Arbitration

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Arbitration, a form of alternative dispute resolution (ADR), is a technique for the resolution of disputes outside the courts. The parties to a dispute refer it to *arbitration* by one or more persons (the "arbitrators", "arbiters" or "arbitral tribunal"), and agree to be bound by the arbitration decision (the "award"). A third party reviews the evidence in the case and imposes a decision that is legally binding on both sides and enforceable in the courts.[1]

Arbitration is often used for the resolution of commercial disputes, particularly in the context of international commercial transactions. In certain countries such as the United States, arbitration is also frequently employed in consumer and employment matters, where arbitration may be mandated by the terms of employment or commercial contracts.

Arbitration can be either voluntary or mandatory (although mandatory arbitration can only come from a statute or from a contract that is voluntarily entered into, where the parties agree to hold all existing or future disputes to arbitration, without necessarily knowing, specifically, what disputes will ever occur) and can be either binding or non-binding....

Arbitration is a proceeding in which a dispute is resolved by an impartial adjudicator whose decision the parties to the dispute have agreed, or legislation has decreed, will be final and binding. There are limited rights of review and appeal of arbitration awards. Arbitration is not like:

- judicial proceedings, although in some jurisdictions, court proceedings are sometimes referred as arbitrations[2]
- alternative dispute resolution (ADR)[3]
- expert determination
- mediation (a form of settlement negotiation facilitated by a neutral third party)

Advantages and disadvantages

Parties often seek to resolve disputes through arbitration because of a number of perceived potential advantages over judicial proceedings:

- **In contrast to litigation, where one cannot "choose the judge",[4] arbitration allows the parties to choose their own tribunal.** This is especially useful when the subject matter of the dispute is highly technical: arbitrators with an appropriate degree of expertise (for example, quantity surveying expertise, in the case of a construction dispute, or expertise in commercial property law, in the case of a real estate dispute[5]) can be chosen.

Arbitrability

By their nature, the subject matter of some disputes is not capable of arbitration. In general, two groups

of legal procedures cannot be subjected to arbitration:

- Procedures which necessarily lead to a determination which the parties to the dispute may not enter into an agreement upon:[7][8] Matters relating to crimes, status and family law are generally not considered to be arbitrable, as the power of the parties to enter into an agreement upon these matters is at least restricted.

Arbitration agreements are generally divided into two types:[*citation needed*]

- Agreements which provide that, if a dispute should arise, it will be resolved by arbitration. These will generally be normal contracts, but they contain an arbitration clause
- Agreements which are signed after a dispute has arisen, agreeing that the dispute should be resolved by arbitration (sometimes called a "submission agreement")

Agreements to refer disputes to arbitration generally have a special status in the eyes of the law. For example, in disputes on a contract, a common defence is to plead the contract is void and thus any claim based upon it fails. It follows that if a party successfully claims that a contract is void, then each clause contained within the contract, including the arbitration clause, would be void. However, in most countries, the courts have accepted that:

1. A contract can only be declared void by a court or other tribunal; and
2. If the contract (valid or otherwise) contains an arbitration clause, then the proper forum to determine whether the contract is void or not, is the arbitration tribunal.[18]

In *ad hoc* arbitrations, the arbitral tribunals are appointed by the parties or by an appointing authority chosen by the parties. After the tribunal has been formed, the appointing authority will normally have no other role and the arbitation will be managed by the tribunal.

Although arbitration awards are characteristically an award of damages against a party, in many jurisdictions tribunals have a range of remedies that can form a part of the award. These may include:

1. payment of a sum of money (conventional damages)
2. the making of a "declaration" as to any matter to be determined in the proceedings
3. in some[*which?*] jurisdictions, the tribunal may have the same power as a court to:
    1. order a party to do or refrain from doing something ("injunctive relief")
    2. to order specific performance of a contract
    3. to order the rectification, setting aside or cancellation of a deed or other document.
4. In other jurisdictions, however, unless the parties have expressly granted the arbitrators the right to decide such matters, the tribunal's powers may be limited to deciding whether a party is entitled to damages. It may not have the legal authority to order injunctive relief, issue a **declaration**, or rectify a contract, such powers being reserved to the exclusive jurisdiction of the courts.