everyday life, it is important to consider how to handle it. We often think of conflict as a problem, but it can also be productive. When conflict is managed responsibly, it can provide a great opportunity to learn. Therefore the most important question is not whether there will be conflict in your life, but how you will respond to it.

There are sometimes disadvantages in going to court to resolve conflict. The court process can be time-

consuming and expensive. Going to court can even make some problems worse. For example, in divorces and child custody disputes, going to court often causes extreme anger and bitterness. Some people feel that by going to court, they will lose even if they win!

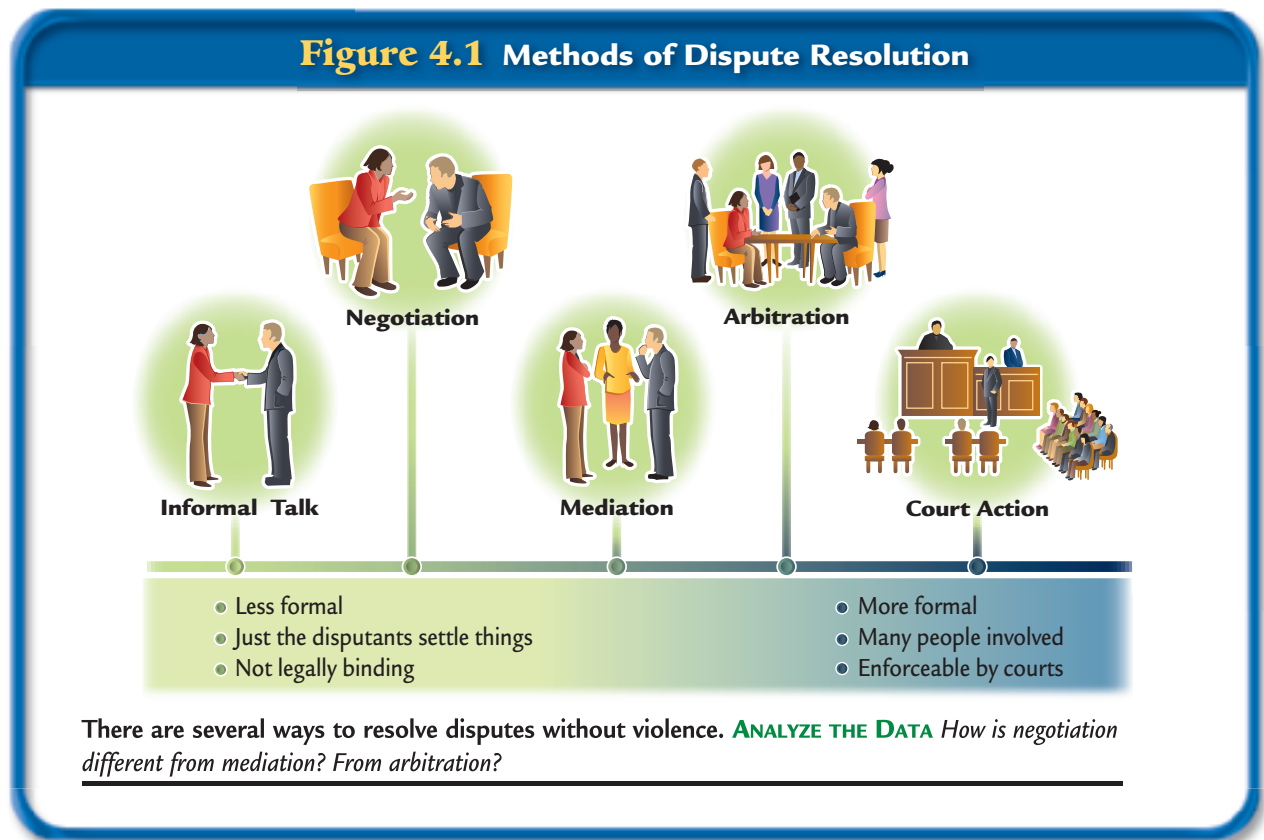
Conflict is part of everyday life.



Methods for Solving Disputes

Among the most common methods for solving disputes out of court are negotiation, arbitration, and mediation. As you will learn, negotiation is the most informal of these methods. Mediation is more formal than negotiation. Arbitration is still more formal, and in some ways it resembles going to court.

Negotiation is the process by which people involved in a dispute discuss their problem and try to reach a solution acceptable to all. It is important to learn to negotiate, because the skills involved in handling conflict responsibly are used every day by people in all aspects of life. You negotiate when you have a disagreement with your parents, your friends, or your teacher and you work out an agreement. The informality of negotiation makes it ideal for many types of problems. Sometimes people hire attorneys to negotiate for them. For example, people involved in auto accidents sometimes hire attorneys to negotiate with the insurance company over payments for injuries or damages to their cars. However, even if you use an attorney to negotiate, you must approve any agreement before it becomes final. Attorneys sometimes file a case in court and then still attempt to work out a **settlement**, or agreement, before the case goes to trial. A large number of civil cases are settled this way, saving both time and money.





Divorce negotiations often become heated as both parties try to agree upon the best possible solutions to their problems. *Why is it important to separate the demands (positions) from what the parties really want (interests) during the negotiation process?*

clearly as possible. Everyone should think about what is really causing the problem and try to separate the demands (positions) from what the parties really want (interests). In the third step, each party should consider the issue from the perspective of the other in order to help them understand the concerns and feelings on the other side of the conflict. Finally, each party should sort out his or her feelings about the problem so each can understand how the interests of the other party differ from their own. From this, both parties should identify two workable solutions that might resolve the problem.

The steps in the second phase focus on the negotiation itself. Both parties must work together to identify the real issue that needs to be resolved. This involves listening carefully, understanding what is being said, and asking questions to clarify and gain more information. Once the issue is identified, both parties should work together to create a list of as many solutions to the problem as possible. Then the two or three most workable solutions should be identified from this list. Each party should be realistic about the solutions that are chosen, perhaps by giving examples so everyone can see how the potential solution will work. To conclude the negotiation, the main points of the agreement should be repeated to be sure that both parties understand them. It is also a good idea to write down the agreement and decide what should happen if the agreement is broken.

In the third phase of the negotiation process, both parties to the dispute should make a few final decisions. For example, they should decide what to tell others about how the problem was handled. Everyone involved should be in agreement on what people outside the negotiation will be told. This could help deter problems in the future. In addition, both parties should be willing to discuss the problem again if the agreement does not seem to be working.

It is helpful to think of negotiation in three phases—preparation for negotiation, the negotiation itself, and post-negotiation. Each phase contains steps that encourage a fair negotiation process. Each party in the dispute should follow all of the steps in each phase to make sure the process helps to resolve the problem.

The steps in the first phase help both parties prepare to negotiate. First, all involved should come to the discussion with a sincere interest in settling the problem. Then the issue that is causing the conflict must be identified as

In **arbitration**, both parties to a dispute agree to have one or more persons listen to their arguments and make a decision for them. The arbitrator is like a judge, but the process is less formal than a trial. Arbitrators, like judges, have the authority to make the final decision, and the parties must follow it (except in nonbinding arbitration). Arbitration is common in contract and labor-management disputes and in some international law cases. Agreements between labor unions and employers include arbitration clauses. This means that the union and the employer agree in advance to submit certain disputes to arbitration and to be bound by the arbitrator's decision.

Mediation takes place when a third person helps the disputing parties talk about their problem and settle their differences. Unlike arbitrators, mediators cannot impose a decision on the parties. The agreement is the result of the parties' willingness to listen carefully to each other and come up with a reasonable settlement to the problem.



For Your Information . . .

Steps in a Typical Mediation Session

Step 1. Introduction

The mediator helps the people involved in the dispute feel at ease and explains the ground rules for behavior during the mediation. Such rules can include agreeing to remain seated and agreeing that any party may request a break during the mediation.

Step 2. Telling the Story

Each person tells what happened. The person who brings up the problem usually tells his or her side of the story first. No interruptions are allowed. Then the other person explains his or her side. These people are the disputants.

Step 3. Identifying Positions and Interests

The mediator tries to make certain that each disputant is clearly understood by listening carefully to each side, summarizing each person's view, and asking questions. Sometimes the mediator will encourage the disputants to ask questions and summarize each other's point of view in order to check for understanding.

Step 4. Identifying Alternative Solutions

The disputants think of possible solutions to the problem. The mediator makes a list and then asks each disputant to explain his or her feelings about each possible solution. Sometimes in a difficult situation, the mediator might also meet with each disputant separately to discuss his or her concerns.

Step 5. Revising and Discussing Solutions

Based on the feelings of the disputants involved, the mediator may help the disputants change some of the possible solutions and identify a better solution to which the disputants can agree.

Step 6. Reaching an Agreement

The mediator helps the disputants reach an agreement that both can accept. The agreement is written down. The disputants also discuss what will happen if they find out the agreement is not working for them.



The Law Where You Live

Research to find out if there are any programs in your community for people who want an alternative to going to court. What types of disputes do these programs address? Is there a peer mediation program in your school?

The mediator acts as a neutral third party by listening carefully to both sides. He or she also tries to help the parties understand each other's positions and find ways to resolve the dispute. Mediation is voluntary; the disputants themselves must reach a decision about the problem. Mediation allows the disputants to air their feelings, avoids placing blame, and concentrates on the future relationship between the parties. The key issue is how the disputants will work or live together after the mediation.

Mediation is used to solve a variety of disputes. Community mediation programs help settle disputes between husbands and wives, landlords and tenants, and consumers and businesses. For example, the Better Business Bureau (BBB) may mediate disputes between shoppers and store owners. In other places, neighborhood justice centers help settle disputes between community residents. Government agencies, newspapers, and some universities have **ombudspersons**, people who have the power to investigate complaints and then help the parties reach some agreement. Some schools train students to mediate conflicts and settle disputes that occur at school. To locate a mediation program in your community, contact your local court, district attorney's office, or social services agency.

The key to the success of both negotiation and mediation is that the ideas for resolving the conflict come from the people who have the conflict. The disputants take responsibility for their actions and work out the problem. Unlike court cases, both of these processes result in an agreement that is focused on the future relationship between the disputing parties. Because the solution comes from the parties, they are more interested in making the solution work.

Problem 4.1

Examine the following situations and decide the best method for solving each problem. Consider informal discussion, negotiation, arbitration, mediation, going to court (including small claims court), seeking help from a government agency, and other methods. Explain your answers.

- a. Two sisters share a room. However, they disagree over how the room should be arranged and decorated.
- b. A new plasma television breaks after two weeks, and the salesperson refuses to fix it.
- c. A landlord will not make needed repairs because he believes the tenant caused the damage.
- d. A fast food restaurant and an employee disagree over the wages and conditions of employment.
- e. The Internal Revenue Service sends you a letter claiming that you owe another \$2,000 in taxes. You disagree.
- f. Carl invites Raquel to the prom, and she agrees to go with him. Then Miguel invites her to the prom. Raquel really wants to go with Miguel and accepts his invitation. Carl finds out about her decision after he has purchased flowers and paid for a limousine to take them to the prom.

LAW AND DEMOCRACY *in Action*

Problems at the Mall

Magda, David, and Rashida have been friends since the sixth grade. One of their favorite activities is to go to the mall and look around in the stores. Sometimes they make purchases and sometimes they are just window-shopping. There are lots of young people who do this, and it is fun to see people and hang out.

Recently, a number of stores in the mall have experienced an increase in shoplifting and vandalism. As a result, the stores have made a policy that no one under 16 years of age can enter without a parent or guardian. The new rules also state that if you are

between the ages of 16 and 18 you cannot enter the store in groups larger than two. Other teens have to wait outside until each pair leaves. Store owners have threatened to call the police if the young people give them any trouble about the new policies.

This policy makes Magda, David, and Rashida angry. They believe it is unfair. After all, they are paying customers and spend money in these stores. Why is the rule directed only at young people? They do not want to get into trouble with the police, but they do not understand why they have to be treated as troublemakers when they have not done anything wrong.

The manager of the shopping mall, along with one of the store owners, has agreed to meet with two of the teens and a mediator to try to find some workable solutions.

Problem 4.2

In preparation for the mediation session, the disputants should consider the following issues:

- a.** What are your concerns? How would you state the issue in the dispute?
- b.** What is your starting position (demand)? What are your underlying interests (what do you really want)?
- c.** What is the best conceivable outcome from your perspective?
- d.** What do you think the starting position and underlying interests of the other side will be?
- e.** Identify two workable solutions that would solve the conflict.

Use the list of Steps in a Typical Mediation Session on page 43 to walk through the process and develop a reasonable solution for the disputants.



Teens at the mall