Arbitration Advantages and Disadvantages

A Practical Guidance® Practice Note by Gary L. Benton, Gary Benton Arbitration

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Contracts typically include dispute resolution procedures to address conflicts that may arise. This practice note considers the advantages and disadvantages of arbitrating versus litigating disputes. It also includes a discussion of other common alternative dispute resolution procedures. While this practice note provides guidance to U.S. parties and their counsel, it is jurisdiction- and industry-neutral.

For more information, see Arbitration Laws Overview, Arbitration Clause Drafting, and Arbitration vs. Litigation (Federal).

Arbitration

Arbitration in the U.S. is a form of alternative dispute resolution (ADR) used to resolve disputes without resort to court litigation. There are various varieties of arbitration but, on the whole, arbitration is distinguished by providing out of court binding resolution on the merits. Arbitration has various advantages and disadvantages compared to litigation, and some of its features may be viewed as an advantage to some and a disadvantage to others, and vice versa.

Disputes subject to arbitration are typically decided by one or more impartial arbitrators, routinely referred to as an arbitral tribunal. Decisions of the arbitrators are referred to as arbitration awards, and they are legally binding and enforceable in the courts. Arbitration awards are subject to limited rights of review and appeal.

Dispute resolution by means of arbitration is generally a matter of contract that is agreed to by the parties. Arbitration agreements are typically included as an arbitration clause in a contract but may also be made between the parties after a dispute arises (so-called submission agreements). Arbitration between businesses (known as commercial arbitration or business arbitration) is typically consensual and binding and offers businesses many advantages over litigation.

Commercial arbitration should be distinguished from arbitration between a business and consumers (consumer arbitration) and between a business and its contract employees (employment arbitration). Although consumer and employment arbitration can offer advantages over litigation for both parties, they are often referred to by critics as mandatory or forced arbitration because the consumers or employees are not given a choice as to whether they wish to arbitrate when they enter into the contract. Mandatory arbitration may also be required by statute in some circumstances, such as where a state requires arbitration of certain insurance claim disputes.

Most ADR providers (often referred to as arbitral institutions) publish their own standard arbitration clauses with various optional additions offered to meet the parties' needs.

The following is a sample commercial arbitration clause:

> Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the [American

> Arbitration Association] pursuant to its then-current rules. The arbitration shall be conducted before a panel of [one (or) three] arbitrators in [city, state]. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

For additional arbitration clauses, see Arbitration Clauses.

Arbitration clauses can be customized but doing so should be done with care. Common customization of clauses includes requiring negotiation or mediation prior to arbitration (hybrid or step-clauses), specifying a particular set of rules (ie commercial or international), requiring confidentiality, providing for or restricting allocation of fees and costs, confirming the right to seek injunctive relief in a court of competent jurisdiction, allowing for certain types of discovery, allowing for dispositive motion practice, requiring a videoconference hearing and/or specifying the language of the arbitration. Where these provisions are not included in a clause, the default provisions in the applicable rules will apply, and where there is no default provision and the parties do not agree, the arbitral tribunal will determine the process.

Customizing clauses to carve out claims from arbitration, to set very short deadlines or to include contract language that suggests disputes may be resolved by litigation are often problematic. Care should be taken to properly identify the desired ADR provider and its rules. Arbitration clauses that do not establish a clear intent of the parties to arbitrate or are otherwise defective are referred to as pathological clauses.

In addition to offering a standard clause for commercial disputes, some ADR providers offer clauses for particular types of disputes (ie., construction, international, employment, labor, healthcare and consumer disputes). These clauses often incorporate specialized sets of rules designed for such disputes. Although all arbitration rule sets provide for binding out-of-court decisions on the merits, ADR providers differentiate rule sets with variations on procedures and deadlines along with features such as expedited arbitration for smaller disputes, additional process protections in the case of consumer and employment disputes, or reference to international norms in international disputes. Some industry sectors, particularly the construction industry, rely on dispute resolution boards composed of industry experts appointed for the duration of a long-term project to make determinations on disputes as they arise.

Comparison between the rules of different ADR providers can be misleading. The quality of their service, their independence and, the capabilities of the individual arbitrator(s) appointed to the case are often more determinative factors for successful arbitrations.

An arbitration that does not rely on an ADR provider to assist with arbitrator appointments, conflicts fee deposits, on other administrative services is called an ad hoc arbitration. Parties in ad hoc arbitration must use rules specially designed for ad hoc arbitration to address these matters.

Generally, parties can agree to modify the procedures provided for in the arbitration clause or in the applicable rules before or after a dispute arises. The ability of the parties to define and modify the arbitration process is known as party autonomy. The flexibility provided by arbitration is considered one of its key advantages over court litigation.

Many ADR providers offer lists of recommended arbitrators but allow the parties to select arbitrators who are not listed on the ADR provider's panel. Care should be taken when an ADR provider imposes restrictions on the choice of arbitrators to ensure that the offered list includes capable, independent, and impartial candidates.

Advantages of Arbitration

Arbitration provides a host of advantages to the parties in a dispute. The following are several of the most common ones:

- **Arbitration is generally faster than court litigation.** This is because the arbitration process is less formal, there is typically much less discovery than in litigation, there is no jury, there is no protracted trial and the outcome is subject to limited court review (as discussed later in this practice note). While lawsuits can take several years to resolve, and longer with appeals, arbitrations can provide finality to disputes in a much shorter period of time. Most business arbitrations are resolved in a year or less. Some specialized arbitration procedures for small disputes allow for resolution within as little as 30 to 60 days.
- **Arbitration is generally less costly than court litigation.** For many of the same reasons, arbitration can save the parties considerable cost. In nearly all instances, arbitrations are conducted with time and cost efficiency as a guiding principle.
- **Arbitration offers more predictable results than court litigation.** Given the time and cost savings offered by arbitration, and its reliance on professional decision-makers rather than juries, arbitration offers decision-making that is more closely aligned to the facts and law,

not swayed by bias or appeals to the emotions of the jury, and more predictable as to costs and outcomes.

- **Arbitration allows for parties to select the decisionmaker(s).** In arbitration, the parties are able to select the arbitrators (and number of arbitrators). Litigation, on the other hand, does not permit the parties to choose their judge; rather, the judge is usually randomly assigned. The ability to select arbitrators allows the parties to select the best decisionmaker(s) for the task based on experience, knowledge, practice-style, temperament or other factors. Parties may agree to have a single arbitrator in a small dispute or for a larger dispute may agree to use three arbitrators, including one appointed by each side, to help ensure that the tribunal reaches the correct determination.
- **Arbitration allows for specialized expertise in decision-making.** The ability to select arbitrators is particularly helpful when the subject matter of the controversy is specialized, as the parties can select arbitrators with specific knowledge regarding the industry or subject matter involved. In contrast, in litigation, decisions are made by juries, or sometimes judges, with limited industry or subject matter expertise.
- **Arbitration allows for party control.** Arbitration is a party-driven process. The parties have control over the details of the process, including the selection of the arbitrator. A good arbitrator will guide the parties on best practices but honor any reasonable procedures agreed to by the parties. In contrast, litigation is conducted by predetermined rules and the procedure is largely controlled by the judge with minimal party input.
- **Arbitration is a less formal and more flexible process.** Arbitration is not bound by formal court rules and procedures. Rather, arbitration rules allow for flexibility and arbitrator discretion. The parties (in their arbitration clause or by mutual agreement) or the arbitrator can provide for particular prehearing or hearing procedures that work best for the parties in resolving their dispute. For example, the parties may agree upon prehearing procedures such as the scope of discovery or hearing procedures such as that the hearing will be conducted by videoconference. Litigation, on the other hand, is primarily controlled by statutory and procedural rules, and the conduct of the trial is dictated by predetermined rules.
- **Arbitration allows for fuller consideration of the evidence.** In litigation, evidentiary rules are strictly relied on to restrict certain evidence from the jury. Arbitration allows for a more expansive introduction of evidence because it does not rely on juries and arbitrators are the triers of fact. Although arbitrators are guided by evidentiary rules, arbitrators can consider all the evidence offered and will give the evidence received appropriate weight. Accordingly, arbitrators may allow the introduction of evidence, such as witness testimony or documents, that a judge would not allow.
- **Arbitration proceedings are private (i.e., nonparties cannot attend hearings).** Arbitration hearings are not open to the public. Accordingly, absent agreement by the parties, interested spectators or the press may not attend arbitration hearings. This can be an advantage to the parties where confidential business information or other private matters are addressed. Although arbitration proceedings are private, they are not necessarily confidential. The parties have the right to disclose details of the proceeding unless they have a separate confidentiality agreement or are subject to a protective order. As well, a party may file an arbitration award with a court to confirm, enforce or vacate the award. Accordingly, if the parties wish to maintain the confidentiality of the discussions in the proceeding and the award, they should include this requirement in their arbitration clause or underlying agreement.
- **Arbitration allows the parties to select the language to be used in the proceedings.** Litigation requires that the language of the country of the applicable court be applied in all instances.
- **International arbitration allows for fairness and neutrality.** Parties entering into international agreements risk being sued in the courts of counterparty. International arbitration allows the parties to agree upon a neutral forum where they can have a fair proceeding and where there is less risk of bias, prejudice, political interference and corruption.
- **International arbitration awards can be enforced in foreign nations.** The U.S. is not a party to any international treaties or conventions that require the recognition of U.S. court judgments by foreign nations. Therefore, with litigation, the parties have to rely on a foreign jurisdiction's willingness to recognize and enforce a U.S. court judgment. Most foreign nations will not recognize U.S. court judgments, requiring litigating the dispute all over again in the foreign jurisdiction. In contrast, awards rendered by international arbitration tribunals are recognized and enforceable nearly worldwide under international convention requirements.

  Perhaps the most important arbitration convention, the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as the New York Convention) has been adopted by over 184 jurisdictions.

It allows U.S. parties to arbitrate international disputes in the U.S. or in another country and requires foreign courts in signatory countries to enforce the awards. For the New York Convention to apply, the arbitration agreement must be made in writing. It must also concern a matter that is capable of settlement by arbitration. Chapter 2 of the Federal Arbitration Act or FAA (9 U.S.C. § 201) implements the New York Convention. An all-inclusive list of member states can be found here.

A related advantage is that enforcement of arbitration awards under international conventions allow for a single arbitration award to be enforced in multiple jurisdictions rather than requiring a party to bring separate lawsuits in each foreign jurisdiction.

- **Arbitration may help foster continuing business relationships.** Litigation is highly adversarial. Although arbitration is also an adversarial process, it is a less formal and more collegial practice and, as such, provides a better climate for initiating settlement discussions and promoting ongoing business relationships between the parties.

Disadvantages of Arbitration

Arbitration is not always the best dispute-resolution option; sometimes litigation is the superior choice. The determination should be made on a case by case basis. Many of the considerations are subjective. The following is a list of perceived disadvantages of arbitration:

- **Jurisdictional disputes can slow down an arbitration.** Disputes as to the existence of an arbitration agreement, the arbitrability of claims and the scope of an arbitration clause are gateway issues that are generally reserved to the courts in the U.S. unless delegated by the parties to the arbitrators. The rules offered by most ADR providers provide that the parties delegate these gateway issues to the arbitrators. Still, disputes over the formation of an arbitration agreement or claims involving non-signatories to the arbitration agreement may result in delays if those issues must be resolved in court.
- **It may be difficult to join third parties in arbitration, as third parties can be compelled to participate only if they have explicitly or implicitly consented to arbitration.** If non-signatories are required for total relief, such individuals must consent or be found to be bound to the arbitration agreement by a contract extension theory (agency, assumption, third-party beneficiary, alter-ego, etc.) In court proceedings, by way of contrast, all third parties involved in the controversy can generally be named as a party without regard to their contractual status.
- **Discovery is typically more limited in arbitration than in litigation.** Arbitration favors efficiency and excess discovery is discouraged. Although document production is common in most business arbitrations, there are often fewer depositions and less written discovery than in a litigation. Many parties find that limiting discovery saves substantial time and cost without any negative impact on the outcome of the case.

  Given that arbitration is a matter of contract, the parties are entitled to define in the arbitration agreement or thereafter the extent of discovery permitted in a proceeding. Where the parties have not agreed on discovery, and only one party wants broad discovery, care should be made in the selection of the arbitrator with this consideration in mind. In some cases, the need for discovery is obviated by the production of reliance documents or the parties agreeing to exchange witness statements in advance of the hearing.
- **There may be limitations on compelling third-party testimony.** Section 7 of the FAA provides arbitrators with the authority to issue subpoenas to compel the attendance of witnesses. 9 U.S.C. § 7. Some courts read this provision to allow for third-party hearing testimony but not prehearing discovery. (In contrast, some state arbitration laws explicitly allow for prehearing depositions of third parties; however, state laws do not have national geographic reach.) As well, enforcement of third-party subpoenas is typically a matter for the courts not arbitrators. Limitations on third-party discovery and the need to rely on courts for subpoena enforcement may be a concern in certain cases.
- **The parties are waiving their right to a trial by jury.** In the U.S., trial by a jury is a cherished right. By agreeing to arbitration, parties are effectively waiving their right to a trial by jury. An arbitrator may assess the facts differently than a lay jury would. Some claimants may prefer litigation because they anticipate that a jury will provide larger awards. Others prefer arbitration because they anticipate the arbitrators will provide a fair and rationale award.
- **Arbitration is conducted behind closed doors.** Although some parties value the privacy that arbitration offers, others argue that disputes, particularly those involving discrimination or public policy claims, should be aired in open court. As noted above, arbitrations are private but what occurs in an arbitration is, generally, not confidential unless the parties explicitly agree to confidentiality protections.
- **The parties are waiving their right to an appeal on the merits.** In a state or federal lawsuit, every party has the right to appeal the judge's or jury's decision on the

merits. In arbitration, awards can be reviewed by the courts but, generally, only to ensure that the agreed process was followed, and the arbitration was fair. The FAA provides that an arbitral award may be vacated (sometimes referred to as set-aside) but only if and when such award resulted from fraud, undue means, or corruption, or the arbitrators exceeded the scope of their authority, engaged in misconduct, denied any party due process, and/or displayed evident bias. 9 U.S.C. § 10. Some U.S. federal circuits will consider whether there was a manifest disregard for the law by the arbitrators, meaning that the arbitrators were aware of the law but knowingly disregarded it.

Under the FAA it is not possible to provide for an appeal on the merits. However, it may be possible under various state's arbitration laws. Arbitration proponents suggest that selecting a capable arbitrator, or a tribunal of three capable arbitrators, alleviates the need for an appeal on the merits and appeals simply add time, cost and uncertainly. Where an appeal is desired by parties, some ADR providers offer arbitration appellate tribunals, often retired judges, to review awards on the merits before they are made final but this offering is rarely used, adds to the cost of arbitration and can be nearly as time consuming as appeals in the courts.

- **Arbitration awards must be confirmed by a court to be converted to a judgment.** Over 90% of arbitration awards are voluntarily satisfied by the parties without going to court. However, like jury verdicts, arbitration awards must be confirmed by a court to be enforced as a judgment. Federal and state statutes allow for summary proceedings to confirm arbitration awards. The confirmation of an arbitral award in federal court is governed by the FAA. While the process is relatively straightforward, it does provide for an added administrative layer that needs to be handled properly and pursuant to the applicable statute of limitations to be effective.
- **Arbitrators must be paid for their time.** The most significant expense in arbitration or litigation is the fees of legal counsel. But it is correct that arbitrators, unlike judges, must be paid by the parties for their time. However, the overall time and cost savings achieved in arbitration nearly always results in lower overall cost than a litigation. As well, the parties are free to contractually shift arbitration costs to the losing party.
- **Arbitration is not always the less expensive and speedier option.** This is particularly true when the arbitration clause is poorly drafted, counsel treat the arbitration like a highly contentious litigation or the arbitrator(s) does not properly manage the process. Arbitration is almost always less expensive and speedier when it is handled properly and there is party oversight.
- **Sometimes, parties rely on ad hoc arbitration to avoid the costs of administration by an arbitral institution.** This may or may not save time and cost, and where it does there is limited savings because administrative costs and fees make up a small portion of the overall cost of resolving a dispute. Ad hoc arbitration should only be used when the parties are certain they can administer the arbitration in a cooperative and efficient manner. Cost and delay in ad hoc arbitration can result when there are disputes over selecting arbitrators, arbitrator conflict of interest issues or arbitrator fees are not paid.
- **There may be repeat business partiality in consumer or employment arbitration.** If an arbitrator or ADR provider relies on a company's repeat business, there is a risk that the provider or appointed arbitrator will be biased and rule against the consumer or the employee. Ethics rules require arbitrator disclosure as to repeat business; some state laws require additional disclosures by providers. It is important to carefully review disclosures and ensure that the arbitrators being considered for a case are independent. In practice, arbitrators working with reputable ADR providers stake their reputation on being fair and impartial. Additional care must be taken when agreeing to arbitration administered by industry-sponsored ADR provider services.
- **Consumers and employees may be denied class action relief in arbitration.** Some companies exclude class action relief in their mandatory arbitration clauses. These exclusions have been upheld under the FAA. Whether class action relief and litigation provide better results for consumers and employers is a hotly debated topic. Some plaintiff lawyers argue that litigation is the only way for a claimant to get a fair hearing and a reasonable recovery. Some defense lawyers argue that arbitration provides both sides a fair and efficient process and that plaintiff lawyers, not parties, are the real beneficiaries of class action claims. Various bills have been presented in recent sessions of Congress to address the future of consumer and employment arbitration.

Federal vs. State Arbitration Laws

The FAA provides both substantive national law and procedural law for the federal courts. The FAA's substantive provisions set forth a national policy favoring arbitration.

Every U.S. state has enacted its own arbitration laws, predominantly modeled on the Uniform Arbitration Act of

1956 (UAA). The UAA is a model statute that was intended to permit each U.S. state to adopt a uniform set of laws respecting arbitration instead of having to create its own set of rules.

There is a complex interplay between the federal and state arbitration law. Interstate commerce is broadly defined by the courts. The FAA will apply to most agreements involving interstate commerce even if it is not specifically referenced in the agreement. The FAA will not apply in matters of intrastate commerce and as to certain specified agreements, in which case state laws will apply. Likewise, where the FAA is otherwise silent on matters, state law will fill the gaps. Accordingly, state arbitration statutes typically govern disputes arising out of the following types of agreements or situations:

- **Agreements that do not fall within the FAA's scope pursuant to 9 U.S.C. § 2**. These include (1) oral agreements; (2) non-maritime, intrastate agreements (i.e., with no interstate or foreign elements); and (3) agreements pertaining to the employment of seamen, railroad employees, airline employees, telecommunications carriers, or any other class of workers engaged in foreign or interstate commerce. 9 U.S.C. § 1.
- **Agreements where the parties expressly agree to apply state arbitration law.** Courts will generally enforce this preference if the applicable state's rules are not in conflict with the FAA's primary policy of enforcing arbitration agreements and arbitral awards, and the parties' agreement to apply state law is clear and unambiguous. The mere inclusion of a general choice-of-law provision, however, does not typically meet this standard. See Mastrobuono v Shearson Lehman Hutton, 514 U.S. 52, 59–60 (1995). When an arbitration agreement is silent with respect to governing law, U.S. courts generally allow the arbitrator(s) to determine the applicable choice of law rules and substantive law.

Although the FAA preempts conflicting state law, there is some resistance to arbitration, particularly some aspects of consumer and employment arbitration by various state courts. As well, there are differences among federal courts as to interpretation of some procedural provisions of the FAA, such as with respect to third-party subpoenas for prehearing discovery. As well, some states, most notably California, hold arbitrators in domestic cases to high standards of disclosure of potential conflicts of interest. Accordingly, although courts throughout the U.S. are largely supportive of arbitration, there are some differences among U.S. jurisdictions as to both the interpretation of federal arbitration law and the application of state laws.

Various state laws and the AAA-ABA Code of Ethics for Arbitrators in Commercial Disputes (2004) require that all arbitrators, even those who are party appointed, are presumed to be neutral, impartial arbitrators. In limited circumstances, so called Canon X arbitrators are appointed in U.S. domestic cases; they may be predisposed to the party appointing them but in all other respects are required to act in good faith and with integrity and fairness.

Other Common Dispute Resolution Procedures

Direct Negotiation

Negotiation in the dispute resolution context is a business-focused settlement discussion that takes place directly between the parties. Often key executives lead the negotiation. Negotiation may be required by an agreement or may be undertaken voluntarily by the parties. Negotiations are generally commenced by the provision of written notice from one party to the other party identifying the dispute and requesting the opportunity to negotiate a resolution. Direct negotiation does not involve the engagement of a neutral third party to facilitate settlement or decide the dispute. Direct negotiations are typically delineated by the parties as confidential settlement discussions and therefore offers and admission made in the course of the negotiations are generally inadmissible in any subsequent court proceeding.

Mediation

Mediation is another form of ADR that is directed to settling disputes rather than resolving a dispute on the merits. Like arbitration, mediation is facilitated through a third party. The parties are not required to settle and only become bound if they do so. The mediator facilitates the settlement discussion, and in some cases provides evaluative guidance. The clients themselves may actively participate in the process. A mediated settlement is made by agreement of the parties; the mediator cannot make a decision and impose it on the parties. The process is private and confidential, and, except when ordered by a court or required by contract, participation is voluntary. Mediation can be conducted before or concurrent with arbitration or litigation.

A mediator uses an array of techniques, including meeting in private with each side (called caucusing), to assist the parties in reaching a compromise on their dispute. A mediation allows for consideration of business objectives and factors unrelated to the merits. It is a significantly

less time consuming and costly process than arbitration and litigation, and in most cases is often conducted in the course of a single day or two. Given its settlement-focused objective, confidentiality, low relative cost, and informal procedure, mediation is a popular dispute-resolution mechanism. It does not, however, guarantee a resolution of the applicable conflict.

One variant of mediation known as guided mediation involves a mediator being engaged early to help the parties resolve disputes at an early stage and, if needed, provide guidance on a longer-term dispute resolution process.

Conciliation

Conciliation is closely related to mediation. In conciliation, a highly regarded individual, the conciliator, is appointed or agreed to by the parties to guide the parties on a settlement. Conciliation differs from mediation in that the conciliator may suggest settlement terms. In some instances, these terms are based on shared value systems rather than an evaluation of the merits. Conciliation is not widely used in the U.S. except among certain affinity groups. It is more widely relied upon in various forms in parts of Asia. Like mediation, conciliation differs from arbitration primarily in that it is not a decision on the merits and the guidance of the conciliator is not binding on the parties.

Settlement Conferences

A settlement conference is an organized meeting between parties usually conducted in accordance with a court order requiring such a conference as a prerequisite to a trial. The parties are each represented at the conference by their respective attorneys and the settlement conference is conducted by the judge, a magistrate judge or an attorney appointed by the court to handle such conferences. Like mediation, settlement conferences are directed to the parties reaching a settlement of the dispute rather than a determination on the merits. Also, like mediations, settlement conference discussions are confidential and, generally, cannot be introduced as evidence at trial. Settlement conferences differ from mediation in that they are often compulsory, and the parties do not select the neutral. There may be more focus on monetary resolution than on business deal considerations. Particularly where conducted by the Judge handling the case there is less separation of the process from the court case.

Multi-Tiered ADR Clauses

A multi-tiered ADR clause (also known as an escalation clause) requires the parties to a dispute to engage in a series of steps (typically negotiation and/or mediation) prior to submitting the dispute to arbitration or litigation. Each step must be attempted prior to moving on to the next step. Multi-tiered ADR clauses can help keep costs down in the event of disputes. However, they do delay the process where a settlement is not feasible prior to arbitration or litigation. For more information regarding multi-tiered, and other types of dispute resolutions clauses, see Alternative Dispute Resolution Clauses: Multitier, Hybrid, and Carve-Out Clauses. See also Alternative Dispute Resolution Clause (Multi-Tiered).

Hybrid ADR

Hybrid ADR is a process that starts as one form of ADR and is voluntarily converted to another form of ADR. For example, Arb-Med begins as an arbitration in which the parties decide to pursue settlement and request that the arbitrator serves as the mediator. This process can work well so long as it is clear what role, if any, the neutral will play if a mediated settlement is not reached. Med-Arb begins as a mediation that does not result in settlement and the parties request that the mediator serves as an arbitrator to decide the dispute on the merits. This process can work so long as it is clear to the parties that the neutral may be swayed by information disclosed confidentially during the mediation process.

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Practice Notes

Commercial Transactions

- Arbitration Laws Overview
- Arbitration Clause Drafting
- Arbitration vs. Litigation (Federal)
- Arbitration Agreements: Drafting a Pre-dispute Agreement (U.S.)
- Arbitration Agreements: Pitfalls in Drafting a Private Agreement
- Arbitration in International Jurisdictions
- Alternative Dispute Resolution Clauses: Multitier, Hybrid, and Carve-Out Clauses

Civil Litigation

- Arbitration Agreements: Separability (U.S.)
- Arbitrability in U.S. Arbitration
- Confidentiality in Arbitration (U.S.)
- Discovery in Arbitration: Limiting Discovery (U.S.)
- Dispositive Motions in Arbitration (U.S.)

- Provisional Measures in Arbitration (U.S.)
- Punitive Damages in Arbitration (U.S.)
- AAA Commercial Arbitration Procedure
- ICDR Arbitration Procedure
- JAMS Arbitration Procedure

Annotated Forms

- Arbitration Clauses
- Ad Hoc Arbitration Clauses
- American Arbitration Association Arbitration Clause
- AAA, ICDR, ICC and/or UNCITRAL Arbitration Clauses
- AAA Arbitration Clause (UNCITRAL)
- Arbitration Clause (UNCITRAL)
- International Commercial Arbitration Clauses
- Alternative Dispute Resolution Clause (Multi-Tiered)

Checklists

Commercial Transactions

- Arbitration Clauses: Common Problems Checklist
- Multi-tiered Alternative Dispute Resolution Checklist

Civil Litigation

- Delay and Excessive Cost in Arbitration Checklist (U.S.)
- Arbitration Organizations: Choosing an Organization Checklist (U.S.)
- Arbitrators: Finding, Vetting, and Selecting an Arbitrator Checklist (U.S.)
- AAA Commercial Arbitration Flowchart
- CPR Commercial Arbitration Flowchart
- JAMS Arbitration Flowchart
- AAA, JAMS, and CPR Comparison Chart

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Gary Benton is an internationally recognized Arbitrator and Mediator with over thirty years major law firm and in-house experience in both corporate/commercial transactions and litigation/arbitration practice. He focuses on US and international business contract disputes, corporate investment, technology, intellectual property and emerging growth matters. He has handled hundreds of cases around the world and serves on the panels of the leading arbitral institutions in the US, Europe and Asia.

In addition to his arbitration practice, Gary is a member of the Adjunct Faculty at Santa Clara University and Pepperdine University, where he lectures on US and international arbitration law and practice.

Gary is also the founder and currently serves as the Chairman of the Silicon Valley Arbitration & Mediation Center (SVAMC), a non-profit educational foundation in Palo Alto, California.

Gary was previously a partner with the international law firms Pillsbury Winthrop Shaw Pittman LLP in Palo Alto and Coudert Brothers LLP in San Francisco and Palo Alto. He served as the head of Coudert Brothers' West Coast International Arbitration Practice and its Northern California Technology, Media and Telecoms group. At Pillsbury, he co-chaired the Silicon Valley international team. In addition, he served as Chief Legal Officer of a cloud and mobile cybersecurity company supporting US national security interests.

As a practicing attorney, his focus has been on US and international business contracts and commercial matters, corporate and securities transactions, private equity and venture capital investment, emerging growth financing, IT and Internet, biotech and pharmaceuticals, alternative energy, technology development, sales, marketing and distribution, competition, IP licensing and infringement disputes. Gary's technology law career includes managing international legal projects for Fortune 500 technology companies, venture financing Silicon Valley tech startups, handling US and international M&As and IPOs, and extensive experience litigating patent, copyright, trade secret and other IP disputes.

Gary is one of only a few arbitration experts with a background in technology and international business law. He has significant experience as both a litigation partner and a corporate transactions partner. He is one of only a few technology arbitration experts with experience as both a partner in a major law firm and as a General Counsel in an emerging technology company. As well, he is one of only a few Silicon Valley arbitration experts with extensive international arbitration experience. Gary's training as a U.S. and international litigator and arbitration counsel, coupled with his transactional expertise in emerging technology, make him uniquely suited for resolving complex private investment, technology development/distribution and international business disputes.

Gary has substantial experience as a single, presiding and panel arbitrator for U.S. and international commercial arbitrations focused on US and international business, commercial transactions, corporate transactions, private investment, accounting/valuations, intellectual property licensing and infringement, technology transactions (including technology financing, technology development, sales and distribution), licensing, joint ventures (joint development and collaboration agreements), IP infringement (trade secret, copyright and patent), data breach/cybersecurity, telecommunications and satellites, life sciences biotech, alternative energy and executive employment disputes. His international arbitration experience includes counsel and neutral services involving common law, civil law and developing country matters. He has significant experience with non-US style arbitration.

He is a member of the the ICDR International Panel; the American Arbitration Association (AAA) Commercial Panel (Large & Complex Cases, Corporate Law, Securities, High Technology, Communications & Telecom, Contract Law; General Business Commercial; Intellectual Property; Cybersecurity, Data Security & Privacy specialty panels); the CPR Institute for Dispute Resolution Panel of Distinguished Neutrals (General & Tech); the World Intellectual Property Organization (WIPO) Panel, the Hong Kong International Arbitration Centre (HKIAC) IP Panel and the Shenzhen Court of International Arbitration (SCIA) Panel, and serves as an Arbitrator on matters before the International Chamber of Commerce (ICC) Court of Arbitration and the Netherlands Arbitration Institute (NAI) and has served as counsel on matters before the London Court of International Arbitration (LCIA) and various other EU and Asian regional arbitral institutions, as well as in UNCITRAL proceedings.

Gary is a Chartered Arbitrator and Fellow of the Chartered Institute of Arbitrators (CIArb), a Fellow and Director of the College of Commercial Arbitrators (CollArb), an Academy Member of the National Academy of Distinguished Neutrals (NADN), and a member of the Institute for Transnational Arbitration (ITA) Advisory Board, the International Council for Commercial Arbitration (ICCA), the International Bar Association (IBA), the N. Cal International Arbitration Club, the American Intellectual Property Law Association (AIPLA), the American College of e-Neutrals (ACESIN), the Alliance for Equality and various other U.S. and international arbitration and legal associations. He is the founder of California Arbitration (CalArb.org) and a founder of the California International Arbitration Council (CIAC). He is also an Accredited Dispute Resolution Expert with the India-based Mediation and Conciliation Network. He has been recognized many years has been recognized as a Super Lawyer – ADR and is listed in Who's Who in the World. He served on the Queen Mary Univ. of London 2016 International Dispute Resolution Survey Task Force and currently serves on the International Task Force on Mixed Mode Dispute Resolution. He also chaired the ABA Dispute Resolution Section Arbitration Consent Subcommittee. He is a Global Arbitration Review (GAR) listed Arbitrator.

Gary was named by the National Law Journal as one of the 25 ADR Trendsetters and Visionaries in the US. He is also named in the IAM 300: The World's Leading IP Strategists. He is peer-vetted to the Silicon Valley Arbitration & Mediation Center Tech List – The List of the World's Leading Technology Neutrals.

In addition to his arbitration work, Gary was trained by the American Arbitration Association as a Mediator. He assists parties in negotiating business-practical resolution of US. and international business and technology disputes. He handles administered mediations through the American Arbitration Association.

He received his undergraduate degree with honors from Washington University in St. Louis (Earth & Planetary Sciences, Political Science and International Development) and his law degree with honors from Tulane Law School, and engaged in additional legal studies at the University of California, Hastings College of the Law and international studies at Stanford University.

Gary is qualified as a U.S. lawyer and an English solicitor. He is admitted in California and the District of Columbia and is a member of the bar of the U.S. Supreme Court, the U.S. Court of Appeals for the Ninth Circuit, the U.S. Court of Appeals for the DC Circuit, the U.S. Court of Appeals for the Federal Circuit and various federal district courts. He serves on the US District Court Early Neutral Evaluation (ENE) Panel.

Gary has handled international commercial matters in over 80 countries around the world: in Asia (including extensive work in China and India), Europe, Israel, Australia, the US and Central/South America.

He serves as an Arbitrator and Mediator throughout the US and internationally in administered and ad hoc proceedings. As well, he speaks frequently and writes regularly on topics concerning technology law and international dispute resolution.

Available for in person and videoconference matters.