

CARROT AND STICK APPROACH IN ENGLISH MEDIATION – THERE MUST BE ANOTHER WAY

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ABSTRACT

Intending to achieve costs savings and delivering value in the dispute management process in both civil and commercial disputes, parties are “encouraged” to engage in mediation according to the decisions handed down in Halsey and PGF II by the English courts. The suspicion of de facto or implied compulsory mediation was further expressed with the implementation of the EU Mediation Directive. Disputants are actively encouraged to take up mediation. Failing to do so, costs sanctions will be used as a “stick” to penalize for having unreasonably refused to mediate in the eyes of the courts. This development has seen the voluntary nature of mediation, the need to educate the parties and the need for a legislative framework being sidelined.

KEYWORDS: *mediation, compulsory mediation, ADR*

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