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Pros & Cons of Arbitration ©

Pros	Cons	Comments
1. Private. Proceedings are not part of formal court system. Only the decision/award at the end become part of the court system because the award can be lodged as a Judgment into the county records.	**Upfront Costs.** With arbitration you have: A. Fee to American Arbitration Association (if you use them), typically based on size of case. Where damages sought are huge this fee can be thousands of dollars versus $3-400 to file suit in court. B. Fee for the private party lawyer or expert chosen as the Arbitrator. (Again, in court proceedings you do not have to pay for the judge) and C. Advance Fee and continuing legal fees to attorney.	**Google Effect**. This privacy component is can be critical in what would be federal court actions because the lawsuit will become number one (#1) in google search ranking. We have had Plaintiff dismiss cases because for reasons of reputation or security clearance they could not afford to have the case be public knowledge. **Lower Overall Costs**. Even with front-end loaded costs arbitration overall is typically much less expensive.
2. Informal. Proceedings not in court room but in the arbitrator's or other party conference room		
3. Fast. While arbitration may take two to three months, this is a "rocket pace" compared to court	**Not always Faster.** A complex litigation case, with perhaps many injured parties, many	**Wrong for Some Cases**. In a complex litigation case where more extensive discovery may

proceedings where typical case takes one year or more. This is true for at least two reasons: A. Deadlines. Arbitration rules, e.g. Commercial Rules of Arbitration of the American Arbitration Association (AAA), have deadlines, much shorter than Rules of Civil Procedure and B. Limited Discovery.	witnesses, and perhaps thousands of documents and emails, as well the parties' experts, will need the more extensive discovery process so the case can be decided on the basis of full and accurate information. In this case the arbitration may take as long as court litigation.	be needed arbitration may not be appropriate
4. Limited Discovery. "Discovery" is the process of disclosing and receiving disclosure of the other side's evidence. Typically, this involves Requests for Production of Documents, Interrogatories (formal questions) and Requests for Admissions which may be submitted and answered by each side, then depositions (formal testimony under oath in lawyer's office in front of a court reporter.) One hallmark of arbitration is limited discovery. The paradigm is to just take the documents you have and go to a hearing. This is	**Lack of Discovery**. Some complex litigation cases need the discovery as referenced above.	**May Need More Discovery.** For reasons above.

no longer true, if it ever was, but discovery is usually over in a month or so as opposed to six months or more. This is one of the reasons that arbitration is much quicker and cheaper than normal litigation.		
5. Lower Cost. Even with upfront fees, arbitration typically, not always, costs a fraction of tradition litigation	**Not Always Cheaper**. With complex litigation the on-going arbitrator fees can be tens of thousands of dollars	**Rare.** But true for some cases.
6. Choice of Arbitrator. "You can choose your judge." With arbitration the parties each make a list of arbitrators -usually lawyers who know the field and who may be specially trained to handle such proceedings -- compare lists, compromise and come to an agreement on the arbitrator. (This usually is not a problem.) So, A. You have a "judge" the lawyers respect, and B. who knows the area of business or law. And, the Arbitrator does not need to be a judge. The Parties can choose an engineer or nuclear physicist to be the Arbitrator if they choose. This means the Arbitrator		

does not need to be educated on technology or other subjects.		
	No Right of Appeal. The Arbitrator's decision is usually final and binding with no right of appeal. This means if the Arbitrator makes a mistake there is no recourse	**AAA now allows Appeal.** By including a provision supplied by AAA the parties may choose to preserve the right of appeal. This is still relatively rare, but available.
7. Highly Favored. Courts and public policy strongly support arbitration.	**Unbridled Power of the Arbitrator.** Under case law the Arbitrator has the power to: 1. Decide jurisdiction (power to decide case in jurisdiction that would not be approved under court Rules and case precedent. 2. Decide Authority. An arbitrator can make decisions that a judge could not, e.g. jurisdiction, the law and the parties. 3. Decide Parties. An arbitrator can compel a party to appear who did not sign the arbitration agreement. 4. Decide the law. The Arbitrator not only makes a decision the Arbitrator	**Better Arbitration Provisions and the Right of Appeal may Check the Unbridled Power of the Arbitrator.** The parties can limit the unbridled power of the arbitrator in private arbitration by the arbitration agreement or contract provision. If the parties choose the right of appeal to the court system's Court of Appeals then traditional rules of law and procedure may undo these extreme results.

	may decide what the Law is.	