

NALSAR UNIVERSITY DDE

Advanced Diploma in ADR



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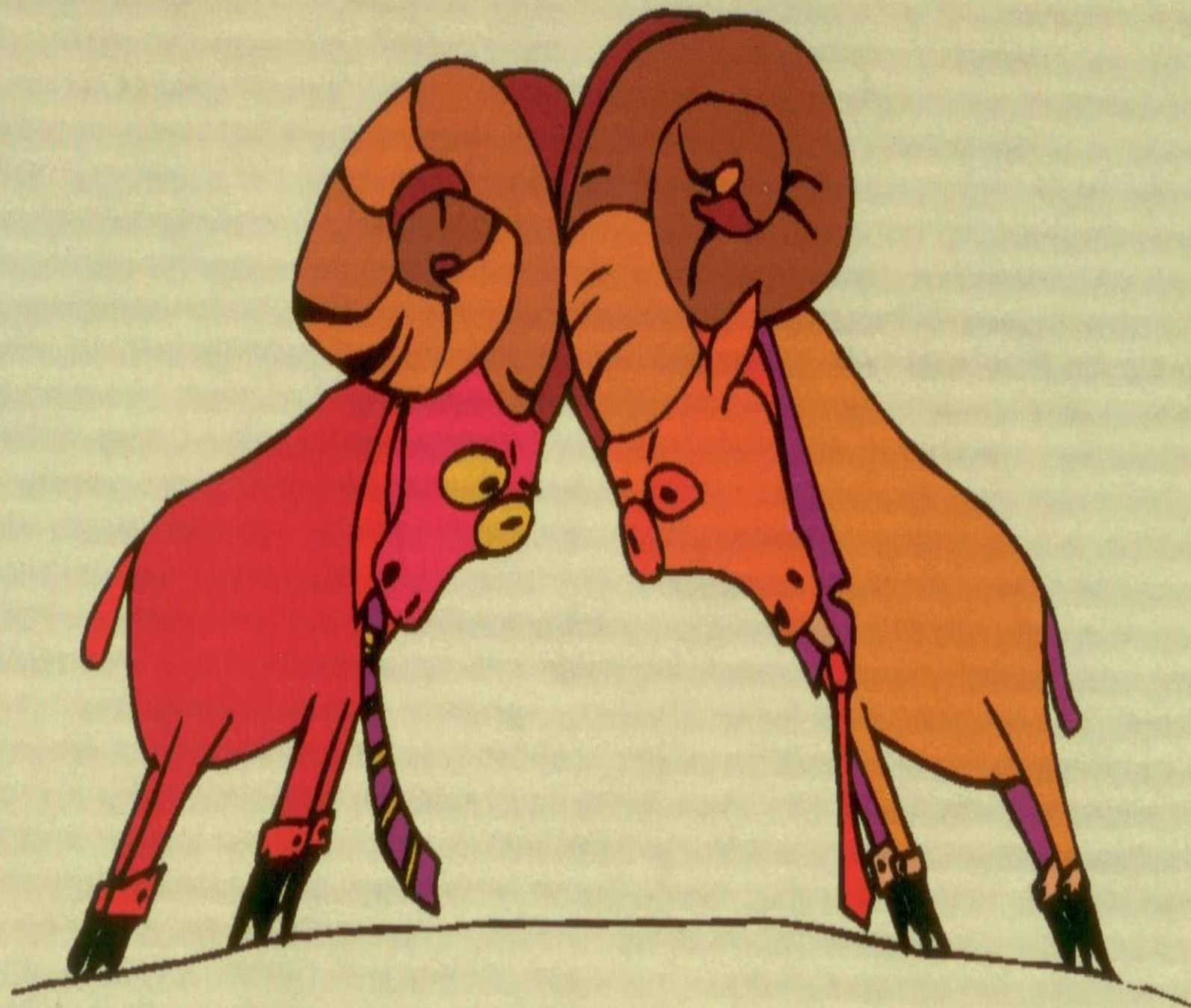
CONCILIATION

What is conciliation?

It means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they relate to conciliation, and in particular, in exercise of his powers under sections 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator.

Use of Conciliation

1. Part-III of the Arbitration and Conciliation Act 1996
2. Sec 89 of Code of Civil Procedure, 1908



Conciliation saved me precious time and energy



is time and energy.

Conciliation process was confidential, the procedure was simple and the atmosphere was informal

SAMADHAN

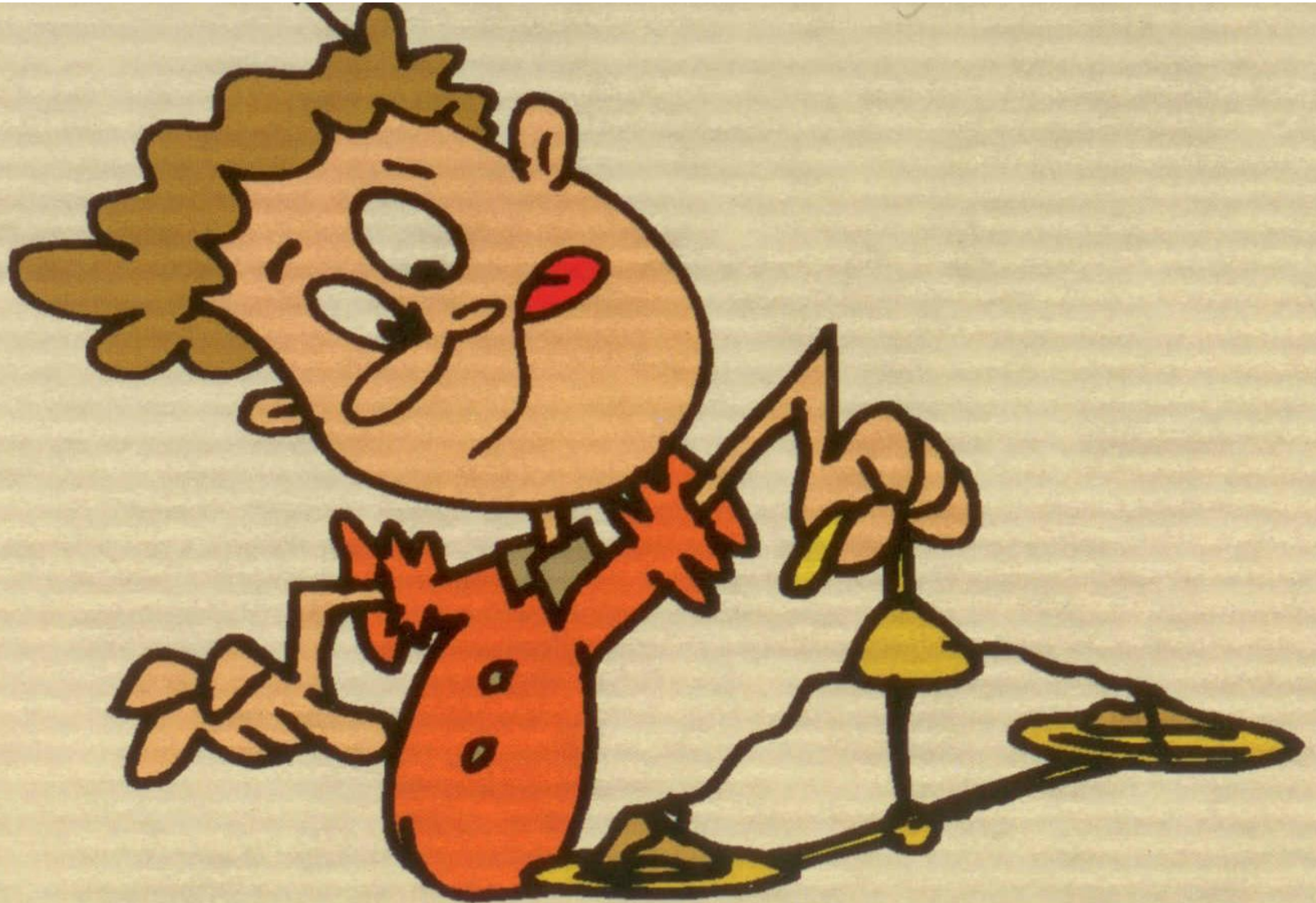
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Conciliation restored my broken relationships and
focused on improving the future, not on dissecting the
past



Concilation showed me the strength and weaknesses of
my case which helped me find realistic solution



Contrast

Arbitration

1. Private Adjudication
2. Totally binding
3. Adjudicatory
4. Has power to grant interim-measures
5. Awards and agreements are enforceable internationally

Conciliation

1. Facilitative
2. Non-binding unless agreement is reached between parties
3. Facilitative/Evaluative
4. No
5. No

Distinction

Conciliation

1. Governed by A&C Act 1996
2. Evaluative
3. Role of conciliator is more active
4. Conciliator has power to propose settlement
5. Settlement agreement when signed by the parties and conciliator becomes an award in agreed terms

Mediation

1. No Statutory recognition
2. Facilitative
3. Role mediator is passive
4. Mediator cannot propose settlement
5. The decision of a mediator is not an award.

Conciliation Proceedings

- Commencement of conciliation
 - Written invitation by one party
 - Written acceptance by other party
- Appointment of conciliator
- Submission of statements by parties
- Exchange of statements and communication between conciliator and the parties
- Suggestion for settlement

Conducting Conciliation

- Convening Process – preliminary arrangements.
- Introduction and laying down of ground rules to be followed in the Mediation process.
- Statements by Negotiators – problem – venting of emotions.
- Re-statement of the problem by the Conciliator briefly
- Collection of additional information, if necessary
(Open ended questions)

- Setting the Agenda for – similar to issues – how to arrange?
- Facilitation of Negotiation – process
- Generating alternatives – process
- Private meetings, if necessary – process
- Persuasion meetings, if necessary – process
- Persuasion to reach a settlement – process
- Agreement – Realistic – Implementable
- Summing up the settlement for clarity also process of implementation
- Reduce the settlement to writing

Remember while Conciliating

- Neutrality
- Confidentiality
- Separate people from the problem
- Motivating Negotiators
- Counseling
- Provide scope of venting of emotions
- Ethics –
 - a) To bring out an amicable settlement?
 - b) To bring out fair and amicable settlement?

Conciliator

Who is a conciliator

Conciliator is the neutral third party who assists the disputing parties in mutually reaching an agreed settlement

Appointment of conciliator

- In conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;
- In conciliation proceedings with two conciliators, each party may appoint one conciliator;
- In conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.
- Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators

Conciliator

Who can be appointed as conciliators

Any persons other than

- ➔ a person who has been adjudged as insolvent or persons
- ➔ against whom criminal charges involving moral turpitude are framed by a criminal court
- ➔ persons who have been convicted by a criminal court for any offence involving moral turpitude
- ➔ person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority
- ➔ any person who is interested or connected with the subject-matter of dispute
- ➔ any legal practitioner who has or is appearing for any of the parties in the dispute

Role of Conciliator

- Independence and impartiality
- Maintaining confidentiality of all communications between the parties and the conciliator
- Give consideration to the rights and obligations of the parties, usages of the trade concerned and the circumstances surrounding the dispute
- Conduct of proceedings in an objective and fair manner
- Proposal of settlement
- Formulation of the settlement agreement as agreed by the parties to conciliation
- Authentication of the settlement agreement

Ethics to be followed

- **Avoid, while communicating with the parties, any impropriety or appearance of impropriety;**
- **Be faithful to the relationship of trust and confidentiality imposed in the office of mediator;**
- **Conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;**
- **Recognize that mediation is based on principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;**
- **Maintain the reasonable expectations of the parties as to confidentiality;**
- **Refrain from promises or guarantees of results.**

Settlement Agreement

1. When it appears to the conciliator that there exist elements of a settlement, which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations.
2. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
3. If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement.
4. When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

Finality

The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

Termination of conciliation proceedings

1. By the signing of the settlement agreement by the parties
2. By a written declaration of the conciliator
3. By a written declaration of the parties addressed to the conciliator