Syllabus
Arbitration: Law and Practice
Hamline University School of Law

Sunday, January 15-April 17, 2011
9:15 – 11:15
Final paper due April 20, 2011 by 4:00 p.m.

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Purposes and Objectives

In a free, diverse, democratic society, conflict is inevitable. Across national, international and cultural lines, there will be conflict. In the "Arbitration: Law and Practice" course we will explore arbitration as a conflict resolution technique, the international and national law of arbitration, some important cases, and practical and practice methods on how to be an advocate in the arbitration process. While Court trials are decreasing, the number of arbitrations increase. "Arbitration is the new litigation." (Thomas Stipanowich, *Arbitration: The New Litigation*, 2010 U OF ILL. L. REV 1 (2010). Lecture, video, role-play and drafting exercises will be used. Computers may be used only for note-taking and reference to material we are discussing in class. Please no e-mail, EBay, Facebook, etc. during class.

The Learning Outcomes of the course are:

1. Understand arbitration as an ADR method: history, law and practice. Compare arbitration with litigation.
2. The value of the of the arbitration clause: how to negotiate it and how to draft it.
3. Use of arbitration in its broad perspective: labor, commercial, no-fault, intellectual property, international, sports, agency vs. ad hoc, etc.
4. Know the law of arbitration: treaties, statutes, cases
5. Understand the relationship between courts and arbitration: Motion to Compel Arbitration cf Motion to Stay Arbitration.
6. Negotiate and draft an international deal: arbitration clause, choice of law, choice of forum, preparation for negotiating the deal, negotiating the deal
7. How to prepare for arbitration: focus on theory of the case.
8. Use Skills required in the arbitration process: practice and practical insights, choice of arbitrator, direct exam, cross exam, opening, closing , post-hearing brief, and discovery.
9. Understanding the Strengths and Weaknesses of Arbitration
10. Predict the Future of Arbitration

<u>Required books and Readings</u> . Please read the books, cases and articles before class. Have them with you in class, ready to be used. Be prepared in each class to discuss the readings and to engage. It is important for the success of this class that <u>each</u> student is prepared and involved. It is expected that each student will contribute. My hope is to have active student involvement in the class at all times, which means coming on time, paying close attention, participation and discussion. Use computer properly.

1) Thomas E. Carbonneau, **Cases and Materials on Arbitration Law and Practice 5th Edition** *(West 2009);*
2) John W. Cooley with Steven Lubet, **Arbitration Advocacy Second Edition** (NITA 2003);
3) Joseph L. Daly, *Arbitration: The Basics*, 5: 1 **The Journal of American Arbitration** 1, (Penn State 2006);
4) Joseph L. Daly, *International Commercial Negotiation and Arbitration,* 22:2 **Hamline Journal of Public Policy** 217 (Spring 2001);
5) *Metropolitan Council Transit Operations and Amalgamated Transit Union Local 1005,* 105 **Lab. Arb.** 68 (Arbitrator Joseph L. Daly 1996)
6) All other cases and readings cited each week

<u>January 16</u> • Carbonneau pp. 1-22 • Cooley pp. 1-11 • Daly, *Arbitration: The Basics* pp 3-12	**Conflict mechanisms and where Arbitration fits in the scheme of ADR: Compare and Contrast Negotiation, Mediation, Hybrid Processes like Med/Arb and Arb/Med, Early Neutral Evaluation, Moderated Settlement Conferences, Consensual Magistrate Processes, Trials**

<u>January 23</u> • Carbonneau pp. 24-49;319-340;353-356;373-375;409-415 • Cooley pp. F-3 to F-6; G-1 to G-20; 21-39 • *Hooters of America v. Phillip*, 173 F. 3d 933 (1999) • Daly, *Arbitration: The Basics* pp 19-28 • Negotiate and draft an arbitration Clause	**Institutional vs. ad hoc: Negotiating and Drafting the Arbitration Clause** Skill: Negotiate and draft an arbitration clause
<u>January 30</u> • Carbonneau pp. 50-125; 692-711, 744-757 • *Mitsubishi Motors v. Soler-Chrysler-Plymouth, Inc.,* 476 U.S. 614 105 S. Ct. 3346 • Cooley pp. 13-21; N-1 to N-11 (Federal Arbitration Act – This is simply a repeat of the FAA in Carbonneau pp 52-57 above)	**Evolution of arbitration**
<u>February 6</u> • Carbonneau pp. 216-230 • Cooley pp. M-1 to M-24 (Uniform Arbitration Act) • *Buckeye Check Cashing v. Cardegna*, 126 S. Ct. 1204 (2006); • Minnesota Revised Uniform Arbitration Act, MINN. STAT.§§ 572B.01-572B.31, EFFECTIVE AUG. 2011	**Law of arbitration: basic laws, concepts and some important cases**

<u>February 13</u> • Carbonneau pp. 356-375 • Daly, *Arbitration: The Basics* pp 72-74; 41-45 • *Hall Street Associates, LLC v. Mattel, Inc.,* 128 S. Ct. 1396 (2008) • *14 Penn. Plaza, LLC v. Pyett,* 498 F.3d 88 (cert. granted Feb 19, 2008) See also pp 478-493 Carbonneau • *Stolt-Nielsen v. Animal Feeds International Corp.,* 130 S. Ct. 1758 (2010) pp. 627-629 Carbonneau • Look up on internet Jamie Leigh Jones case against Halliburton KBR • *AT&T Mobility LLC V. Concepcion* 584 Fed. 3d 849 (9th CIR. 2010), CERT. Granted, 130 S. Ct. 3322	**More important cases: can we arbitrate any kind of dispute? Class actions? Criminal? Negligence? Forced arbitration?**
<u>February 20</u> • Carbonneau pp. 429-519 • *Metropolitan Council Transit Operations and Amalgamated Transit Union Local 1005*, 106 LAB. ARB (Arb Daly 1996) • Cooley pp. 126-155 (Direct & Cross Examination)	**Labor and Employment Arbitration [Speaker]**

<u>February 27</u> • Carbonneau pp. 719-722; 784-804 • Cooley pp. G-1 to G-20; O-1 to O-17	**Commercial Arbitration: National and International** **[Speaker]**
<u>March 6</u> No Class Mid-Term Break	**Mid-Term Break- No class**
<u>March 13</u> • Cooley pp. 73-92 • *E.E.O.C. v. Waffle House,* 534 U.S. 279 (2002) • Daly, *Arbitration: The Basics* pp 36-40 • Re-read *Hooters,* 173 F. 3d 933 (1999) • Find and read Arbitration Fairness Act pp 869-881 Carbonneau • Look up and read Arbitration Fairness Act Arbitration Fairness Act of 2007, S. 1782 and H.R. 3010, 110th Cong. 1st session. (July 12, 2007); P. 569-881 Carbonneau	**Relationship of courts with arbitration: Motion to Compel cf Motion to Stay** Skill: Draft motions; argue motions in court

March 20 • Daly, *International Commercial Negotiation and Arbitration,* 22:2 **Hamline Journal of Public Law and Policy** 217 (Spring 2001) • Re-read New York Convention Carbonneau pp. 784-804	**Negotiating the International Commercial Deal** Skill: Negotiate and draft a basic international contract using various styles of negotiation (cooperative, competitive, principled)
March 27 • Cooley pp. 73-93; 95-105 • Daly, *Arbitration: The Basics* pp 28-50	**Pre-arbitration matters and preparing for an arbitration: theory of the case** Skill: Develop a theory of the case
April 3 • Cooley pp. 107-235 • Daly, *Arbitration: The Basics* pp 50-64 • *City of Northfield & IUOE, Local 170,* 124 LAB. ARB. 1077 (2008)	**Advocacy during the arbitration hearing** Skill: Role-play an arbitration

<u>April 10</u> • Carbonneau pp. 540-541; 572-583; 584-591; 620-627; 652-659;697-704 • Cooley pp. 239-248 • *City of Brooklyn Park, MN v. LELS,* 635 NW 2d 236 • *Medicine Shoppe International, Inc. v. Turner Investments, Inc,* 614 F. 3d 485 (8th Cir. 2010) • Re-read FAA §10 & 11 pp. 54-55 Carbonneau	**Enforcement of arbitration award: focus on public policy, The future of arbitration**
<u>April 17</u> • Daly, *Arbitration: The Basics* pp 64-79 • Carbonneau pp 783-837 • Cooley pp 249-269	**Agencies: AAA, ICC, LCIA, CIETAC, etc; Problems with Arbitration, The Future of Arbitration**
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Grading:
75% Paper
25% Class preparation, participation and skill role-plays.