

Key Concept 3: Understanding Arbitration and the Significance of Agreeing to Submit a Dispute to Arbitration.¹

I. What is “arbitration?”²

Arbitration is the submission of a dispute to a neutral, nonjudicial third party (arbitrator) who issues a binding decision resolve the dispute.

II. What is an “arbitration agreement?”

Arbitration usually results from the parties’ agreement. That agreement normally is made before the dispute arises (most often through an *arbitration clause* in a contract), but it can occur after the dispute begins.

III. How is arbitration different from court proceedings?

Arbitration usually is less formal than regular court proceedings. The arbitrator need not be an attorney; often, she is a professional who may be expert in the subject matter of the dispute. Although arbitration hearings often resemble civil trials, the applicable procedures, the rules for admission of evidence, and the record-keeping requirements typically are not as rigorous as those governing courts.

IV. May the “losing party” seek review of an arbitrator’s award?

The arbitrator’s decision, called an *award*, is filed with a court, which will enforce it if necessary. The losing party may object to the arbitrator’s award, but the courts’ review of arbitration proceedings is limited. Possible grounds for overturning an arbitration award include: (1) its procurement by fraud, (2) the arbitrator’s partiality or corruption, and (3) other misconduct by the arbitrator (e.g. refusing to hear relevant evidence).

V. What is the difference between “binding arbitration” and “judicial” (or “court-annexed”) arbitration?

Court-annexed arbitration{:}³ In this form of ADR, certain kinds of civil lawsuits are diverted into arbitration. One example might be cases in which less than a specified dollar amount is at issue. Most often, court-annexed arbitration is mandatory and is ordered by the judge, but some jurisdictions merely offer litigants the option of arbitration. The losing party in a court-annexed arbitration still has the right to a regular trial.

VI. What is the difference between arbitration and mediation?

In mediation, a neutral third party called a *mediator* helps the parties reach an agreeable. Cooperative resolution of their dispute by facilitating communication between them, clarifying their areas of agreement and disagreement, helping them to see each other’s viewpoints, suggesting settlement options, and so forth. Unlike arbitrators, mediators cannot make decisions that bind the parties. Instead, a successful mediation typically results in a mediation agreement. Such agreements normally are enforced under regular contract law principles.

¹ Text reprinted by permission of publisher of Jane Mallor, et al., *Business Law and the Regulatory Environment: Concepts and Cases* (Irwin McGraw-Hill, Burr Ridge, IL: 11th ed. 2001).

² This and all headings do not appear in the Mallor text. They have been added for ease of student reference.

³ Colon does not appear in the Mallor text.