

Welcome

Before exploring how Alternative Disputes Resolution (ADR) works, it is important to understand from where disputes come.

Upon completion of this lesson, you should be able to:

- Define the five conflict styles.
- Identify the five methods used to resolve contract disputes.



What is Conflict?

When disagreements grow beyond the issues, people tend to personalize comments. Discussion can become contentious with the focus moving from the original problematic issue to more personal issues.

According to the American Heritage Dictionary, conflict is:

- A state of open fighting; warfare
- A state of disagreement and disharmony; clash
- The opposition or simultaneous functioning of mutually exclusive impulses, desires, or tendencies
- A collision

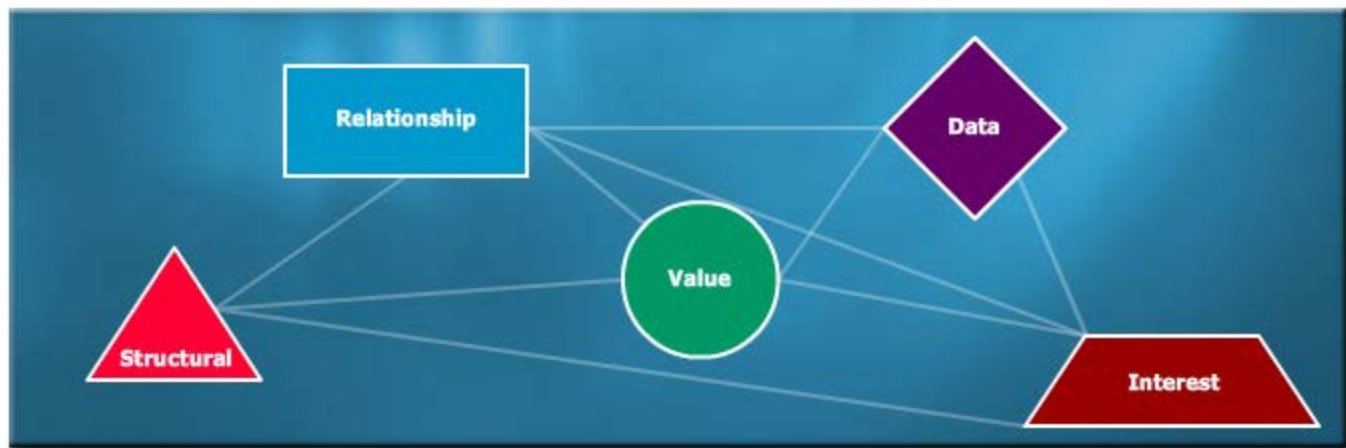
Conflict occurs when two or more people oppose one another because their needs, wants or values are different. Common feelings associated with conflict can include anger, frustration, hurt, anxiety and fear.



Types of Conflict

Where does conflict exist and what causes conflict? Defining the types of conflicts helps answer these questions.

Click each conflict type in the graphic below to learn more.



Popup Text**Structural**

Caused by constraints on physical resources, time, or organizational structure.

Relationship

Caused by strong emotions; misperceptions of stereotypes; poor or miscommunication.

Value

Caused by perceived or actual incompatible belief systems.

Data

Caused by lack of information; misinformation; different view on what is relevant; different interpretations of data.

Interest

Caused by substantive (money, physical resources, time); procedural (the way the dispute is to be resolved); or psychological (perceptions of trust, fairness, desire for participation, respect).

Long Description

Five shapes that represent the five types of conflict. Structural - triangle, relationship - rectangle, value - circle, data - diamond, interest - trapezoid. Each shape defines the type of conflict.

Knowledge Review

Which type of conflict is caused by perceived or actual incompatible belief systems?

- ☒ Value
- ☐ Data
- ☐ Structural
- ☐ Relationship

Check Answer



A **value** conflict is caused by a perceived or actual incompatible belief system.

Knowledge Review

Which type of conflict is caused by strong emotions; misperceptions or stereotypes; poor communication or miscommunication?

- ☐ Value
- ☐ Data
- ☐ Structural
- ☒ Relationship

Check Answer



Relationship conflicts are caused by strong emotions; misperceptions or stereotypes; poor communication or miscommunication.

Sources of Conflict

Conflict can also occur when there is a discord between what we see and what we *think*. Below is an activity to illustrate this concept.

Activity:

1. Look at the diagram.
2. As quickly as possible, say the **COLOR** of the words, **NOT** the words themselves.

YELLOW BLUE ORANGE
BLACK RED GREEN
PURPLE YELLOW RED
ORANGE GREEN BLACK
BLUE RED PURPLE
GREEN BLUE ORANGE

Long Description

Image depicts three columns of words displayed in the colors green, yellow, red, black, and blue.

Column 1:

- Text reads: Yellow (font color is green)
- Text reads: Black (font color is yellow)
- Text reads: Purple (font color is red)
- Text reads: Orange (font color is black)
- Text reads: Blue (font color is green)
- Text reads: Green (font color is blue)

Column 2:

- Text reads: Blue (font color is red)
- Text reads: Red (font color is blue)
- Text reads: Yellow (font color is blue)
- Text reads: Green (font color is red)
- Text reads: Red (font color is blue)
- Text reads: Blue (font color is red)

Column 3:

- Text reads: Orange (font color is blue)
- Text reads: Green (font color is black)
- Text reads: Red (font color is green)
- Text reads: Black (font color is yellow)
- Text reads: Purple (font color is black)
- Text reads: Orange (font color is green)

Sources of Conflict, Cont.

If you said:

Green, Red, Blue
Yellow, Blue, Black
Red, Blue, Green
Black, Red, Yellow
Green, Blue, Black
Blue, Red, Green

YOU WERE CORRECT!

If you said anything else, you experienced what is known as a "left-right conflict." This occurs when your right brain tries to say the color and your left brain insists on reading the actual word itself.

YELLOW	BLUE	ORANGE
BLACK	RED	GREEN
PURPLE	YELLOW	RED
ORANGE	GREEN	BLACK
BLUE	RED	PURPLE
GREEN	BLUE	ORANGE

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Conflict Analogy

When thinking about conflict, consider the following analogy:

"In a complex relationship, conflict is similar to the grit and dirt that surrounds us in our daily lives. This dirt may quickly accumulate and ultimately require a scraper or chisel to remove it, without the constant application of a flushing or cleansing agent. The most effective cleansing agent for a relationship is communication and trust."



How Do You Manage Conflict?

In order to manage conflict, it is important to recognize that:

- Conflict is inevitable.
- Conflict is uncomfortable.
- Efficient and fair resolution is not inevitable.
- Improperly managed conflict is expensive.
- Failure to effectively deal with conflict is a formula for mutually assured destruction.

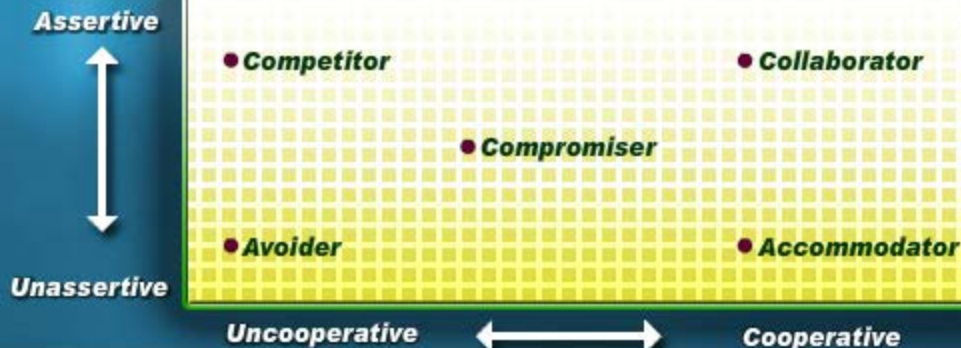


Thomas Kilmann Conflict Mode Instrument

Thomas Kilmann designed the definition of five types of conflict styles and called the in implementation of his design, Thomas Kilmann Conflict Mode Instrument (TKCMI).

Click each bulleted conflict style on the graph below to learn about the behavior associated with those conflict styles presented in the TKCMI.

TKCMI Five Conflict Styles



Popup Text**Competitor**

"Might make it right" - Securing own needs to maximize own gain is primary while exerting ones will.

Avoider

"Leave well enough alone" - Ignores problems hoping they will disappear, detests conflict.

Compromiser

"Split the difference" - Views negotiation as a way to "split the baby" fairly and equitably without trying to capture other potential value.

Collaborator

"Two heads are better than one" - Tries to expand value before dividing it on objective standards and consistent with interests.

Accommodator

"Kill your enemies with kindness" - Relationship retention is most critical even at the expense of securing own interests.

Knowledge Review

Situation:

Bette is having a problem with a company with which she has contracted – on behalf of the Government – to provide weekly pick-up and destruction of sensitive government documents. As she walks past the recycling bin, she sees that it is overflowing and that there are papers stacked on the floor next to the bin. She then checks the log and sees that it has been nearly three weeks since the contractor has been on-site to collect the papers for destruction. Bette thinks to herself, "Oh well. If they at least come at some point, I guess that is good enough. There is no point in pushing the issue."

What conflict style is Bette exhibiting?

- ☐ Competitor
- ☐ Accomodator
- ☒ Avoider
- ☐ Collaborator
- ☐ Compromiser

Check Answer

The correct answer is **Avoider**. An avoider ignores problems hoping they will disappear and detests conflict.

Knowledge Review

Situation:

Jim is a tough contracting officer. He always tries to see what additional work he can squeeze out of the contractor. When there is a problem, he knows then that he has the contractor over a barrel!

What conflict style is Jim exhibiting?

- ☒ Competitor
- ☐ Accomodator
- ☐ Avoider
- ☐ Collaborator
- ☐ Compromiser

Check Answer



Competitor is the right answer. A competitor is focused on securing his or her own needs and maximizing his or her own gains.

Conflict Styles

There is a time and place for each of the five conflict styles and everyone will use one or more of the styles at some point in their lives. In a conflict situation, it is important for the members of each party to recognize their own conflict style tendencies, those tendencies of their associates, and those tendencies of the members of the other party.



Barriers to Conflict Resolution

While most people, by far, would prefer to be able to resolve conflicts – and the sooner, the better – often barriers to resolving a conflict must first be overcome.

Barriers come in all shapes and sizes, but most can be grouped into one of the following categories:

- [Strategic](#)
- [Principal/Agent](#)
- [Risk/Loss Aversion](#)
- [Reactive Devaluation](#)

Select each type of barrier to learn more.



Popup Text

Strategic

Strategic Barriers

One or both parties fail to disclose relevant information in order to maximize their own self interests.

Example: Information is power, and if I give you some information, I lose some power.

Principal/Agent

Incentives for an agent may induce behavior that fails to serve the client's interests.

Example: When an agent is paid by the hour, it is in the agent's interests to prolong the conflict.

Risk/Loss Aversion

Most people would gamble to avoid having a sure loss.

Example: That is why some litigants will often "litigate to the hilt" and only concede when they are really sure they will lose. It is said that the litigation is settled "on the courthouse steps."

Reactive Devaluation

A given compromise is rated less positively when proposed by the other party than by a neutral party or ally.

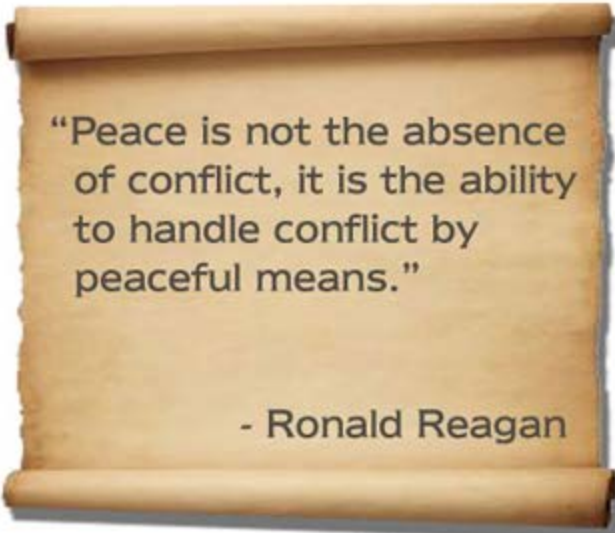
Example: If it is my idea, I love it. However, even if it is the same idea, since the idea is yours, I don't love it.

Benefits of Conflicts

Although conflict is generally viewed as a negative force, keep in mind that conflict has its benefits as well. Just as a grain of sand that slips into an oyster's shell becomes a pearl, good things can come out of conflict.

Conflict:

- Allows important issues to be aired
- Produces new and creative ideas
- Releases built-up tension
- Causes people to re-evaluate and clarify goals and missions
- Stimulates social change to eliminate inequities and injustice



"Peace is not the absence of conflict, it is the ability to handle conflict by peaceful means."

- Ronald Reagan

Long Description

Scroll that reads, "Peace is not the absence of conflict, it is the ability to handle conflict by peaceful means."

- Ronald Reagan

Issues vs. Disputes

Disagreements come from people, organizations, countries in conflict.

In the contracting world, disagreements are usually categorized as:

- [Issues](#)
- [Disputes](#)

Select each term to learn more.



Popup Text

Issue

An "issue" is simply a difference in opinion or disagreement between the parties. Issues arise when the parties have not taken defined positions.

Dispute

A "dispute" is an issue that has been formally notified under the contract. Disputes arise when parties have taken defined positions. Disputes often involve heightened emotions and irrational behavior.

How Disputes Arise

No matter how well written the contracting agreement, or how experienced the project team, there will always be instances when one party will interpret a contract requirement differently. And that difference in interpretation can lead to a dispute.

In contracting, disputes have been known to arise from things such as:

- [The amount or quality of the work to be performed.](#)
- [The time to perform the work.](#)
- [The price to be paid.](#)
- [The identity of the party who will bear out the responsibility for problems that occur.](#)

Select each bulleted item above to see an example.

Popup Text

Amount or Quality of the Work to be Performed

Here is an example of how disputes can arise from the amount or quality of the work to be performed:

Government Official: I certainly expected a more thorough report. When we initially discussed the project, the contractor voiced a lot of great ideas. I just don't see any of them here.

Contractor: We were very clear in what we were going to do in our proposal. While we threw out some other ideas, we never agreed to actually do them. We fulfilled our contractual agreement to the letter.

Time to Perform the Work

Here is an example of how disputes can arise from the time to perform the work:

Government Official: We started this project a year ago. Although it took us longer than expected to get the contract in place, we made it very clear from the beginning when we needed the project to be completed.

Contractor: While the project was started a year ago, it took a long time to get the contract in place and we didn't actually get the materials and support we needed to do the job until half-way through the year. We did the best job we could do, given the time remaining on the project.

Price to be Paid

Here is an example of how disputes can arise from the price to be paid:

Government Official: We were very specific about the funding we had available to do this project. It seems like every time we've turned around the contractor has asked for additional funding for this little thing or that little thing.

Contractor: Our proposal was very specific about what was included. As the scope of the project expanded, we absorbed as much of the additional costs as we could. Finally, we had to go back to the client for more funding.

Party Who Will Bear the Responsibility

Here is an example of how disputes can arise from the identity of the party who will bear out the responsibility for problems that occur:

Government Official: The problems are clearly on the shoulders of the contractor. We did the best we could to support their efforts, but, after all, we hired them to do the job, not to do it ourselves.

Contractor: We feel as if we have done the very best job that could possibly be done, given the circumstances. On this project, we had to deal with a delayed start, Subject Matter Experts who were not available, and change in Contracting Officer's Technical Representative (COTR), which changed the focus of what we were to do in the middle of the project. Clearly, we are not responsible for the problems.

Disputes in Federal Contracting

So what kinds of disputes exist in Government contracting? They are as varied as the contracts and the people involved in contracts!

Here is a list of the more common kinds of disputes that have been experienced in Government contracting.

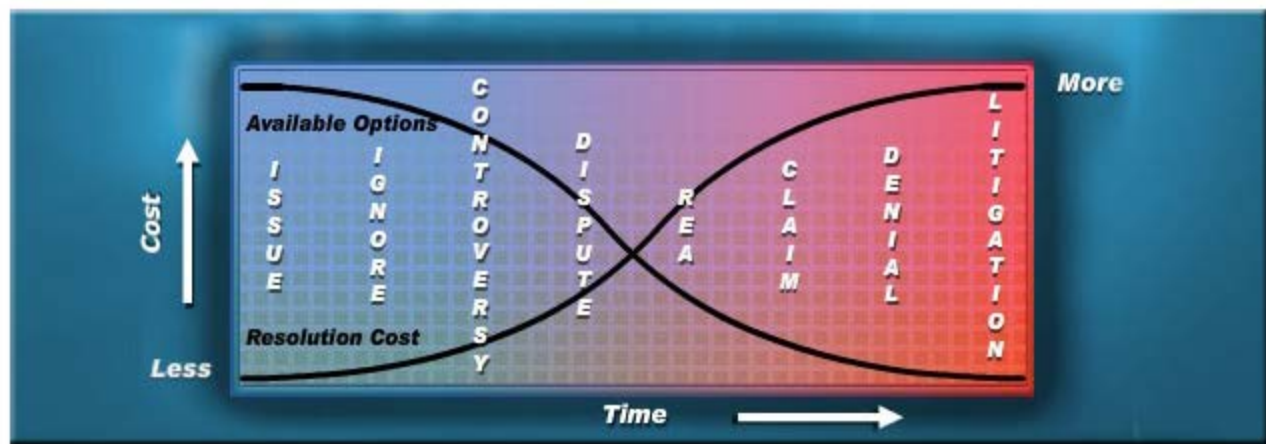
How many of these have you experienced?

- Constructive changes
- Incomplete work
- Defective work
- Schedule
- Quality
- Delays and disruption
- Acceleration
- Defective contract documents
- Warranty issues
- Poorly defined Statement of Work
- Buying-in by the contractor
- Defective or late GFP
- Defective pricing
- Non-payment or slow payment
- Submittal review

The Dispute Continuum

When seeking to resolve a contract dispute, time is of the essence.

The graph below describes the relationships between time, cost, and options available. As time elapses, the cost of resolving the problem increases, and the options available to resolve the problem decreases. Keep in mind that this phenomenon holds true, regardless of the reason for the delay in resolution.



Long Description

The Dispute Continuum depicts the relationships between time, cost, and options available. As time passes, costs increase and available options decrease.

Knowledge Review

Thinking about the Dispute Continuum, which of the following statements are true? (Select all that apply.)

- ☒ As time goes on, the available options for resolving a dispute decrease.
- ☐ As time goes on, the available options for resolving a dispute increase.
- ☐ As time goes on, the costs to resolve a dispute generally decrease.
- ☒ As time goes on, the costs to resolve a dispute generally increase.

Check Answer



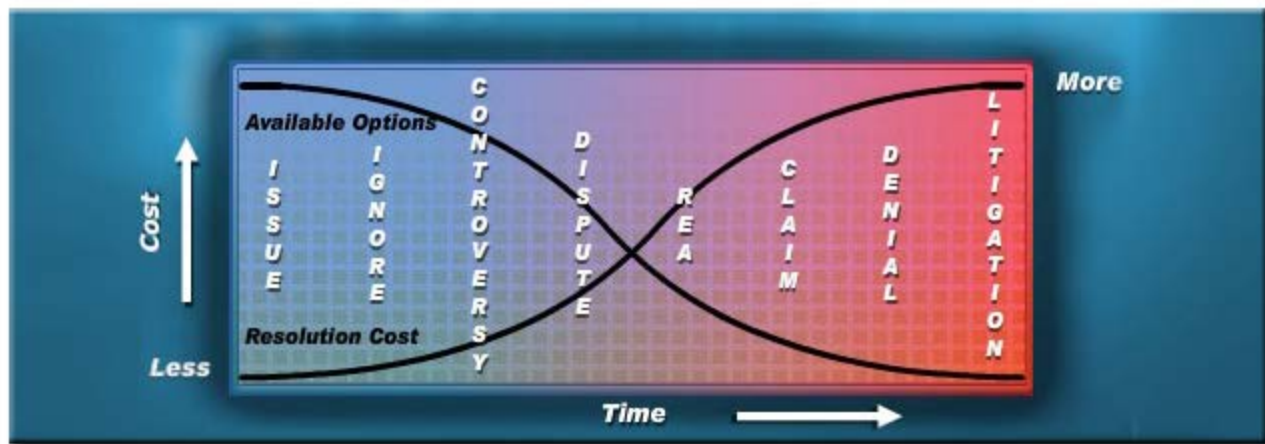
As time goes on, the available options for resolving a dispute decrease and the costs to resolve a dispute generally increase, which is why it is important to resolve disputes as quickly as possible.

Why Older Disputes are More Difficult

Always keep in mind that the older a dispute is, the more difficult it is to resolve. As a result, older disputes are more likely result in claims and appeals.

Here are some of the reasons. Over time:

- It becomes more difficult to separate emotion from fact
- It becomes easier to reinforce positions
- It is harder to make good business decisions on resolution
- There is a quicker breakdown of contractor's cash flow



Long Description

The Dispute Continuum depicts the relationships between time, cost, and options available. As time passes, costs increase and available options decrease.

Why Older Disputes are More Difficult, Cont.

With time, it becomes easier for the parties to allow the dispute to become a legal issue, so ownership will move from the program to the legal community. And it will more than likely result in claims and appeals.

And remember, once the parties have taken a position, it is harder to change and risk losing face and credibility. There is no such thing as a truly objective person whose involved in a dispute.



Three Basic Elements of Any Dispute

There are three basic elements of any dispute:

- [Interests](#)
- [Rights](#)
- [Power](#)

Select each element to learn more about them.



Popup Text**Interests**

Needs, desires, concerns, and fears; the things we care about.

Rights

An independent standard with perceived legitimacy or fairness to determine who is right.

Power

The ability to coerce someone to do something he or she would not otherwise do.

Three Basic Elements of Any Dispute, Cont.

In resolving a dispute, the parties may choose to focus their attention on one or more of these basic factors. They may seek to:

- Reconcile their underlying interests
- Determine who is right
- Determine who is more powerful



Five Methods for Resolving Disputes

Each method for resolving disputes focuses on and addresses a different element.

- **Negotiation** focuses on fulfilling and protecting both parties *interests*.
- **ADR** focuses on addressing and protecting both parties *interests* and, at the same time, protecting the *rights* of both parties.
- **Litigation** focuses primarily on addressing and protecting the *rights* of both parties.
- **Strikes and Violence** focus primarily on exercising *power* in the dispute.



Long Description

Graphic depicts page content and is titled "Five Methods Used to Resolve Disputes. Below the title there are two sets of bulleted lists. The list on the left identifies the five methods and has arrows extending from each pointing to the list on the right which describes the focus of the method

The left bulleted list reflects the five methods used to resolve disputes:

1. Negotiation
2. ADR
3. Litigation
4. Strike
5. Violence

The right bulleted list reflects the focus of each method:

1. Interests
2. Rights
3. Power

Negotiation has an arrow pointing to Interests.

ADR has 2 arrows, one pointing to Interests and the other pointing to Rights.

Litigation has an arrow pointing to Rights.

Strike and Violence both have arrows pointing to Power.

Knowledge Review

When resolving a dispute, you want to select a method that allows you to address and protect the interests of both parties and, at the same time, protect the rights of both parties.

Which one of the following methods would you select?

- ☐ Negotiation
- ☒ ADR
- ☐ Litigation
- ☐ Strike
- ☐ Violence

Check Answer



The correct answer is **ADR**. ADR focuses on addressing and protecting both parties interests and, at the same time, protecting the rights of both parties.

Selecting the Best Approach

When selecting the best method for resolving a dispute, always consider the following:

- **Transaction costs** – including time, money, emotional energy, and opportunity costs.
- **Satisfaction with outcomes** – identifying the outcomes that will mutually satisfy the parties involved.
- **Effect on the relationship** – determining how the outcome will affect the parties' ability to work together in the future.
- **Recurrence** – determining if the approach produces durable, long-term resolutions.

The more factors you can positively address, the more successful your method for resolving the dispute will be.



The Disputes Process

Because the Government and contractors frequently could not reach mutual agreement on controversial issues, Congress formalized and structured the disputes process.

Contract Disputes Act (CDA) of 1978

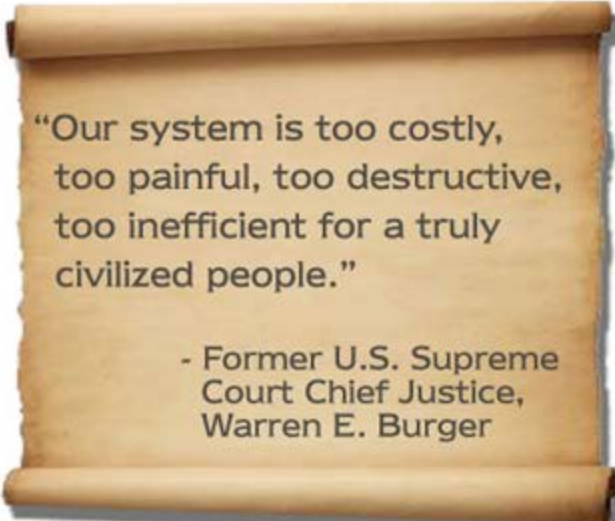
The CDA established statutory authority for the Boards of Contract Appeals to expeditiously settle disputes in which the Government and contractors could not reach mutual agreement. Unfortunately, over time, the resolution of disputes has again become cumbersome.



Problems with the Disputes Process

The Disputes Process is not without its own issues.
The Government's Disputes Process:

- Is overburdened and ineffective
- Clogged with delay, which exacerbates the problem
- Is formalistic and its procedures tend to divide people rather than to unite them
- Silences the parties and rarely allows them to meet with each other
- Takes control of the process from the parties
- Destroys relationships



"Our system is too costly,
too painful, too destructive,
too inefficient for a truly
civilized people."

- Former U.S. Supreme
Court Chief Justice,
Warren E. Burger

Long Description

Scroll that reads, "Our system is too costly, too painful, too destructive, too inefficient for a truly civilized people."

- Former U.S. Supreme Court Chief Justice, Warren E. Burger

Disputes Process Cumbersome

Unfortunately, over time, the resolution of disputes has again become cumbersome.

Although, through the disputes process, the dispute may be settled according to the legal processes, the residual effects may be a tenuous, if not adversarial, relationship between the contractor and the government.

This adversarial relationship may affect both the government's and the contractor's operations and their future business association.




What is the Problem with Litigation?

At this point, you may be asking yourself, "So, what's so bad about litigation?"

The basic fact is that litigation is not very effective – or efficient – in resolving contract disputes to the satisfaction of both parties or often to even one of the parties!

The fact is, litigation is unpredictable. It focuses on legal rights, not on the interests of the parties involved. In addition, a Board or Court decision can easily take several years after the hearing or trial ends!



DID YOU KNOW...

A LAWSUIT IS FILED EVERY
2 SECONDS = 16 MILLION A
YEAR

90% OF APPEALS ARE
SETTLED PRIOR TO DECISION

Long Description

Sticky note with the following text: Did you know...A lawsuit is filed every 2 seconds = 16 million a year. 90% of appeals are settled prior to decision.

What is the Problem with Litigation?, Cont.

You should also keep in mind that litigation fees can easily exceed the cost of the appeal. In fact, surveys have shown that litigation costs have equaled approximately 2.2% of the U.S. Gross Domestic Product (GDP).

What are the chances of success in litigating a contract dispute? According to a study by the Armed Services Board of Contract Appeals (ASBCA), (1996-2000), the average contractor appeal has a:

- 32% chance of winning
- 17% chance of recovering the amount sought
- 5% of winning and recovering the amount sought

Clearly, litigation is not for the faint of heart or for those in need of a quick, effective resolution!



Knowledge Review

Scenario:

You are talking with a colleague about how great ADR is. Your colleague asks: "What's wrong with litigation? I thought litigation was the best way to protect the government's interests."

Which of the following statements could you use to support your argument that litigation is not always the best method for resolving disputes?

(Select all that apply.)

- ☐ Litigation fees are generally less than the cost of the appeal.
- ☒ The outcome of litigation can be unpredictable.
- ☒ The chances of success in litigating a contract dispute exceed 50%.
- ☐ Litigation focuses on legal rights, not interests.

Check Answer

The outcome of litigation can be unpredictable and **the chances of success in litigating a contract dispute exceed 50%**. Both of these choices support your argument that litigation is not always the best methods for resolving disputes.

Summary

This lesson described conflict, disputes and litigation, and how they influence contracting issues.

It also explained that conflict comes from a variety of sources, and reviewed the five conflict styles that influence how one deals with conflict: *Competitor*, *Accommodator*, *Avoider*, *Collaborator*, *Compromiser*.

This lesson also reviewed the five methods used to resolve disputes: *Negotiation*, *ADR*, *Litigation*, *Strike*, and *Violence*.

You should now be able to:

- Define the five conflict styles.
- Identify the five methods used to resolve contract disputes.



Lesson Completion

You have completed the content for this lesson.

To continue, select another lesson from the Table of Contents on the left.

If you have closed or hidden the Table of Contents, click the Show TOC button at the top in the Atlas navigation bar.