

ARBITRATION

Spring 2015

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Objective

The study of arbitration involves an examination of why and how private parties to a dispute design and participate in a dispute resolution process that advances their respective goals yet operates within the basic framework of a public conception of justice and fairness. A variety of intriguing questions arise:

- Should individuals or organizations be able to utilize private justice systems to resolve controversies that involve public law?
- Are certain types of cases better suited for resolution through private processes than others; and, if so, what criteria should be used to distinguish such matters?
- What types of guidelines and procedures should govern the conduct of these processes or should all of those matters be left to the discretion and bargaining power of the respective parties?
- Are the advocacy skills relevant to performing in these private processes identical to those used in conventional trial procedures? If so, then what are the advantages of using a private procedure rather than the public process; and, if not, what types of skills and tactics are relevant for maximizing the benefits of the process to one's client?
- Who are the arbitrators and what is their training?
- What principles and practices constitute an arbitrator's ethical code of professional practice?

We will analyze these and other features and challenges to the process of arbitration during this course.

Topics and Required Readings (Tentative)

Overview of Course

Basic Principles of Process (Discussion of DR procedures)

FAA, UAA and RUAA & Red Cross Line, 264 U.S. 109 (1924)
(Relevant statutes and role of court)

Labor Arbitration:

Prima Paint, 388 U.S. 395 (1967)
(Arbitrability and nature of agreement)

Buckeye Check Cashing, 126 S. Ct. 1204 (2006)

Nitro-Lift, 133 S. Ct. 500 (2012)

Preston v. Ferrer, 128 S. Ct. 978 (2008)

Textile Workers Union, 353 U.S. 488 (1957);

American Mfg. Co., 363 U.S. 564 (1960);

Warrior and Gulf Navigation, 363 U.S. 574 (1960);

Enterprise Wheel and Car Corp., 363 U.S. 593 (1960);
(Arbitrators powers)

AT&T Technologies, 475 U.S. 643 (1986);

Howsam, 123 S. Ct. 588 (2003);

Misco, Inc., 484 U.S. 29 (1987);

Eastern Associated Coal Corporation, 121 S.Ct. 462 (2000)

Employment Arbitration:

Gardner/Denver, 415 U.S. 36 (1974);

Gilmer, 500 U.S. 20 (1991);

Researching your brief

Cole, 105 F.3d 1465 (1997);
(Fees and costs)

Green Tree Financial Corp., 121 S.Ct. 513 (2000);

Hall Street Associates, 128 S. Ct. 1396 (2008)

14 Penn Plaza, 129 S. Ct. 1456 (2009)

Vaden, 129 S. Ct. 1262 (2009)

Arbitration and Statutory Rights:

Southland, 465 U.S. 1 (1984);
(Nature of agreement)

First Options, 514 U.S. 938 (1995);

Terminex, 513 U.S. 265 (1995)

SPRING BREAK (Enjoy!!)

Arbitration and Statutory Rights:

Casarotto, 517 U.S. 681 (1996);

Citizens Bank, 123 S. Ct. 2037 (2003);

Greentree, 123 S. Ct. 2402 (2003);

Stolt-Nielsen S. A., 130 S. Ct. 1758 (2010)

Rent-A-Center, 130 S. Ct. 2772 (2010)

Concepcion, 131 S. Ct. 1740 (2011)

Compucredit Corp., 132 S. Ct. 665 (2011)

Oxford Health Plan, 133 S. Ct. 2064 (2013)

American Express Co., 133 S. Ct. 2304 (2013)

Circuit City, 121 S. Ct. 1302 (2001)

Hooters of America, 39 F. Supp. 2d 582 (1998) and 173 F.3d 937 (1999);

Garvey, 203 F.3d 580 (2000) & 121 S. Ct. 1724 (2001)

Circuit City, 121 S.Ct., 1302 (2001)

Broemmer, 840 P.2d 1013 (1992);

Kyocera, 130 F.3d 884 (1997);

Halligan, 148 F.3d 197 (1998);

Powers; 54 Cal. App. 4th 1102 (1997)

Engalla, 938 P.2d 903 (1997)

(Papers Due on April 30!!)

Course Grading:

Your course grade will be based upon the following elements:

1. A minimum of 12 page brief as the attorney for the Company or the Union . All papers must be typed and double-spaced. Papers will be due at **class time** on April 30, 2015.
2. Active participation in class is an important element of enriching the learning experience. I reserve the right to add up to a maximum of 3 points to a student's grade based on the quality and extent of his/her contribution to class discussions.

Cases will be assigned and students (expert witnesses) will be responsible for analyzing and leading the classroom discussion on these cases.

Attendance Policy:

If you miss more than five (5) classes, you will be dropped from the course.

General:

My office is Room 217. Although I do not maintain "office hours" as such, I am available to you whenever I am in my office. If you catch me at an inconvenient time, I will make an appointment with you for another time. If you need to contact me by telephone, my office number is 882-6891 (if I am not there, my voicemail will take a message, and I'll get back to you), and my home number is 446-8157. My e-mail address is baileyr@missouri.edu

Good luck this semester. I look forward to working with you during the semester and I hope you enjoy and profit from this course.

If you need accommodations because of a disability; if you have emergency medical information to share with me; or if you need special arrangements in case the building must be evacuated, please inform me immediately. Please see me privately after class, or at my office.

To request academic accommodations (for example, a note taker), students must also register with Disability Services, A038 Brady Commons, 882-4696. It is the campus office's responsibility for reviewing documentation provided by students requesting academic accommodations, and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.