



Arbitration

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Arbitration Defined

Arbitration is the most traditional form of private dispute resolution. Arbitration is a binding procedure. It is often "administered" by a private organization that maintains lists of available arbitrators and provide rules under which the arbitration will be conducted. Such organizations can also manage the arbitration in whole or in part. Parties often select arbitrators on the basis of substantive expertise.

Arbitration is adjudicatory, as opposed to advisory, because of the fact that the arbitrator (usually a retired judge or attorney) renders a decision at the end of an arbitration hearing, and that decision is final and binding, subject only to a very limited court review. Arbitration is sometimes referred to as "non-binding" if the parties agree to make it so, but that is really a misnomer. Think of arbitration as a binding, adjudicatory process.

The Process

Most arbitration is driven by a pre-dispute contract entered into by the parties, in which they agree that if a dispute should arise, it will never get into the court system. The Federal Arbitration Act, coupled with the state arbitration law of the place of arbitration, generally governs the process. If the parties choose an administering authority, such as JAMS, that authority's arbitration rules will govern the procedure that will be followed.

By agreeing to arbitration, the parties, perhaps among other things, are waiving their fundamental, constitutional right to a trial by a jury of their peers. They can have no de novo (second trial) after they have gone to arbitration. Unless otherwise agreed, the decision is **legally binding and non-appealable**, except in extremely limited circumstances, such as in the case of fraud or collusion on the part of the arbitrator.

In general the arbitrator is an impartial person chosen by the parties. The arbitrator reads briefs and documentary evidence, hears testimony, examines evidence and renders **an opinion on liability and damages** in the form of an "award of the arbitrator" after the hearing. Once confirmed by a court of appropriate jurisdiction, the award can be subsequently entered as a judgment.

High-Low Arbitration

Also known as Bracketed Arbitration. This is an arbitration wherein the parties have agreed in advance to the parameters within which the arbitrator may render his or her award. If the award is lower than the pre-set "low," the defendant will pay the agreed-upon low figure; if the award is higher than the pre-set "high," the plaintiff will accept the agreed-upon high; if the award is in between, the parties agree to be bound by the arbitrator's figure. The high and low figures **may or may not be revealed** to the arbitrator.

Baseball Arbitration

A form of binding arbitration wherein each of the parties chooses one and only one number, and the arbitrator may select only one of the figures as the award. In a baseball arbitration, there are only two possible outcomes.

Night Baseball Arbitration

Like baseball arbitration, this is a form of arbitration wherein the parties exchange their own determination of that value of the case, but the figures are not revealed to the arbitrator. The arbitrator will assign a value to the case and the parties agree to accept the high or low figure closest to the arbitrator's value.

Non-Binding Arbitration

A procedure sometimes called "non-binding arbitration" is conducted much like a (binding) arbitration, except that when the arbitrator issues the award after the hearing, it is **not binding** on the parties and they do not give up their right to a jury trial. In that case, the arbitrator's award is merely an advisory opinion. Many cases go to settlement or (binding) arbitration after this phase, or they can choose to go to a trial.

Mandatory Arbitration

Also known as Judicial Arbitration or Court-Ordered Arbitration. A legislatively mandated or court administered scheme for the resolution of pending court cases (usually valued at under \$50,000), utilizing informal rules of evidence and procedure in a non-binding, advisory arbitration process that is ordered by the court at an early stage of a lawsuit. The availability of this process depends upon local state laws or court procedures.