LAW CLASS

Arbitration

**Arbitration Advantages and Disadvantages**

**Advantages of Arbitration**

Promoted as a way to resolve disputes efficiently, proponents of arbitration commonly point to a number of advantages it offers over litigation, court hearings, and trials.

Avoids hostility

Because the parties in an arbitration are usually encouraged to participate fully and sometimes even to help structure the resolution, they are often more likely to work together peaceably rather than escalate their angst and hostility toward one another, as is often the case in litigation.

**Usually cheaper than litigation**

Arbitration is becoming more costly as more entrenched and more experienced lawyers take up the cause. It is not unusual, for example, for a well-known arbitrator to charge $3,000 to $4,000 per day for his or her services. And most parties in arbitrations will also hire lawyers to help them through the process, adding to their costs. Still, resolving a case through arbitration is usually far less costly than proceeding through litigation because the process is quicker and generally less complicated than a court proceeding.

**Faster than litigation**

According to a recent study by the Federal Mediation and Conciliation Services, the average time from filing to decision was about 475 days in an arbitrated case, while a similar case took from 18 months to three years to wend its way through the courts.

**Flexible**

Unlike trials, which must be worked into overcrowded court calendars, arbitration hearings can usually be scheduled around the needs and availabilities of those involved, including weekends and evenings.

**Simple rules of evidence and procedure.**

The often confusing rules of evidence and procedure do not apply in arbitration proceedings -- making them less stilted and more easily adapted to the needs of those involved. Importantly, arbitration dispenses with the procedure called discovery that involves taking and answering interrogatories, depositions, and requests to produce documents -- often derided as a delaying and game-playing tactic of litigation. In arbitrations, most matters, such as who will be called as a witness and what documents must be produced, are handled with a simple phone call.

Private.

Arbitration proceedings are generally held in private. And parties sometimes agree to keep the proceedings and terms of the final resolution confidential. Both of these safeguards can be a boon if the subject matter of the dispute might cause some embarrassment or reveal private information, such as a company's client list.

**Disadvantages of Arbitration**

Being aware of the possible drawbacks of arbitration will help you make an informed decision about whether to enter or remain in a consumer transaction that mandates it -- or whether to choose it as a resolution technique if a dispute arises.

**Limited options**

A final decision is hard to shake. If the arbitrator's award is unfair or illogical, a consumer may well be stuck with it and barred forever from airing the underlying claim in court.

**Uneven playing field**

Some are concerned that the "take-it-or-leave-it" nature of many arbitration clauses work in favor of a large employer or manufacturer when challenged by an employee or consumer who has shallower pockets and less power.

Most retailers -- car dealers are repeat offenders here -- do not mention the arbitration clause before requiring the customer to sign the purchase agreement. Or they will wait until you are ready to drive the car off the lot, then casually mention that they won't sell unless you sign.

**Questionable objectivity**

Another concern is that the process of choosing an arbitrator is not an objective one, particularly when the decision-maker is picked by an agency from a pool list, where those who become favorites may get assigned cases more often.

**Rising costs**

While most still claim that arbitration is less costly than litigation, its costs are increasing. According to a recent survey by Public Citizen, a consumer watchdog group, the cost of initiating an arbitration is significantly higher than the cost of filing a lawsuit: $6,650 to $11,625 to initiate a claim to arbitrate a consumer claim worth $80,000 versus $221 to file that action in a particular county court. Add to that the arbitrator's fees -- multiplied by three if a panel is involved -- in addition to administrative costs, and the process appears to be less of a bargain.