

‘Features of Mediation’

COMMERCIAL LAW CPD DAY

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PETER AGARDY

Summary

- Features of mediation
- Case study – oppression proceeding
- Terms of settlement
- General observations

Features of Mediation

- Assist parties to resolve dispute
- Intake sessions
- Joint session
- Not mini trial
- Not opportunity to rehearse cross examination

Features of Mediation

- Inconvenience & distress
- Risk
- Cost
- Open court

Features of Mediation

- Little things – words matter
- Form of address
- Live with/happy
- Paris peace talks
- Compromise

Case Study

- Oppression proceeding
- Corporations Act s.233 orders
- Order for purchase
- Wind up
- Order for person to do specific act
- Can also deal with units in unit trust

Case Study

- Supreme Court practice note SC CC 8
- 3 page affidavit
- Draft order
- Initial conference
- Joint valuation?
- Early mediation

Case Study

- A buys B
- B buys A
- Split business
- Sell business
- Replace corporate trustee
- Wind up
- Adjustment
- Do nothing

Case Study

- Two brothers/relatives
- Disproportionate effort
- Offer to buy or sell for \$^^^
- Wind up implications
- Employ person to assist busy brother

Terms of Settlement

- Prepare in advance
- Who keeps name
- Who keeps premises
- Restraint of trade
- Tax issues

General Observations

- Shareholders & unit holders agreement
- Small cases often harder
- Often need more time

Questions

- Questions
- Comments
- Shared experiences