

January 26, 2015

LAW 699: ARBITRATION IN AMERICA
Abraham D. Sofaer and Janet Martinez -- Stanford Law School -- Winter 2015

<p><u>Class Hours</u> Monday, 2:15-5:15 pm Crown 320-D</p>	<p><i>Office Hours:</i> By appointment.</p> <p>Abraham Sofaer Hoover: HHMB Room 234 asofaer@stanford.edu; 725.3763</p> <p>Janet Martinez Crown 326 janetkgm@law.stanford.edu; 723.4457</p>
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Course description

This course covers the history and development of alternative dispute resolution in the U.S., with an emphasis on arbitration under the Federal Arbitration Act (FAA). It describes how the federal and state governments have gradually come to accept and now favor the private settlement of commercial disputes based on consent of parties. It examines the many different contexts and industries in which arbitration is conducted, including government-mandated programs for labor disputes, systems established by specific industries such as the diamond trade and professional sports associations, the construction industry, and commercial disputes in general; more controversial is the use of arbitration for consumer, class action and employment disputes. This historic reversal of power over adjudication from government to the private sector has alleviated the delays and uncertainties of judicial litigation, and has created a huge and growing legal field of attorneys, arbitrators, and service providers fashioning and administering systems ranging in complexity from the most formal mega dispute with full discovery to the resolution of mini disputes through mechanically applied algorithms. Allowing private parties to agree on the law and procedures that govern their disputes has led, moreover, to numerous clashes of interests, including evasion of public policies established by legislation. How to deal with alleged violations of public policy, errors of law, erroneous findings of fact, unfair procedures, unequal negotiating power, and arbitrator bias are among the continuing and complex difficulties currently faced by courts and legislatures. The US Supreme Court's recent attempts to deal with several aspects of these difficulties will be considered. We will also examine the less heralded but highly significant use of mediation as a relatively speedy and inexpensive method for private dispute resolution, and the recent development of hybrid systems and other innovations.

Core competencies

This course will enable students to develop the following core competencies:

- ❖ Law, policy and practice of commercial arbitration
- ❖ Selection of arbitrator, choice of law, and procedures
- ❖ Drafting dispute resolution clauses
- ❖ Specialized arbitration
- ❖ Enforcement of awards and limits of review

Course requirements and grading

Textbook: *Arbitration: Cases and Material*, 3d edition (2011) by Stephen Huber and Maureen Weston

Attendance, preparation and participation [25% grade]

This course is graded H/P/F. Credit is dependent upon attendance at all classes; active participation in class discussion; and submission of all assigned short papers. Each student is expected to complete each week's assigned reading with close attention to the text; to bring the assigned readings or documents to class; and to be prepared to participate in each class discussion. Required readings include the primary source material and articles posted on Coursework (CW).

Short preparation and reflection papers [25% grade]

Two short writing assignments (approx. 3 pages each) or equivalent during the term.

Take-home exam [50%]

Problem-oriented hypothetical raising the principal issues dealt with in the course. Open book. Individual work.

Course Sessions [Revised Schedule]

Week 1: January 5th *The Dispute Resolution Spectrum; History, Nature and Scope of Arbitration; Arbitrability.*

Read:

- * Fogel, Strategies for Effective ADR Advocacy
- * Sofaer, Introduction to Arbitration [pending]
- * Federal Arbitration Act: Huber Appendix I
- * Huber pp. 51-62

Week 2: January 12th *Disputes Subject to Arbitration*

- * Separability doctrine and arbitrability of statutory claims. Read Huber pp. 62-96.
- * Contract formation and unconscionability. Read Huber pp. 96-133.

January 19th: Martin Luther King Holiday

Week 3: January 26th *Interaction Between Federal and State Arbitration Law; Arbitration Process and Drafting.*

- RUAA and the role of state arbitration law, commerce clause preemption of state law by FAA, federal court jurisdiction and the FAA, choice of law and choice of forum provisions. Huber, Ch. 3, pp. 133-72; 180-94.
- Arbitration Process & Drafting, Huber Ch. 5, pp. 251-291.

Week 4: February 2nd *Getting to Arbitration; Judicial Review; Selection and Conduct of Arbitrator*

- Qualifications, ethical standards, disclosure of interests and relationships, state legislative efforts in regulating arbitrators and providers. Huber, Ch.6, pp. 301-369
- Judicial review of awards. Huber, Ch. 8, pp.411-18; 421-35; 445-60; 467-71.

Week 5: February 9th *Arbitration in Hollywood and Beyond*

GUEST: Stephen Strick

Week 6: February 16th *Dispute System Design; International Arbitration*

- *Engalla v. Permanente Medical* [case posted on CW]
- Smith and Martinez, Analytic Framework for Dispute System Design
- International Arbitration: Huber, Ch. 11, pp. 572-624
- New York Convention; ICC and other int'l providers.

Week 7: February 23rd *Class Arbitration*

- Class arbitration: Huber, Ch. 9; AT&T v. Concepcion [Huber p. 111]; American Express posted on CW; Oxford Health posted on CW

GUEST: Professor Christopher Drahozal

Week 7 cont'd: February 24th *Intellectual Property Arbitration*

Breakfast Panel Discussion, 8-9:30am, Wilson Sonsini (Palo Alto)

Professor Mark Lemley and Abe Sofaer

Week 8: March 2nd *Future of Commercial Arbitration*

GUESTS: Professor Tom Stipanowich and Mr. Ty Holt

Week 9: March 9th

International Arbitration; synthesis of course.