

# ARBITRATION

## Fall 2010

## Room 304

## Tuesday/Thursday 2:25-3:45

## Professor Amy J. Schmitz

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### Required Materials:

#### Books you must purchase:

1. Drahozal, Commercial Arbitration: Cases and Problems (2nd ed. 2006)
2. Documentary Supplement (2<sup>nd</sup> ed. 2006).

#### Free materials you also need for the course:

1. In addition to the above books, there is a **2010 Update for the book** that is available online in Lexis and is a pdf under “Additional Materials” on the TWEN website set up for this course. To access the 2010 update outside of TWEN via an online Lexis link, go to <http://www.lexisnexis.com/lawschool/study/texts/>. From there, select “Arbitration” and you will see the link for Drahozal’s book. The link says “Supplement” but when you open it, you will see that it is a lengthy “Update.” *Please note that it is essential to continually consult the Update to see if there are replacements and additions to the 2<sup>nd</sup> ed. casebook. I apologize that this is a “pain” but it is necessary because of the changing landscape of arbitration law.*

2. Note also that you will have to pick up a packet of **additional materials for this course from outside the Faculty Assistants’ office on the 4<sup>th</sup> floor (referred to as “Add Materials” below).** *This is different from (additional to) the Update, casebook and paperback statutory supplement.* Furthermore, I will be giving you other handouts and materials in class or through TWEN from time-to-time. My hope is to inject the course with recent developments and debates in this area.

### Course Themes:

As you prepare the materials, please consider the following themes:

- Private vs. Public Dispute Resolution

- "Arbitration" Distinguished From Other Forms of Private Dispute Resolution
- Pros and Cons of Arbitration in Consumer and Employment Contracts
- Proper Scope of Arbitration in Light of Historical Context and Current Public Policy
- Possible Reforms of the Federal Arbitration Act
- Procedural Reforms and Roles of Arbitration Institutions and their Rules
- Domestic vs. International dispute resolution, and importance of cultural and legal differences among disputing parties

## Assignments:

**General:** The assignments generally will follow sequentially from the Table of Contents but we will not necessarily get through a “Class” in one class meeting. Furthermore, because it may be necessary to spend more or less time on some topics, the reading assignments are subject to change. Also, note that the syllabus lists reading assignments for 26 classes, with the lightest reading assignments at the end, in order to account for the missed day on Oct. 19 and the other TBA. *Please do not read too far ahead of class due to possible changes, and ask me at the end of class if you are uncertain how far to read for the next class meeting.*

**Problems:** In addition to preparing the assigned reading, you will be assigned Problems from the book for class presentation. YOU ARE ALL RESPONSIBLE FOR THE PROBLEMS IN CHAPTER ONE. THEREAFTER, YOU WILL BE ASSIGNED PARTICULAR PROBLEMS AND WILL BE ABLE TO SEE THE LISTING POSTED ON TWEN (MAKE SURE TO CHECK TWEN FOR THE POSTING). Although you will be assigned these particular Problems, however, I expect you to carefully consider and prepare answers to all of the Problems. It is to your advantage to prepare all Problems because they require you to apply the legal concepts, and they help prepare you for the exam.

**Statutes and Rules:** Also, it is essential that you study the provisions in the conventions, statutes, arbitration rules, and other materials referenced in the reading assignments and reprinted in the Documentary Supplement and Update. You should be especially vigilant in consulting the Federal Arbitration Act and AAA Commercial Arbitration Rules (both reprinted in the Supplement).

**Update and Add Materials:** As noted above, you need to consult the 2010 Update to see if there are additions, deletions, or replacements from the casebook (I noted Update pages below as “Up. \_\_\_\_”). Furthermore, some materials are in the Additional Materials (noted as “Add Materials” below) in the packet from the 4<sup>th</sup> floor. Again, this is necessary to keep up with the changing landscape of arbitration law and policy.

### **Class 1: pp. 1 to 27 through Prob. 1.3; Up. 1**

Introduction to Commercial Arbitration

§ 1.01 Overview

§ 1.02 A Theory of Private Dispute Resolution

### § 1.03 What is Arbitration?

**\*FOCUS:**

Should we privatize dispute resolution? Why do we value “our day in court”?

Should constitutional due process apply in arbitration and other private tribunals?

What is “arbitration” governed by the FAA, and how does it differ from other types of “ADR”?

Is the term “ADR” useful or meaningful in today’s dispute resolution marketplace?

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