

Arbitration

Hamline University School of Law – Fall 2009

Professor David A. Larson

dlarson@hamline.edu (651-523-2128)

Required Reading:

1) **Arbitration: Cases and Materials** by Huber and Weston, LexisNexis (Second Edition) ISBN 0-8205-7011-7

2) **Arbitration Advocacy** by Cooley and Lubet (2nd ed.), NITA (National Institute for Trial Advocacy) ISBN 978-155681-799-1

Syllabus revisions that are made during the semester will be posted on TWEN, so please always refer to TWEN for the most up-to-date copy of the syllabus.

Because I am hoping to invite at least one guest speaker to our class this semester, we will have to remain flexible and it is likely that the syllabus will be revised during the semester.

Goals and Objectives: Students will be introduced to both the arbitration process and controversial legal issues that have arisen in the arbitration context. Arbitration is a binding method of dispute resolution. Students will learn to identify ambiguous and problematic situations. Because parties typically agree to arbitrate disputes before they know what disputes will arise, for instance, those parties sometimes regret that choice and subsequently attempt to escape their arbitral agreements. Arbitration historically has been used primarily in labor-management disputes and commercial disputes. More recently and quite controversially, arbitration has been used to resolve statutory claims that include employment discrimination, antitrust and RICO claims. Credit card collection arbitrations similarly have become quite controversial and receiving significant attention from national and state policy makers.

As the use of arbitration increases, so does the controversy. Students will critically analyze actual arbitration agreements and edit those agreements as necessary. Students also will draft arbitration clauses. Students will engage in simulations and role-playing and will gain experience acting as neutrals, advocates, parties, and witnesses in arbitration hearings. Students will be assigned judicial decisions and will be asked to make presentations regarding those cases. They will be encouraged to use multimedia resources in making those presentations.

Each student will submit a written paper (at least 4,000 words in length) and, if time permits, make a formal presentation to the class at the end of the semester. The student may select a particular subject that he or she finds interesting (subject to the approval of Professor Larson). The students are encouraged to use the technology and media that they believe will support their presentation. Student's performance regarding class discussion and participation in the simulation and hypothetical exercises will be considered when assigning a final grade for the course.

Attendance Policy: Fourteen class sessions are scheduled. **Two or more absences will be considered excessive.** Attendance will be taken by circulating the Registrar's attendance sheet. If a student misses two classes, that student will be required to write and submit a 1,000 word paper that discusses one of the issues covered in the classes the student missed. The topic of that paper will be determined by Professor Larson. **Three or more absences will be brought to the attention of the Associate Dean and may result in a course withdrawal (W) or a failing grade (F).**

Testing and Grading: Students will be graded primarily based upon their written paper and presentation. Additional credit may be given for students who make significant substantive contributions during our weekly class meetings. Although no changes are anticipated, if the grading criteria does change then any change will be brought to the students' attention during class and also posted on TWEN.

Papers must be at least 4,000 words in length and must be turned in as instructed by 4:00 p.m. on the last day this class meets. **If a paper is submitted after the deadline, the grade will be reduced as follows.** Late paper grades will be reduced one grade level for each day the paper is late. For example, a B+ will become a B if it is one day late. If a paper is two days late, then a B+ paper will be given a B-.

If a student uses classroom time to read or send e-mail messages, visit web sites that the class has not been instructed to visit at that particular time, or engage in any other online or technology based activities (including cellular telephones, text messaging, and social networks) not directly related to the current classroom discussion, that student will be warned one time. If there is a second violation of this policy, that student will be asked to drop the course and will not receive academic credit for the course.

Assignments

August 19 – Introduction to Arbitration

1) **Arbitration: Cases and Materials**, read pp. 1 – 38

2) Read Public Citizen Report (9/27/07) The Arbitration Trap: How Credit Cards Companies Ensnare Consumers

<http://www.citizen.org/documents/ArbitrationTrap.pdf>

3) Read "The Current State of Consumer Arbitration"

http://www.aei.org/publications/filter.all,pubID.28950/pub_detail.asp

4) Read Public Citizen Report (7/29/08) The Arbitration Debate Trap: How Opponents of Corporate Accountability Distort the Debate on Arbitration

<http://www.citizen.org/documents/ArbitrationDebateTrap%28Final%29.pdf>

Jan. 26

1) Video introduction to Arbitration. For the class next week students will draft a brief award based upon the arguments presented in the video. The award should explain which party wins and why that party is the prevailing party.