

**Syllabus**  
**Arbitration: Law and Practice**  
**Hamline University School of Law**

Thursdays, Aug. 21 – Dec. 4, 2008  
1:00 – 2:50 p.m.  
Final paper due Dec. 8, 2008 @ 4:00 p.m.  
in Registrar's Office

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**Purposes and Objectives**

In a free, diverse, democratic society, conflict is inevitable. Across 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 practice and practical methods on how to be an effective advocate in the arbitration process. While Court Trials are decreasing, the number of arbitrations increase. 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.

The objectives of the course are:

1. Understand arbitration as an ADR method: history, law and practice. Compare arbitration with various forms of Adjudicative and Evaluative ADR Processes.
2. The importance of the arbitration clause: how to negotiate it and how to draft it.
3. Arbitration in the broadest perspectives: labor, commercial, no-fault, intellectual property, securities, international, sports, agency vs. ad hoc
4. 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. Negotiating the international deal: arbitration clause, choice of law, choice of forum, preparation for negotiating the deal, negotiating the deal
7. Preparation for the arbitration: focus on theory of the case, direct exam, cross exam, closing argument, post-hearing brief
8. The arbitration process itself: practice and practical insights
9. The Strengths and Weaknesses of Arbitration

**Required books and Print-Outs Kindly purchase the books and look up the cases and articles below and print them. Have them with you in class, ready to be used. Be prepared for each class to discuss all the readings and to engage in discussions, simulations and role-plays. It is most important to the success of this class that each student is fully prepared and involved in the discussions, role-plays and simulations. A student who does not contribute to the oral discussions, role-plays and simulations in class will have his/her grade lowered by a full grade. My expectation is full**

**involvement in the class at all times, which means coming on time, paying close attention, participation and discussions.**

- 1) Thomas E. Carbonneau, **Cases and Materials on Arbitration Law and Practice 4<sup>th</sup> Edition** (Thomson-West, 2007);
- 2) John W. Cooley, **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 **Hamline Journal of Public Law & Policy** 217 (Spring 2001);
- 5) *International Association of Firefighters, Local 851, Eugene, Oregon & City of Eugene, Oregon* (Arbitrator Joseph L. Daly) @ <http://www.oregon.gov/ERB/awards/IA-06-07.pdf>
- 6) *Metropolitan Council Transit Operations and Amalgamated Transit Union, Local 1005*, 1996 WL 159875, 106 Lab.Arb. 68 (Arbitrator Joseph L. Daly 1996)

<p><b><u>August 21</u></b>  Read:  Carbonneau pp. 1-23  Cooley pp 1-11  Daly, <i>Arbitration: The Basics</i> pp 3-12</p>	<p><b>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</b></p>
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<p><b><u>August 28</u></b>  Read:  Carbonneau pp. 24-50; 310-313; 365-371  Cooley pp. F-3 to F-6; G-1 to G-20; 21-39  <b>Hooters of America v. Phillip</b>, 173 F. 3d 933 (1999)  Daly, <i>Arbitration: The Basics</i> pp 19-28</p>	<p><b>Institutional vs. ad hoc: Negotiating and Drafting the Arbitration Clause</b></p>
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<p><b><u>September 4</u></b>  Read:  Carbonneau pp. 51-120; 694-714  (<i>Mitsubishi Motors v. Soler-Chrysler-Plymouth, Inc.</i>)  Cooley pp. 13-21; N-1 to N-11 (Federal Arbitration Act- this is simply a repeat of the FAA in Carbonneau pp 53-58 above )</p>	<p><b>Evolution of Arbitration</b></p>
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<p><b><u>September 11</u></b></p>	<p><b>Law of arbitration: Basic laws, concepts</b></p>
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**and some important cases**

Read:  
Carbonneau pp. 200-275  
Cooley pp. M-1 to M-24 (Uniform Arbitration Act)  
*Buckeye Check Cashing v. Cardegna*, 126 S. Ct. 1204 (2006)

**September 18** **More important cases: Can we arbitrate any kind of dispute?**

Read:  
Carbonneau pp. 371-384  
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)

**September 25** **Relationship of Courts with Arbitration: Motion to Compel cf Motion to Stay**

Read:  
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)

**October 2** **Labor and Employment Arbitration**

Read:  
Carbonneau pp. 385-478  
**Metropolitan Council Transit Operations and Amalgamated Transit Union Local 1005**, 106 LA 68 (Arb. Daly 1996)  
Cooley pp. 126-155(Direct & Cross Examination)

**October 9** **Commercial Arbitration: National and International**

**Read:**  
Carbonneau pp. 669-680; 734-749  
Joseph L. Daly, *International Commercial Negotiation and Arbitration*, 22 **Hamline Journal of Public Law & Policy** 217

Cooley pp. G-1 to G-20; O-1 to O-17

**October 16**

No Class Mid-Term Break

**Mid-Term Break- No class**

**October 23**

**Negotiating the International  
Commercial Deal**

Read:

Carbonneau pp 841-865; 894-910

Daly, *International Commercial*

*Negotiation and Arbitration*, 22 **Hamline**

**Journal of Public Law and Policy** 217

(Spring 2001)

**October 30**

Read:

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**

**November 6**

Read:

Cooley pp 107-235

Daly, *Arbitration: The Basics* pp. 50-64

**Advocacy during the Arbitration  
hearing**

**November 13**

Read:

Carbonneau pp. 479-496; 505-511; 523-  
530; 531-539; 548-555; 559-565; 565-568;  
576-584; 584-590; 598-601

Cooley pp. 239-248

*City of Brooklyn Park, MN vs. LELS*, 635

NW 2d 236

**Enforcement of Arbitration Award:  
focus on public policy**

**November 20**

Read:

Daly, *Arbitration: The Basics* pp 64-79

Carbonneau pp. 783-837

Cooley pp. 249-269

**Agencies: AAA, ICC, LCIA, CIETAC,  
etc  
Problems with Arbitration**

**November 27**

No Class-Thanksgiving Break

**Thanksgiving Break**

**December 4**

Come up with your own ideas on “What is

**Final thoughts: What’s right and what’s**

right and what is wrong with Arbitration”.  
We will discuss in class. Make a list of  
both before class and bring with you for the  
discussion in class.

**wrong with arbitration**

**Paper due December 8 by 4:00 p.m. at  
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