**COMMERCIAL ARBITRATION OF BUSINESS DISPUTES**

[**Fordham University School of Law**](http://www.fordham.edu/law)

**Spring 2019 Course Syllabus**

***Updated January 14, 2019***

Prof. [George H. Friedman](http://www.fordham.edu/info/23644/e_-_f/7813/george_h_friedman), Esq.

This course is offered to students interested in acquiring knowledge of arbitration as it relates to business disputes. We will also cover the impact of the Supreme Court decision in [*Epic Systems Corp. v. Lewis*](https://www.supremecourt.gov/opinions/17pdf/16-285_q8l1.pdf), 137 S.Ct. 809 (2018), and three arbitration-centric cases the Court already heard this Term: *New Prime, Inc. v. Oliveira*, No. [17-340](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-340.html)*, Henry Schein Inc. v. Archer & White,* No. [17-1272](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-1272.html), and *Lamps Plus v. Varela,* No. [17-988](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-988.html). Students registering for this course do not need any prerequisites except those already established by the law school as to the manner and selection of elective course offerings. A general background in contract law and civil procedure is helpful.

Learning Outcomes:

* Acquire in-depth knowledge of arbitration as it relates to domestic and international business disputes.
* Master the key statutes, cases, and regulations impacting arbitration.
* Learn about the several arbitration cases before the Supreme Court.
* Gain perspective on the emerging legislative and regulatory challenges to mandatory predispute arbitration clauses in consumer and employment contracts.
* Examine how the Trump administration has already impacted arbitration law and policies.
* Become familiar with the basics of other alternative dispute resolution methods, such as mediation, mini-trial, court-annexed arbitration, negotiation, and hybrids.
* Identify, analyze, and apply acquired knowledge through in-class group exercises.

Class Policies: In lieu of a final examination, students will submit a [paper](#Paperinstructions) on a pre-approved ADR topic. A sample list is attached to this syllabus. Attendance and participation is expected, but not graded. However, students can improve their paper by one-half a grade through class participation. Professor Friedman will submit the best paper(s) to the Dispute Resolution Journal for possible publication (a former student’s paper is assigned for class # 6). Students will receive a free online subscription to the weekly online [*Securities Arbitration Alert*](http://sacarbitration.com) for the semester.

Classes meet **THURSDAY** afternoonsfrom **4:00 p.m. to 5:50 p.m.,** in Room **3-05**, unless otherwise noted.

Prof. Friedman can be contacted as follows:

E-Mail: ProfGFriedman@gmail.com or gfriedman@fordham.edu

Phone: 917-841-0521

Twitter: @GFriedmanADR; LinkedIn: [www.linkedin.com/pub/george-friedman/63/866/33b/](http://www.linkedin.com/pub/george-friedman/63/866/33b/%22%20%5Co%20%22View%20public%20profile)

Assigned Text: For the first time, ***this class is being taught without an assigned textbook***. All materials needed are linked in this syllabus or will be available later through the class website, [www.gfriedmanadr.com/fordham](http://www.gfriedmanadr.com/fordham). *Note: because there is no assigned textbook, it is imperative that students review assigned/linked materials before each class.*

Recommended:

* **Websites:** There is a class website: <http://www.gfriedmanadr.com/fordham/>. The website contains the class syllabus and links to cases, articles and authorities covered in the course.

Class exercises and study aids are separately linked in the syllabus, and are [collected here](http://www.gfriedmanadr.com/law-class-pdfs). Other useful links are [collected here](https://www.gfriedmanadr.com/useful-links/).

The class website site also contains links to websites of interest. including:

* + American Arbitration Association, [http://www.adr.org](http://www.adr.org/)
	+ ABA Dispute Resolution Section (has an excellent [resources page](https://www.americanbar.org/groups/dispute_resolution/policy_standards.html))
	+ Arbitration Resolution Services, Inc., [www.arbresolutions.com](http://www.arbresolutions.com)
	+ Financial Industry Regulatory Authority (FINRA), <http://www.finra.org> (click on [“Arbitration & Mediation”](http://www.finra.org/ArbitrationAndMediation/))
	+ Global Arbitration News, <https://globalarbitrationnews.com/>
	+ Lexology Navigator (<https://www.lexology.com/navigator/>)
	+ Arbitrator Albert G. Feliu publishes an excellent [free quarterly compilation](http://www.feliuadr.com/articles.html) of court cases dealing with ADR
* **Apps**: There are also many good (and free) ADR mobile apps: AAA, JAMS, and the Federal Arbitration Act. Also, Covington has an excellent app, *The Arbitration Handbook,* compiling arbitration rules, treaties, national laws and guidelines used in international arbitration.
* **Blogs**: Professor Friedman has an ADR blog at [Arbitration Resolution Services](https://www.arbresolutions.com/author/george-friedman/) and the [*Securities Arbitration Commentator*](http://www.sacarbitration.com/blog/author/george-friedman/). The following ADR blogs are very good:
	+ [Arbitration Nation](http://arbitrationnation.com/)
	+ [Center for Public Resources](http://blog.cpradr.org/)
	+ [Indisputably (ADR Law Profs](http://www.indisputably.org/))
	+ [JAMS](http://jamsadrblog.com/)
	+ [NY State Bar Ass’n Resolution Roundtable](http://nysbar.com/blogs/ResolutionRoundtable/)
	+ [Securities Arbitration Commentator](http://www.sacarbitration.com/blog)
* **Articles:** Professor Friedman’s blog posts and articles are collected at <http://www.gfriedmanadr.com/articles/>. Scholarly works are on his SSRN Author page: [http://ssrn.com/author=2492175](http://ssrn.com/author%3D2492175).

Skim/Optional/Supplemental Material:

Material so marked will generally be of interest or use to those writing on the subjects covered in that class.

**COURSE SCHEDULE AND SYLLABUS**

***Please print out and take to class any group exercise in this syllabus***

**Class 1 [1/17/2019]: Introduction and Overview, the Trump Administration,** **and SCOTUS**

Assignment: Review and print the “[ADR Continuum](http://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546b87afe4b0ec4522ffc889/1416333231795/ADR%2Bcontinuum.pdf)” and read N. Freeman Enstrom, [*The Diminished Trial*](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3232185)*,* 81 Fordham L. Rev. 2131 (2018)

Also read:

B. Farkas, [*Donald Trump and Stormy Daniels: An Arbitration Case Study*](https://www.americanbar.org/content/dam/aba/publications/dispute_resolution_magazine/summer-2018/8-an-arbitration-case-study.authcheckdam.pdf)*,* ABA DR Magazine p. 12 (Summer 2018)

Also, skim my blog posts:

* [*Arbitration – Still the Wave of the Future?*](https://www.arbresolutions.com/arbitration-still-the-wave-of-the-future/)(Aug. 16, 2018)
* [*The Presidents and Arbitration: from Washington to Trump*](https://www.arbresolutions.com/presidents-and-arbitration/)(Feb. 13, 2018)
* [*SCOTUS hits the Arbitration Certiorari Trifecta: What’s in Store for Financial Industry Arbitration*](http://www.sacarbitration.com/blog/scotus-hits-an-arbitration-certiorari-trifecta-whats-in-store-for-financial-industry-arbitration/) (Jul. 3, 2018)
* [*The New Year is Here: What’s in Store for Arbitration and the Financial Services Field?*](http://www.sacarbitration.com/blog/the-new-year-is-here-whats-in-store-for-arbitration-and-the-financial-services-field/) (Dec. 31, 2018)

And these blog posts:

* SAC, [*Supreme Court Nominee Kavanaugh Seems to Be Pro-Arbitration (or so We Think), Part I*](http://www.sacarbitration.com/blog/supreme-court-nominee-kavanaugh-seems-pro-arbitration-think-part-i/) (Jul. 13, 2018)
* SAC, [*Supreme Court Nominee Kavanaugh Seems to Be Pro-Arbitration (or so We Think), Part II*](http://www.sacarbitration.com/blog/supreme-court-nominee-kavanaugh-seems-pro-arbitration-think-part-ii/) (Jul. 20, 2018)

Optional/Supplemental:

* There is a wealth of statistics kept by the Court Statistics Project at <http://www.courtstatistics.org/>

* R. Weinstein, C. Edes, J. Hale and N. Pearsal, [*Efficiency and Economic Benefits of Dispute Resolution through Arbitration Compared with U.S. District Court Proceedings*](http://go.adr.org/rs/294-SFS-516/images/Economic%20Impact%20of%20Delay%20Micronomics%20Final%20Report%20%282017-03-07%29.pdf)(March 2017)
* Also, the Law School has a webpage, “[Transition to Trump](https://news.law.fordham.edu/transition-to-trump/),” containing all things Trump impacting legal and regulatory issues.

**Class 2 [1/24/2019]: Mediation – Overview of the Process**

Assignment:

* G. Friedman, [*How Do You Explain Mediation? Practical Tips on how to Approach the Mediation Process*](https://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/5672b353a976af1587a757d0/1450357587804/Expert%2BAdvice%2BHow%2BDo%2BYou%2BExplain%2BMediation.pd)*,* California Lawyer (Dec. 2015)
* J. Krivis, [*The Five Stages of Mediation*](http://www.mediate.com/articles/krivis.cfm#.)(Dec. 1999)
* G. Friedman, [*Mediation No Longer the Rodney Dangerfield of Dispute Resolution?*](http://www.sacarbitration.com/blog/mediation-no-longer-rodney-dangerfield-dispute-resolution/) (Mar. 29, 2016)
* B. Laliberte, [*Good Faith, Bad Faith, No Faith: Will a Subjective Good Faith Standard Influence How Litigants Approach Mediation?*](https://www.tuckerellis.com/webfiles/Good%20Faith%2C%20Bad%20Faith%2C%20No%20Faith_Laliberte.pdf) Lexology (Nov. 16, 2017)
* G. Friedman, [*Mediator’s Pre-mediation Instructions*](https://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/5a6e1517652dea30bdf1cf6d/1517163800356/Mediation%2BInstructions.pdf)
* J. Yellin and E. Larkin, [*Ten Tips for an Effective Securities Mediation*](https://www.finra.org/sites/default/files/neutral-corner-volume-4-2018-1218.pdf), The Neutral Corner (Dec. 2018)

Skim:

* [*Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association, (October 1, 2013)*](https://www.adr.org/sites/default/files/commercial_rules.pdf). **Read only the Mediation Procedures, rules M1– M17.**

We will view the brief mediation part of the FINRA video, "[What Investors Can Expect from the FINRA Dispute Resolution Process](http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/OverviewofArbitrationMediation/WhattoExpect/),” and time-permitting the first 20 minutes of the AAA video, "Hearing Procedures in a Construction Mediation." Please review the [guide to the video](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2907e4b0c3b5cc211998/1416505607385/mediation%2Bvideo%2Bdiagram.pdf).

We will also do a group problem-solving [exercise](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e28d2e4b003fc6e321421/1416505554367/mediation_benefits_exercise.pdf) on mediation benefits and drawbacks.

**Class 3 [1/31/2019]: Arbitration I - Overview**

Assignment: Read: NY State Bar Ass'n, [*An Arbitration Primer for Litigators*](https://www.nysba.org/Sections/Dispute_Resolution/Dispute_Resolution_PDFs/An_Arbitration_Primer_For_Litigators.html)*.* J. Berkelhammer, [*Arbitration: A Comparison of the Pros and Cons*](http://www.lexology.com/library/detail.aspx?g=36fbe82c-37ea-4abf-8218-7f2b28531479)and ABA, [*Benefits of Arbitration for Commercial Disputes*](http://www.americanbar.org/content/dam/aba/events/dispute_resolution/committees/arbitration/arbitrationguide.authcheckdam.pdf) *.* Also, NY Civil Practice Law & Rules, [Art. 75](https://www.nysenate.gov/legislation/laws/CVP/A75), [Federal Arbitration Act ["FAA"] § 1 – 16](http://codes.lp.findlaw.com/uscode/9/1) and [Revised Uniform Arbitration Act](http://www.uniformlaws.org/shared/docs/arbitration/arbitration_final_00.pdf).

Also read:

* G. Friedman, [*Exactly Where is an Arbitration Award in Cyberspace Made? Time to Modernize the Federal Arbitration Act*](https://www.arbresolutions.com/modernize-federal-arbitration-act/)(Aug. 23, 2018)

Skim:

* B. Repa, [*Arbitration Pros and Cons*](https://www.nolo.com/legal-encyclopedia/arbitration-pros-cons-29807.html)*,* NOLO (Feb. 2018)
* [*Investor's Guide to Securities Industry Disputes: How to Prevent and Resolve Disputes with Your Broker*](http://www.finra.org/sites/default/files/Investors_Guide_to_Securities_Industry_Disputes.pdf) (edited by Professor Jill Gross and Professor Elissa Germaine)

We will also see the *arbitration* part of the FINRA video, "[What Investors Can Expect from the FINRA Dispute Resolution Process](http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/OverviewofArbitrationMediation/WhattoExpect/)” (PDF [study guide](http://www.finra.org/sites/default/files/Education/p117486.pdf)).

For those writing on the topic:

* E. Kramer, [*Comparison of AAA, JAMS, CPR Commercial Rules (7th Blogiversary!)*](https://www.arbitrationnation.com/comparison-aaa-jams-cpr-commercial-rules-7th-blogiversary/)(Aug. 11, 2018)

We will also do a group [problem-solving exercise](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2beee4b02a5aa7576d2b/1416506349998/Arbitration%2BBenefits%2BExercise%2B%282015%29.pdf) on arbitration benefits and drawbacks.

**\*\*\* Selection of Term Paper Topic Due \*\*\***

**Class 4 [2/7/2019]:** [[[[**Arbitration II - Enforcing the Promise to Arbitrate**](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://caselaw.lp.findlaw.com/nycodes/law16/art55.html)](http://caselaw.lp.findlaw.com/nycodes/law16/art55.html) **+ Who Decides Arbitrability – Judges or Arbitrators?**

Assignment: Read New York’s [CPLR §§ 7501 - 4](https://www.nysenate.gov/legislation/laws/CVP/A75), [FAA §§ 1 - 4](http://codes.lp.findlaw.com/uscode/9/1), [Revised Uniform Arbitration Act §§ 6 and 7](http://www.uniformlaws.org/Act.aspx?title=Arbitration%20Act%20%282000%29). See especially [CPLR § 7515](https://www.nysenate.gov/legislation/laws/CVP/7515), a new amendment that bans mandatory arbitration of employment discrimination disputes *“except where inconsistent with federal law”* (was effective October 2018). See [compilation](https://george-friedman.squarespace.com/s/The-New-York-Arbitration-Law.docx) of CPLR and FAA sections on enforcing arbitration agreements in class website.

Also, read and review the [AAA Construction Demand for Arbitration Form](https://www.adr.org/sites/default/files/Commercial%20Demand%20for%20Arbitration.pdf).

Read these cases:

* [*Prima Paint v. Flood & Conklin*](https://supreme.justia.com/cases/federal/us/388/395/)*,* 388 U.S. 395 (1967) (separability of arbitration clause)
* [*Buckeye Check Cashing v. Cardegna*](https://supreme.justia.com/cases/federal/us/546/440/)*,* 546 U.S. 440 (2006) (separability of arbitration clause; delegation to arbitrators of “arbitrability” issues)
* [*Rent-A-Center, West, Inc. v. Jackson*](https://scholar.google.com/scholar_case?case=10589677176860191748&hl=en&as_sdt=6&as_vis=1&oi=scholarr), 561 U.S. 63 (2010) (who decides arbitrability?)
* [*Archer & White Sales v. Henry Schein, Inc*.](https://www.supremecourt.gov/opinions/18pdf/17-1272_7l48.pdf), No.[17-1272](https://www.supremecourt.gov/docket/docketfiles/html/public/17-1272.html)(Jan. 8, 2019) (no “wholly groundless” FAA exception to delegation)

Skim these other “who decides?” cases:

* [*First Options v. Kaplan*](https://supreme.justia.com/cases/federal/us/514/938/)*,* 514 U.S. 938 (1995)
* [*Howsam v. DeanWitter*](https://supreme.justia.com/cases/federal/us/537/79/case.html)*,* 123 U.S. 588 (2002)

Optional:

* [*Martians, Baloney, and Laughter: SCOTUS Hears Oral Argument in Henry Schein: Seems to Us the “Wholly Groundless" Delegation Exception Is on Borrowed Time*](http://www.sacarbitration.com/blog/scotus-hears-oral-argument-in-henry-schein/) (Nov. 7, 2018)
* [*We Called It! In Justice Kavanaugh’s First Opinion, SCOTUS Holds There’s No “Wholly Groundless” Delegation Exception Under the FAA*](http://www.sacarbitration.com/blog/scotus-holds-unanimously-theres-no-wholly-groundless-delegation-exception-under-the-faa/) (Jan. 10, 2019)

We will also do a group problem-solving [exercise](https://george-friedman.squarespace.com/s/Arbitration-II-exercise-current.docx) [on enforcing the promise to arbitrate](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e40a6e4b08da8ca3b1f4c/1416511654029/enforcing%2Bpromise%2Bexercise%2B%282015%2BNO%2BANSWERS%29.pdf)

**Class 5 [2/14/2019]:** [[[[**Arbitration III - Federal Arbitration Act Preemption**](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://caselaw.lp.findlaw.com/nycodes/law16/art55.html)](http://caselaw.lp.findlaw.com/nycodes/law16/art55.html) **of State and Federal Law**

Assignment: Read the U.S. Constitution’s Supremacy Clause,([US Const., Art. 6, para 2](http://www.law.cornell.edu/constitution/articlevi)); and the Commerce Clause ([US Const., Art. 1, sec. 8, clause 3](http://www.law.cornell.edu/wex/commerce_clause)). Also, New York [[GBL § 399-c](http://law.justia.com/newyork/codes/general-business/gbs0399-c_399-c.html)](http://codes.findlaw.com/ny/general-business-law/gbs-sect-399-c.html) (2006); compare to [CPLR § 7515](https://www.nysenate.gov/legislation/laws/CVP/7515), and [*Citizens Bank v. Alafabco*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=02-1295)*,* 539 U.S 52 (2003) (defines interstate commerce for FAA arbitration clause enforcement purposes)

Skim these **state law** preemption cases (focus on the core holding):

* [*Southland v. Keating*](https://supreme.justia.com/cases/federal/us/465/1/)*,* 465 U.S. 1 (1984)
* [*Volt v. Stanford Information Systems*](https://supreme.justia.com/cases/federal/us/489/468/)*,* 489 U.S. 468 (1989)
* [*Allied-Bruce Terminix v. Dobson*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=U10326), 513 U.S. 265 (1995)

* [*Doctor's Associates v. Casarotto*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=U10181), 517 U.S. 681 (1996)
* [*Marmet Health Care v. Clayton Brown*](https://supreme.justia.com/cases/federal/us/565/530/)*,* 565 U.S. 530 (2012)
* [*Kindred Nursing Centers v. Clark*](https://www.supremecourt.gov/opinions/16pdf/16-32_o7jp.pdf), 137 S.Ct. 1421 (2017)

Skim these **federal law** preemption cases (focus on the core holding):

* [*CompuCredit v. Greenwood*](https://www.supremecourt.gov/opinions/11pdf/10-948.pdf)*,* 132 S.Ct. 65 (2012)
* [*Epic Systems Corp. v. Lewis*](https://www.supremecourt.gov/opinions/17pdf/16-285_q8l1.pdf), 137 S.Ct. 809 (2018)

Also, see my short blog posts:

* [*“SCOTUS’ Support for Arbitration Will Continue Unabated” – Really this Time*](https://www.arbresolutions.com/scotus-supports-arbitration/) (May 19, 2017)
* [*SCOTUS Rules in Epic Systems. What it Means for Securities Employment Arbitration*](http://www.sacarbitration.com/blog/scotus-rules-in-epic-systems-what-it-means-for-securities-employment-arbitration/)(July 9, 2018)

Note: a *Certiorari* [Petition](https://www.supremecourt.gov/DocketPDF/18/18-703/73625/20181129124046867_USC%20-%20Munro%20Petition%20FINAL.pdf) was filed in late November in [*Munro v. University of Southern California*](http://cdn.ca9.uscourts.gov/datastore/opinions/2018/07/24/17-55550.pdf)*,*No. 17-55550 (9th Cir. Jul. 24, 2018), seeking review of whether ERISA claims may be arbitrated.

We will also do a group [problem solving exercise on Federal Arbitration Act preemption.](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2cb5e4b08af7083958fc/1416506549599/Preemption%2BMad%2BLibs.pdf)

**\*\*\*** [**Paper Outline**](http://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/565c9322e4b08c62b9ed2e81/1448907554988/Sample%2BOutline.pdfhttp%3A/www.proffriedman.homestead.com/files/outlineonline.htm) **and List of Resources Due \*\*\***

**Class 6 [2/21/2019]: Arbitration IV - Class Actions and Consumer Arbitration**

Assignment: Read AAA, [*Supplementary Rules for Class Arbitrations*](https://www.adr.org/sites/default/files/Supplementary%20Rules%20for%20Class%20Arbitrations.pdf) (July 1, 2010) and FINRA Rules [12204](http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4110) (customer arbitrations) and [13204](http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4207) (industry), both of which state that class arbitrations are prohibited in the FINRA ADR forum and allow the investor/employee to opt out of arbitration to participate in a class action. See also FINRA [Rule 2268](http://finra.complinet.com/en/display/display.html?rbid=2403&element_id=9955), which governs the use of arbitration agreements in customer agreements. Also, N. Aschen, *Tearing Down the Wall Protecting Mandatory Arbitration: A Critical Evaluation of Mandatory Arbitration Clauses in Consumer Contracts*, 71:3 Disp. Res. Journal 55 (Dec. 2016). The author, class of 2017, is my former student (Spring 2016). The paper in PDF will be emailed to the students, with permission of the AAA.

Read sections 921, 922 and 1028 -- **only these sections** -- of the [Dodd-Frank Wall Street Reform and Investor Protection Act of 2010](http://docs.house.gov/rules/finserv/111_hr4173_finsrvcr.pdf). This link will give you the entire massive statute. ***Note:*** *it’s possible (but highly unlikely) that Dodd-Frank will be repealed and replaced by this time, in which case we will examine the new law and how or if it impacts consumer arbitration.*

Read these cases (focus on the core holding):

* [*AT&T Mobility v Concepcion*](https://h2o.law.harvard.edu/cases/3607)*,* 131 S.Ct. 1740 (2011) (FAA permits class action waivers in arbitration clauses; preempts contrary state law)

And skim: [*DIRECTV v. Imburgia*](http://www.supremecourt.gov/opinions/15pdf/14-462_2co3.pdf)*,* 136 S.Ct. 463 (2015) (while parties can agree to application of state law in their arbitration agreement, the Federal Arbitration Act requires application of valid law. In this case, the FAA does not permit application of California law that was held preempted by *Concepcion*)

* [*Stolt-Nielsen, S.A. v. AnimalFeeds International Corp*](https://supreme.justia.com/cases/federal/us/559/662/opinion.html). 559 U.S. 662 (2010) (“a party may not be compelled under the [Federal Arbitration Act] to submit to class *arbitration* unless there is a contractual basis for concluding that the party agreed to do so”)

And skim: [*Oxford Health Plans, LLC v. Sutter*](https://supreme.justia.com/cases/federal/us/569/564/)*,* 133 S.Ct. 2064 (2013) (arbitrator’s Award ordering classwide *arbitration* upheld 9-0)

* [*American Express Co. v. Italian Colors Restaurant*](https://supreme.justia.com/cases/federal/us/570/12-133/)*, 570 U.S. \_\_\_* (2013) (the parties expressly provided in their arbitration agreement that there would be no class wide arbitrations. Thus the plaintiffs’ sole recourse in this antitrust matter was an individual arbitration. Also, Court affirmed its prior decisions holding that a challenger must show that Congress, in enacting the involved federal statute, intended to bar arbitration of claims thereunder arising)
* [Petition](https://www.supremecourt.gov/DocketPDF/17/17-988/27452/20180110174544823_Lamps%20Plus%20v%20Varela%20-%20Cert%20petition.pdf) for or *Certiorari* in *Lamps Plus v. Varela,* No. [17-988](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-988.html) (or the Opinion if the case has been decided). Read issue presented: “The arbitration clause at issue here did not mention class arbitration…. The question presented is: Whether the Federal Arbitration Act forecloses a state-law interpretation of an arbitration agreement that would authorize class arbitration based solely on general language commonly used in arbitration agreement”

Also, see short blog posts:

* [*“Arb Rule, We Hardly Knew Ye.” CFPB Arbitration Rule Likely to Be No More (And Never Was)*](http://www.sacarbitration.com/blog/arb-rule-hardly-knew-ye-cfpb-arbitration-rule-likely-never-more/)(Oct. 27, 2017)
* [*SCOTUS Also Hears Oral Argument in* Lamps Plus*. Another Tough Day at the Office for Counsel*](http://www.sacarbitration.com/blog/scotus-also-hears-oral-argument-in-lamps-plus-another-tough-day-at-the-office-for-counsel/)(Nov. 7, 2018)

[[[[**Class 7 [2/28/2019]: Arbitration V - The Arbitration Hearing**](http://www.law.cornell.edu/ny/ctap/091_0039.htm)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/01-800.html)](http://www.proffriedman.homestead.com/files/arbhealthcare.pdf)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=949246)

Assignment: Read [CPLR § 7506,](http://codes.lp.findlaw.com/nycode/CVP/75/7506) [FAA §7](http://codes.lp.findlaw.com/uscode/9/1/7). See also [these study aids.](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2ceae4b0f81008bb73b9/1416506602445/ARB-III_revisions_.pdf)

Also, read:

      [[*Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association, (October 1, 2013*)](https://www.adr.org/sites/default/files/commercial_rules.pdf).](http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_004103&revision=latestreleased) **Read only the arbitration rules on hearings, rules R-24 – R36.**

Skim:

* [FINRA *Discovery Guide*](http://www.finra.org/web/groups/arbitrationmediation/%40arbmed/%40arbtors/documents/arbmed/p394527.pdf)

We will again view the “hearing” arbitration part of the FINRA video, "[What Investors Can Expect from the FINRA Dispute Resolution Process](http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/OverviewofArbitrationMediation/WhattoExpect/)” and part of an AAA arbitrator training video ([read fact pattern](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2d13e4b0d415b9ad8544/1416506643270/hearing_video_fact_pattern.pdf)).

Supplemental:

* Those interested in a comparative analysis of how different arbitration agencies appoint arbitrators should peruse Association of the Bar of the City of New York, [*Arbitrator Appointment Procedures of Arbitral Institutions in Commercial Arbitrations*](http://s3.amazonaws.com/documents.nycbar.org/files/2017366-Appointment_Procedures_Commercial.pdf) (April 2018)

[[**[Class 8 [3/7/2019]: Arbitration VI – Enforcing or Challenging the Arbitration Award](http://www.adr.org/index2.1.jsp?JSPssid=15747)**](http://www.adr.org/index2.1.jsp?JSPssid=15747)](http://www.adr.org/index2.1.jsp?JSPssid=15747) **+ Growing Judicial Impatience with Frivolous Attacks on Awards**

Assignment: Read [CPLR §§ 7507-11](https://www.nysenate.gov/legislation/laws/CVP/A75) and [7515](https://www.nysenate.gov/legislation/laws/CVP/7515). Also [FAA §§ 9 -12](http://codes.lp.findlaw.com/uscode/9/1/9)

See also [these study aids](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2d51e4b0f30e9c653ae5/1416506705392/award%2Bvacatur%2Bgrounds.pdf). Please read the AAA Commercial Arbitration Rules [sections on arbitration awards](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2d7ae4b0dce5377c2622/1416506746793/AAA_Rules_on_Awards__2013_Rules_.pdf). See sample [AAA Award](http://www.arbchek.com/files/pdf/52%20Y%20148%2000144%2012.pdf) and [FINRA Awards](http://www.finra.org/arbitration-and-mediation/arbitration-awards).

[[[[[Read and be prepared to discuss:](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://www.adr.org/index2.1.jsp?JSPssid=15747)](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://www.adr.org/index2.1.jsp?JSPssid=15747)](http://www.adr.org/index2.1.jsp?JSPssid=15747)

       [*Commonwealth Coatings Corp. v. Continental Casualty Corp*](http://www.law.cornell.edu/supremecourt/text/393/145)., 393 U.S. 145 (1968), *reh. den*. 393 U.S. 1112 (1969) (deals with **arbitrator bias** ground for vacating under FAA; failure to disclose a relationship with an arbitration participant creates an “impression of possible bias”)

And skim: [*Morelite Constr. Corp. v, New York City Dist. Council*](https://openjurist.org/748/f2d/79/morelite-construction-corp-v-new-york-city-district-council-carpenters-benefit-funds), 747 F.2d 79 (2d Cir. 1984), and [*U.S. Electronics v. Sirius Satellite Radio*](http://www.courts.state.ny.us/CTAPPS/Decisions/2011/Nov11/185mem11.pdf)*,* 17 N.Y.3d 912 (2011) (“impression of possible bias” standard in plurality decision in *Commonwealth* is not controlling; a “reasonable person” standard should be used to decide challenges for arbitrator bias under the FAA, in both New York and the Second Circuit)*.*

* [*Wilko v. Swan*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=346&invol=427), 346 U.S. 427, 74 S.Ct. 182 (1953). Also [*Stolt-Nielsen, S.A. v. AnimalFeeds International Corp*](https://supreme.justia.com/cases/federal/us/559/662/opinion.html). 559 U.S. 662 (2010) **FN 3 only** (“**manifest disregard” of the law**)
* [*Hall Street Associates v. Mattel*,](https://supreme.justia.com/cases/federal/us/552/576/) 552 U.S. 52 (2008) (limits of attacks permitted by the FAA)

[[[[Supplemental/Optional:](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=977801&exact=1)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=977801&exact=1)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/346/427.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/393/145.html)

      [*Garrity v. Lyle-Stuart*](http://scholar.google.com/scholar_case?case=14016683496433993604&hl=en&as_sdt=2&as_vis=1&oi=scholarr), 40 N.Y.2d 354, 386 N.Y.S.2d 831 (1976)(**punitive damages**)

* *[Stevens v. Jiffy Lube International](https://cases.justia.com/federal/appellate-courts/ca9/17-15965/17-15965-2018-12-27.pdf?ts=1545933673)*, No. 17-15965 (9th Cir. Dec. 27, 2018) (FRCP governs how to calculate the three-month time period in FAA § 12 for moving to vacate awards)
* Friedman, G. [*Like Rodney Dangerfield,*Commonwealth Coatings *“Don’t Get No Respect” – and it Shouldn’t!*](http://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/55ae4954e4b0f7975558af11/1437485396245/SAC%2B2015-03Feature%2BDangerfield.pdf)*,* 2015:3 Securities Arbitration Commentator 1 (July 2015)
* Friedman, G., [*Federal Courts on Frivolous Motions to Vacate Arbitration Awards: “I’m as Mad as Hell and I’m Not Going to Take this Anymore!”*](https://www.arbresolutions.com/federal-courts-frivolous-motions-vacate-arbitration-awards/#.VG4Sk_ldX84)

We will also do a group [problem-solving exercise](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e32f8e4b0bb6434ea5eb2/1416508152581/vacate.pdf) on statutory grounds for vacating arbitration awards.

[[[[**Class 9 [3/14/2019]: Arbitration VII – Statutory Employment Arbitration**](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/u10306.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/u10306.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/u10306.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/u10306.html)

Assignment: Read [FAA §§ 1 – 2](http://codes.lp.findlaw.com/uscode/9/1/1), Tavares-Erickson, [*Cutting edge companies use dispute resolution techniques to address workplace conflict: Analyzing the results of a 2013 CPR and Cornell survey on alternative dispute resolution*](https://www.cpradr.org/news-publications/articles/2015-04-21-insidecounsel-publishes-cutting-edge-companies-using-dispute-resolution-techniques-to-address-workplace-conflict-by-cpr-s-helena-tavares-erickson) (Apr. 21, 2015). See **new** CPLR [section 7515](https://www.nysenate.gov/legislation/laws/CVP/7515) prospectively rendering null and void mandatory predispute arbitration agreements covering sexual harassment disputes, *“except where inconsistent with federal law”* (effective October 9, 2018).

Read these **proposed – but expired – Federal** Statutes (from last Congress):

[S. 2203](https://www.congress.gov/bill/115th-congress/senate-bill/2203?r=1) and [H.R. 4570](https://www.congress.gov/bill/115th-congress/house-bill/4570?q=%7B%22search%22%3A%5B%22FORCED+ARBITRATION+sexual+harASSMENT%22%5D%7D&r=1) -- the *Ending Forced Arbitration of Sexual Harassment Act* – introduced December 2017 by Sen. Kirsten Gillibrand (D-NY) and Rep. Cheri Bustos (D-IL). The Bills, which had bipartisan support in both institutions, would have banned mandatory predispute arbitration agreements for “a dispute between an employer and employee arising out of conduct that would form the basis of a claim based on sex under title VII of the Civil Rights Act of 1964 (42 U.S.C.2000e *et seq*.) if the employment were employment as defined in section 701(b) of that title regardless of whether a violation of title VII is alleged…”

* Rep. Jerrold Nadler (D-NY) (new chair of the House Judiciary Committee) last Fall introduced [H.R. 7109](https://www.congress.gov/bill/115th-congress/house-bill/7109), the *Restoring Justice for Workers Act*, that would have amended both the FAA and the NLRA to ban mandatory predispute arbitration agreements with class action waivers in the employment context. The preamble stated that the legislation intends to overrule *Epic Systems*, which it says was decided “contrary to the plain text of the law and congressional intent.” Senate version was [S. 3615](https://www.congress.gov/bill/115th-congress/senate-bill/3615?q=%7B%22search%22%3A%5B%22s.+3615%22%5D%7D&r=1).

These Bills expired January 3, 2019, but will undoubtedly be reintroduced in the new Congress.

Read and be prepared to discuss:

* [*Gilmer v. Interstate/Johnson Lane Corp*](https://supreme.justia.com/cases/federal/us/500/20/case.html)*.,* 500 U.S. 20 (1991) (first case dealing with arbitrability of claims asserted under federal statutes protecting employees)
* [*Circuit City Stores v. Adams*](http://www.law.cornell.edu/supct/html/99-1379.ZO.html)*,*532 U.S. 105 (2001) (FAA section 1 exemption for “workers engaged in interstate commerce” is narrowly construed)

And skim: [Petition](http://www.scotusblog.com/wp-content/uploads/2017/09/17-340-petition.pdf) for *Certiorari* in *New Prime, Inc. v. Oliveira*, No. [17-340](https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/17-340.html)(or Opinion if decided) (does FAA section 1 cover independent contractors or only “employees”?)

Also, read:

* [Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relationship](https://www.adr.org/sites/default/files/document_repository/Employment%20Due%20Process%20Protocol_0.pdf) (1995)
* SAC, [*We Called It. SCOTUS Narrowly Holds that the FAA Trumps the NLRA*](http://www.sacarbitration.com/blog/we-called-it-scotus-narrowly-holds-that-the-faa-trumps-the-nlra/) (May 23, 2018)
* SAC, [*SCOTUS Hears Oral Argument in New Prime. Looks to Us Like FAA Will Exempt Independent Contractors Engaged in Interstate Commerce*](http://www.sacarbitration.com/blog/we-called-it-scotus-narrowly-holds-that-the-faa-trumps-the-nlra/) (Oct. 12, 2018)

[[[[Supplemental/Optional Cases:](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=977801&exact=1)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=977801&exact=1)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/346/427.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/393/145.html)

* [*Epic Systems Corp. v. Lewis*](https://www.supremecourt.gov/opinions/17pdf/16-285_q8l1.pdf), 137 S.Ct. 809 (2018) ) [already covered in “Class 5]
* [*Hill v. Rent-a-Center*](https://openjurist.org/398/f3d/1286/hill-v-rent-a-center-inc), 398 F.2d 1286 (11th Cir. 2005) (defines “engaged in commerce” for FAA §1 purposes).
* [*Muro v. Cornerstone Staffing Solutions, Inc*](http://caselaw.findlaw.com/ca-court-of-appeal/1890265.html)., No. D070206 (Calif. Ct. App. Feb. 23, 2018), (at issue was whether the FAA section 1 exemption was triggered by *the employer* being engaged in the interstate transportation business or *the employee* being so engaged?)
* [*EEOC v. Wafflehouse*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/99%2D1823.html)*,* 534 U.S. 279 (2002) (is EEOC bound by an arbitration agreement signed by the employee?)

We will also do a group problem-solving [exercise](https://george-friedman.squarespace.com/s/employment-Exercise-current.docx) on key issues in employment arbitration.

**\*\*\* No Class 3/21/2019: SPRING BREAK \*\*\***

[[[[**Class 10 [3/28/2019]: Arbitration VIII - Ethical Issues**](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)

[[[[Assignment: Read:](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html) [Revised AAA/ABA Code of Ethics for Arbitrators in Business Disputes (2004)](http://www.abanet.org/dispute/commercial_disputes.pdf); JAMS [Arbitrators Ethics Guidelines](https://www.jamsadr.com/arbitrators-ethics/); and FINRA’s [Oath of Arbitrator and Disclosure Checklist.](http://www.finra.org/sites/default/files/Oath-of-Arbitrator-Checklist.pdf)

Skim/Optional:

* [AAA/ABA/ACR Model Standards of Conduct for Mediators](https://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.authcheckdam.pdf) (revised Sept. 2005)

       [ABA/College of Commercial Arbitrators, Annotated Code of Ethics for Arbitrators in Commercial Disputes (2014)](http://www.finra.org/sites/default/files/ArbMed/p123778.pdf)

We will also do a group problem-solving [exercise](https://george-friedman.squarespace.com/s/Ethics-Problems-Handout-current.docx) on ethics in arbitration (see [Study aid](https://george-friedman.squarespace.com/s/ETHICS-Study-Aid-current.docx) on ethics and arbitration Codes, Rules, etc.)

[[**\*\*\* DRAFT PAPERS DUE 3/31/2019 (if being submitted) \*\*\***](http://www.ilr.cornell.edu/alliance/model_standards_of_conduct_for_m.htm)](http://www.ilr.cornell.edu/alliance/model_standards_of_conduct_for_m.htm)

[[**Class 11 [4/4/2019]: Arbitration IX - International Arbitration**](http://www.ilr.cornell.edu/alliance/model_standards_of_conduct_for_m.htm)](http://www.ilr.cornell.edu/alliance/model_standards_of_conduct_for_m.htm)

Assignment: Read [*International Dispute Resolution Procedures of the American Arbitration Association*](https://www.adr.org/sites/default/files/ICDR%20Rules_0.pdf)(July 1, 2014); this [short article](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e3418e4b02c501fb0004d/1416508440777/taba017.pdf) about nation-nation arbitration; Article 31 of the [US-Mexico-Canada Agreement](https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between) (“USMCA”) [announced](https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-secures-modern-rebalanced-trade-agreement-canada-mexico/) by President Trump last October.

Also read:

* G. Friedman, [*Enforcing International Arbitration Awards*](https://www.arbresolutions.com/enforcing-international-arbitration-awards/)) (Aug. 9, 2018)

        [*United Nations Convention on the Recognition and Enforcement of Foreign Arbitration Awards*](http://www.jus.uio.no/lm/un.arbitration.recognition.and.enforcement.convention.new.york.1958/doc.html) (text) and [list of signatory countries](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html)

* Federal Arbitration Act [Chapter 2](https://codes.findlaw.com/us/title-9-arbitration/#!tid=N59BE098C56D6415295B278762941A2C8), §§ 201-208
* *Reuters* [article](https://www.reuters.com/article/us-trade-nafta-factbox/factbox-five-key-takeaways-from-trumps-u-s-mexico-trade-deal-idUSKCN1LC27K), *Factbox: Five key takeaways from Trump's U.S.-Mexico trade deal* (Aug. 27, 2018) *(*agreement to reform NAFTA eliminated or weakened the arbitration provisions in [Chapters 11](https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/North-American-Free-Trade-Agreement?mvid=1&secid=539c50ef-51c1-489b-808b-9e20c9872d25#A1120) and [19](http://www.sice.oas.org/Trade/NAFTA/chap-191.asp))

Skim the following:

* [*C&L Enterprises, Inc. v. Potawatomi Indian Tribes of Oklahoma*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=00-292)*,* 532 U.S. 411 (2001) (waiver of sovereign immunity for Native American tribes?)
* [*Blue Ridge Investments, LLC v. Republic of Argentina*](http://f.datasrvr.com/fr1/513/31245/4_Blue_Ridge_v_Argentina.pdf)*,* 735 F.3d 72 (2d. Cir. 2013) (did Argentina impliedly waive its immunity by becoming a party to the ICSID Convention?)
* [*Corporacion Mexicana De Mantenimiento Integral v. Pemex-Exploracion*](http://cases.justia.com/federal/appellate-courts/ca2/13-4022/13-4022-2016-08-02.pdf?ts=1470150006)*,* 832 F.3d 92 (2d Cir. 2016), ([Pet. for *Cert*](http://www.scotusblog.com/wp-content/uploads/2017/02/16-956-cert-petition.pdf)*.* withdrawn Apr.19, 2017) (where an arbitration award was vacated in Mexico based essentially on retroactive application of law, can an American court nonetheless confirm the award under the FAA?)
* [*Yusef Ahmed Alghanim & Sons. v. Toys “R” Us, Inc.*](https://caselaw.findlaw.com/us-2nd-circuit/1096715.html)*,*126 F.3d 15 (2d Cir. 1997) (delineates grounds available under the FAA to vacate international award)
* **Introduction on pages 2-3** to Final draft [*Convention on International Settlement Agreements Resulting from Mediation*](http://www.uncitral.org/pdf/english/commissionsessions/51st-session/ACN9-942_Draft_convention_advance_copy_website.pdf)(“Singapore Convention”) June 25, 2018

We view a few minutes of [*The Quiet Triumph – How Arbitration Changed the World*](https://vimeo.com/205567614)

***Also, please print this*** [***study aid***](https://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/5a10e7689140b7281e083058/1511057256589/INTLCOMP%2B%282014%2BRules%29.pdf) ***comparing the AAA’s international and commercial arbitration rules.***

Those writing about or very interested in international ADR:

* Consider subscribing to [*Global Arbitration News*](https://globalarbitrationnews.com/) (free)
* Consider [*Why Choose New York for International Arbitration*,](https://nyiac.org/nyiac-core/wp-content/uploads/2013/01/Choose-NY-for-IA.pdf) published by the New York State Bar Dispute Resolution Section and the New York International Arbitration Center
* For detailed statistics on international arbitration case filings for 2012-16, see[*International Arbitration Statistics 2016 – Busy Times for Arbitral Institutions*](https://globalarbitrationnews.com/international-arbitration-statistics-2016-busy-times-for-arbitral-institutions/)*,* published in Baker & McKenzie’s Global Arbitration News (June 2017)
* [*Internaves de Mexico S.A. de C.V. v. Andromeda Steamship Corp*.](https://cases.justia.com/federal/appellate-courts/ca11/17-12164/17-12164-2018-08-01.pdf?ts=1533133838), No. 17-12164 (11th Cir. Aug. 1, 2018), provides a nice primer on the history of the Convention and the interplay between [FAA](https://codes.findlaw.com/us/title-9-arbitration/#!tid=N59BE098C56D6415295B278762941A2C8) Chapters 1 and 2
* R. Ziegler *et al*, [*Guide to Enforcement of Foreign Arbitral Awards and Court Judgments in the United States*](https://jenner.com/system/assets/publications/18486/original/USA%20Enforcement%20guide%20%202nd%20ed%20WEB%20version.pdf?1543599959) (2d Ed.)
* Hausfeld LLP, [*Mandatory Arbitration in the United States and Europe*](https://www.hausfeld.com/news-press/mandatory-arbitration-in-the-united-state-and-europe)(Feb. 29, 2016) offers a nice comparative analysis

[[**Class 12 [4/11/2019]: Hybrid ADR Systems**](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/00%2D292.html)](http://www.adr.org/index2.1.jsp?JSPssid=15747)

Assignment: Review the “[ADR Continuum](http://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546b87afe4b0ec4522ffc889/1416333231795/ADR%2Bcontinuum.pdf)”

Read:

* Read G. Friedman, [*On the 1st day of Christmas/Chanukah/Kwanzaa, My True Love Gave to me…a New Form of ADR*](https://www.arbresolutions.com/1st-day-christmaschanukahkwanzaa-true-love-gave-mea-new-form-adr/) (Dec. 23, 2014).
* [*Avista Management v. Wausau Ins. Co*](http://money.cnn.com/2006/06/07/magazines/fortune/judgerps_fortune/index.htm)*.,* M.D. Fla. (2006) (the ultimate in court-annexed ADR)
* W. Ruskin, [*The Success of the SDNY Mediation Program*](http://www.lexisnexis.com/legalnewsroom/litigation/b/litigation-blog/archive/2014/01/23/william-a-ruskin-the-success-of-the-sdny-mediation-program.aspx) (Jan. 23. 2014)
* [*Zapruder Heirs Get $16 Million for Dallas Film*](http://www.nytimes.com/1999/08/04/us/zapruder-heirs-get-16-million-for-dallas-film.html)*,* NY Times (Aug. 4, 1999)

Skim:

* R. Gerstman, [*When the Mediator is Transformed into the Arbitrator*](https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/newsletter/nov2018/gerstman-when-the-mediator-is-transformed-into-the-arbitrator.pdf) (Nov. 2018)
* D. C. Toedt III*,* [*EVALOA: A Better Way to Facilitate Settlements in Arbitration*](https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/newsletter/may2018/toedt-better-way-to-facilitate-settlements-in-arbitration.authcheckdam.pdf)(undated)

We will also do a group problem-solving [exercise](https://george-friedman.squarespace.com/s/hybrid-group-exercises-current.doc) on hybrid forms of ADR.

**\*\*\* No Class 4/18/2019: EASTER BREAK \*\*\***

[[**Class 13 [4/25/2019]: FINAL CLASS - Drafting the ADR Clause; Putting it All Together**](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/00%2D292.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/00%2D292.html)**. What does the future hold?**

Assignment: AAA, [*Drafting Dispute Resolution Clauses: a Practical Guide*](https://www.adr.org/sites/default/files/document_repository/Drafting%20Dispute%20Resolution%20Clauses%20A%20Practical%20Guide.pdf) and A. Daley, [*Recent Court Decisions Highlight the Importance of Customizing Arbitration Agreements,*](http://www.natlawreview.com/article/recent-court-decisions-highlight-importance-customizing-arbitration-agreements) published in the National Law Journal (12/5/2013).

Also read my short blog posts:

* [*Arbitration – Still the Wave of the Future*](https://www.arbresolutions.com/arbitration-still-the-wave-of-the-future/) (Aug. 16, 2018)
* *[The New Year is Here: What’s in Store for Arbitration and the Financial Services Field?](http://www.sacarbitration.com/blog/the-new-year-is-here-whats-in-store-for-arbitration-and-the-financial-services-field/)* (Dec. 31, 2018)

**Skim:**

* **AAA’s** [ClauseBuilder](https://www.clausebuilder.org/cb/faces/index?_afrLoop=923855852511304&_afrWindowMode=0&_adf.ctrl-state=rgv7bbcfr_4)**TM system.**

Students will be grouped in teams for the purpose of developing an ADR clause for a given [set of facts](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e34e5e4b0116c45f5a3ee/1416508645565/drafting_form.pdf).

**\*\*\* Official Last Day of Classes is April 26, 2019: TERM PAPERS DUE \*\*\***

**[FORDHAM UNIVERSITY SCHOOL OF LAW](http://law.fordham.edu/)**

[[[**Commercial Arbitration for Business Disputes**](http://www.adr.org/index2.1.jsp?JSPssid=9714&JSPsrc=upload\LIVESITE\Rules_Procedures\ADR_Guides\clausebook.html)](http://www.adr.org/index2.1.jsp?JSPssid=9714&JSPsrc=upload\LIVESITE\Rules_Procedures\ADR_Guides\clausebook.html)](http://www.adr.org/index2.1.jsp?JSPssid=9714&JSPsrc=upload\LIVESITE\Rules_Procedures\ADR_Guides\clausebook.html)

[[[**List of Topics for Student Papers**](http://www.fordham.edu/law)](http://www.fordham.edu/law)](http://www.adr.org/index2.1.jsp?JSPssid=9714&JSPsrc=upload\LIVESITE\Rules_Procedures\ADR_Guides\clausebook.html)

[[[1. Dispositive Motions in Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[2. Class Actions and Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[3. The Arbitration of Statutory Rights](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm) Claims

[[[4. Arbitrator Immunity](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[5. ADR and the Unauthorized Practice of Law](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[6. The Arbitration Clause as an Enforceable Contract of Adhesion](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[7. The Arbitration of Consumer Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[8. The Use of Discovery in Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm) (by agreement; ADR rules; FAA section 7)

[[[9. Judicial Review of Arbitration Awards](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[10. Mandatory ADR and the Right to a Jury Trial](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[11. Time Bars and Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[12. The Arbitrator's Duty to Disclose](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[13. Punitive Damages in Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[14. Enforceability of Online ADR Agreements](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[15. Enforceability of Agreements to Mediate](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[16. Must the Mediator Ensure Fairness?](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[17. Arbitration of Non-union Employment Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[18. Arbitration of Securities Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[19. Arbitration of Bankruptcy Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[20. The Use of ADR to Resolve Amateur Sports Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[21. The Use of ADR to Resolve Professional Sports Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[22. Use of Minitrial to Resolve Complex, Multi-Party Cases](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[23. Enforceability of Arbitration Awards Abroad [specify nation:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[24. Enforceability of Foreign Arbitration Awards in the U.S.](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

25. Federal Arbitration Act Preemption of State Law (statutory and judge-made)

26. Federal Arbitration Act Preemption of Federal Statutes (25 and 26 may be combined)

27. Arbitration rights under the Equitable Estoppel Doctrine

[[[**INFORMATION REGARDING PAPER REQUIREMENT**](http://www.fordham.edu/law)](http://www.fordham.edu/law)](http://www.fordham.edu/law)

Successful completion of this course requires that students fulfill a writing requirement by submitting a paper on a pre-approved topic. [[[Requirements are discussed below.](http://www.fordham.edu/law)](http://www.fordham.edu/law)](http://www.fordham.edu/law)

[[[***Paper Requirements***](http://www.fordham.edu/law)](http://www.fordham.edu/law)](http://www.fordham.edu/law)

Students are to prepare a 5,000 to 6,000-word, double-spaced paper (including notes) on a pre-approved topic. This amounts to 20 - 25 double-spaced pages if you were to use the type font and size utilized for this syllabus. The Blue Book citation method should be followed. The usual number of footnotes will be about 50. Deadlines are as follows:

* Select Topic: A topic should be selected by **January 31, 2019** using the form below OR by sending the Professor an email at GFriedman@fordham.edu. If a student desires to write about a topic not on the list, specific approval from Prof. Friedman is required. ***Students can change their topic later if they desire; just advise the Professor by email***.
* Submit Short Outline: A short [Outline and List of Resources](http://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/565c9322e4b08c62b9ed2e81/1448907554988/Sample%2BOutline.pdfhttp%3A/www.proffriedman.homestead.com/files/outlineonline.htm) is to be submitted by **February 14, 2019.** It should be no more than 2 - 3 pages in length, consisting of the basic outline the student intends to follow, and a list of the major resources to be used (key cases, articles, authorities, etc.)
* Submit Draft Paper: Submit draft paper **by March 31, 2019** if you are using this course to satisfy the Upper Class Writing Requirement. All other students are not required to submit a draft paper, but you may do so if you desire.
* Submit Final Paper: The final paper is due **April 26, 2019.** ***There is a mandatory half-grade deduction for unexcused late submissions.***

[[[**SELECTION OF PAPER TOPIC**](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[**Commercial Arbitration for Business Disputes**](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[Student Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[**PAPER Topic Selected (circle number):**](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[1. Dispositive Motions in Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[2. Class Actions and Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[3. The Arbitration of Statutory Rights](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm) Claims

[[[4. Arbitrator Immunity](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[5. ADR and the Unauthorized Practice of Law](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[6. The Arbitration Clause as an Enforceable Contract of Adhesion](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[7. The Arbitration of Consumer Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[8. The Use of Discovery in Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm) (by agreement; ADR rules; FAA section 7)

[[[9. Judicial Review of Arbitration Awards](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[10. Mandatory ADR and the Right to a Jury Trial](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[11. Time Bars and Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[12. The Arbitrator's Duty to Disclose](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[13. Punitive Damages in Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[14. Enforceability of Online ADR Agreements](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[15. Enforceability of Agreements to Mediate](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[16. Must the Mediator Ensure Fairness?](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[17. Arbitration of Non-union Employment Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[18. Arbitration of Securities Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[19. Arbitration of Bankruptcy Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[20. The Use of ADR to Resolve Amateur Sports Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[21. The Use of ADR to Resolve Professional Sports Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[22. Use of Minitrial to Resolve Complex, Multi-Party Cases](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[23. Enforceability of Arbitration Awards Abroad [specify nation:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[24. Enforceability of Foreign Arbitration Awards in the U.S.](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

25. Federal Arbitration Act Preemption of State Law (statutory and judge-made)

26. Federal Arbitration Act Preemption of Federal Statutes (25 and 26 may be combined)

27. Arbitration rights under the Equitable Estoppel Doctrine

[[[Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)