

but to go to court. A related problem is that mediation may produce more inconsistent outcomes. In many places, this disparity of outcomes resulting from a matter's being mediated would be argued to be unfair.

Also, if part of a party's objectives includes getting publicity, which it hopes will turn public opinion against a project strongly enough to block it, then mediation is not appropriate. In many environmental disputes, the greatest benefit of litigation for a citizens' group may be in creating public awareness that it hopes will lead to public pressure to prohibit some action.

Finally, no one can be forced to mediate. If one person whose interests are affected chooses not to mediate, even if 20 other affected interests agree to a mediated solution, the party who did not participate may still raise the issue through litigation. Sometimes, those involved in the mediation may not be aware of an affected party who, consequently, is not included in the mediation. That party may later litigate. Even worse, a party who wants to tie up a project may agree to mediation and go through the process, fully intending not to reach any agreement. The party is simply tying the case up in mediation. Once the other party realizes what is going on, the case may then be litigated, but by that time there has been a costly delay.

Critics of mediation often argue that the informal nature of the process represses and denies certain irreconcilable structural conflicts, such as the inherent strife between developers and environmentalists. They also argue that this informal process tends to create the impression of equality between the disputants when no such equality exists. The resultant compromise between nonequals is an unequal compromise, but it is clothed in the appearance of equal influence. Despite these criticisms, mediation does have its place in the resolution of environmental disputes. It will probably always be a supplement to, but not a replacement for, litigation.

Concluding Remarks

You now understand how the U.S. dual court system is structured and functions. Dispute resolution through our courts is an adversarial process, so disputes are managed by two conflicting parties, represented by lawyers, each of whom tries to bring out the strongest evidence and make the best argument for his or her side. A neutral third party, either a judge or a jury, will decide who the winner is.

This adversarial process, however, is not well suited for many disputes, especially environmental ones. It is time consuming, generates publicity, does not lead to compromise resolutions, and often worsens the relationship between two parties who must work with each other in the future. Because of these problems, alternatives to litigation increasingly are being used to resolve environmental disputes. Some of the more common alternatives include arbitration and mediation. Mediation is probably the most common because it preserves the parties' relationship and also allows the easiest inclusion of a multiplicity of interests.

Once you appreciate how the dispute resolution systems function, there is only one more area of the American legal system that you need to understand before you are ready to explore environmental law: administrative law. Chapter 3 introduces this important system of law.

Questions for Review and Discussion

1. Explain what is meant by an adversary system and justify the use of such a system.
2. Explain the problems associated with reliance on the adversarial process to resolve environmental disputes.
3. Distinguish subject matter jurisdiction from jurisdiction over the person.
4. Explain the various roles a lawyer may play.
5. Distinguish a grand jury from a petit jury.
6. Explain the significance of the standing cases such as *Lujan v. Defenders of Wildlife* and *Sierra Club v. Morton*.
7. Trace the steps of a civil lawsuit.
8. Explain and critique the primary alternatives to litigation.

CASE STUDY

Resolving Controversial Environmental Issues

- As you learned in the first chapter, you need to identify the issue, conclusion, and reasons when reading an article. Identifying the argument in the following essay will help you better understand and evaluate it. What are the conclusion and reasons offered by this author?
- Ethical norms are ideas that guide our behavior. Everyone generally agrees that ethical norms are positive ways of behaving. Some examples of ethical norms are honesty, cooperation, and individual responsibility. If I ask you, "Do you value honesty?" you will probably say "Yes." If I ask you, "Do you value loyalty?" you will also probably say "Yes." But how do you behave when those ethical norms conflict? For example, you discover that your best friend, who is also your coworker, is stealing money from your boss. If you are loyal to your friend, you cannot also be honest to your boss. Which ethical norm guides your behavior?

Ethical norms often conflict in the law. Four ethical norms that often arise in legal controversies are freedom, justice, security, and efficiency. Try to think of more ethical norms that might guide your thinking. When you read an article, you should try to identify the ethical norms that are guiding the author's thinking. This task is difficult because the author typically will not tell you his or her ethical norm preferences. Consequently, you must infer the preferences through the reasons. Can you identify which ethical norms seem to be present in the reasons and conclusion provided in the following editorial? Which ethical norm is in conflict with the author's preferred ethical norm?

Does a Turtle Have More Rights Than a Human?

Who should be allowed to bring a case in a court of law? One might respond with the following simple answer: Anyone who has been wronged. Environmentalists claim that when environmental wrongs occur, it is often difficult for those who have been wronged to bring a case because of a perceived lack of legal standing—the legal right to bring a lawsuit.