LAW CLASS

Arbitration

**What is Arbitration?**

Arbitration is a method of resolving disputes outside of court. Parties refer their disputes to an arbitrator who reviews the evidence, listens to the parties, and then makes a decision. The arbitration process is less formal than a courtroom hearing or trial (and often less expensive), but more formal than mediation or negotiation.

Most arbitrations arise because of an arbitration clause in a contract, in which the parties have agreed to resolve any disputes arising out of the contract through arbitration. Before we discuss what an arbitration looks like, it helps to understand what an arbitration clause can include.

Arbitration clauses can be simple -- stating that claims will be settled according to applicable arbitration rules and then enforced by a local court.

But arbitration clauses can also be more complex, controlling a large number of matters, such as

* how arbitrators will be selected,
* where the arbitration will be held,
* who will pay for attorneys' fees, and
* whether the final arbitration award must be kept confidential.

Arbitration clauses can be mandatory or voluntary, and the arbitrator's decision may be binding or nonbinding.

Mandatory Versus Voluntary Arbitration

An arbitration clause may make the arbitration either mandatory or voluntary. A dispute that is subject to mandatory arbitration must be resolved through arbitration. The parties give up their right to sue in court, participate in a class action lawsuit, or appeal the arbitration decision.

In voluntary arbitration, both sides in a dispute agree to submit their disagreement to arbitration after it arises, and after they have evaluated other options for resolving it. Most consumer advocates find this to be the preferred, evenhanded approach to arbitration -- allowing it to be a choice rather than a necessity.

Binding Versus Nonbinding Arbitration

In binding arbitration, the arbitrator's decision is final. It may not be reviewed or overturned by a court except in very limited circumstances, such as when fraud or misuse of power has been involved.

In nonbinding arbitration, either party may reject the arbitration award and demand a trial instead. Parties often treat nonbinding decisions as an independent assessment of the strengths and weaknesses of a potential lawsuit, with the aim of fostering a settlement. But even in such cases, the arbitration agreement will often provide that the award may become binding if the parties agree to it or wait longer than a stated time to ask that the case be returned to court.

Choosing an Arbitrator

Many arbitration agreements require that disputes be arbitrated through one of the big arbitration groups or associations. Others leave it up to the parties to agree upon a particular arbitrator.

Large Arbitration Agencies

Often, an arbitration agreement will designate the American Arbitration Association (www.adr.org), JAMS (www.jamsadr.com), or the National Arbitration Forum ( www.arb-forum.com) to handle the arbitration. Arbitrators on the rosters of these groups are often retired judges or practicing attorneys, although some are nonlawyers with particular expertise in an area such as construction or child custody.

These agencies typically charge a set amount or percentage of the amount in dispute as a filing fee, and an additional amount or percentage as a "case service fee." For example, if the amount in dispute is $75,000 to $150,000, an arbitration organization would typically charge about $2,250 in fees to begin the proceeding.

Independent Arbitrators

You can locate independent arbitrators and find out their fees and philosophies by looking in the phone book -- or doing an Internet search combining "arbitrator" and your location.

Getting a Lawyer's Help

Parties sometimes hire attorneys to help them through the arbitration process. If the dispute involves $10,000 or less, most individuals opt to handle the process alone, with guidance from the arbitrator or arbitration organization. Companies and retailers nearly always hire lawyers to represent their interests in arbitration. And for disputes involving $100,000 or more, both sides usually hire lawyers for help.