Arbitration

Arbitration is the most formal alternative to litigation. In this process, the disputing parties present their case to a neutral third party, who renders a decision. Arbitration generally is considered a more efficient process than litigation because it can be faster, less expensive, and is more flexible. The parties often select the arbitrator and exercise control over certain aspects of the arbitration procedure. Arbitrators often have more expertise in the specific subject matter of the dispute than do judges and may also have greater flexibility in decision-making if the parties grant them such authority.

In domestic cases, the participation of the parties in the process is as a result of an agreement to arbitrate that usually occurs after the dispute has arisen. Arbitration agreements generally provide a means for selecting the arbitrator or panel of arbitrators, the format of the hearing, the procedural and evidentiary rules to be used, and the controlling law.

The format for arbitration is similar to a trial. The parties make opening statements and closing arguments, present testimony and witnesses, and offer documents. The evidentiary rules, however, often are inapplicable (or greatly relaxed) and the discovery and cross-examination opportunities are limited.

Arbitration may be binding or non-binding, although binding arbitration is by far the more common approach. However, the law prohibits binding arbitration of issues affecting the welfare of children.