

Arbitration
Hamline University School of Law – Spring 2009

Professor David A. Larson
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Required Reading:

1) Dispute Resolution: Negotiation, Mediation, and Other Processes by Goldberg, Sanders, Rogers and Cole (5th ed.), Aspen Publishers ISBN – 978-0735564039

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.

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, who will read the leading cases and will be asked to make presentations regarding those cases, 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 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 at the law school Registrar's office 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, visits web sites that the class has not been instructed to visit at that particular time, or engages in any other online or technology based activities (including cellular telephones and text messaging) not directly related to the current classroom discussion, that student will be warned on 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

Jan. 21 – Introduction to Arbitration

- 1) Read pp. 213 – 222.
- 2) Come to class prepared to discuss problems 4.2 and 4.3
- 3) Read Public Citizen Report (9/27/07) The Arbitration Trap: How Credit Cards Companies Ensnare Consumers
<http://www.citizen.org/documents/ArbitrationTrap.pdf>

4) Read "The Current State of Consumer Arbitration"
http://www.aei.org/publications/filter.all,pubID.28950/pub_detail.asp

5) Possible video introduction to Arbitration

Jan. 28

1) 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>

2) Federalism/Preemption Issues

a) Read pp. 222 - 231 and FAA sec. 1-4 in Appendix A

b) Come to class prepared to discuss problems 4.5 through 4.8

c) Discuss additional preemption hypothetical problems provided in class

c) Read Southland v. Keating, Preston v. Ferrer, and Volt v. Stanford University
(hyperlinks will be provided on TWEN)