

Arbitration Exercise: Benefits and Drawbacks

Instructions: Listed below are several potential benefits and drawbacks to arbitration. Reviewing this list, work with your group to decide if an item is a **(B)enefit**, **(D)rawback**, or potentially **(E)ither** or a benefit or drawback.

Indicate your results as follows:

B = Benefit

D = Drawback

E = Can be either – depends on the situation (you can't put "E" for all of them!)

- ___ Arbitrator can impose a settlement
- ___ Parties can shape arbitrator's powers and authority)
- ___ Relatively low cost (compared to litigation)
- ___ Parties can pick their arbitrator
- ___ Confidential (this is not the same as "private")
- ___ Private (this is not the same as "confidential")
- ___ Relatively fast (at FINRA, average arbitration is done in 16 months)
- ___ Arbitrators don't have to decide cases in accordance with "the law"
- ___ Societal interest in resolving disputes out of court (resource issue)
- ___ Decisions are not explained (usually) and there is no *stare decisis*
- ___ At FINRA, AAA and other providers, established arbitration rules and rosters
- ___ "Final and binding," meaning limited judicial review (FAA grounds are fraud, arbitrator misconduct, arbitrator exceeding his or her authority; arbitrator bias)