

ARBITRATION –7103

Room 246 Wednesday 1:30-2:45 p.m. and Thursday 2:30-3:45 p.m.
Professor Sarah Rudolph Cole

Office: Room 302

Required Text: Duplicated Materials

Goals of the Course: This course is intended both as an introduction to the arbitration process as well as an identification of controversial legal issues that have arisen in the arbitration context. Arbitration is a binding method of dispute resolution. Parties typically agree to arbitrate disputes before they know what disputes are likely to arise between them. Arbitration has historically been used primarily in labor-management disputes and commercial disputes. More recently and quite controversially, arbitration has been used to resolve statutory claims, such as employment discrimination, antitrust and RICO claims. As the use of arbitration increases, so does the controversy. I hope to identify through reading and discussion some of the major areas in which arbitration has become controversial. In addition, this class will provide training to students in drafting enforceable arbitration agreements, preparing for and handling an arbitration hearing, conducting a closing argument in arbitration and writing a post-hearing brief. The course will also cover arbitration research methods.

Grading: Grading in the course will be based on the following structure:

Class participation and attendance:	15%
(includes advocacy during hearing)	
Arbitrator Opinions (2):	30%
Exam	55%

If you would prefer to take this class as a seminar, you may do so. If you choose to take the class as a seminar, grading will be as follows:

Seminar paper:	85%
Class Participation:	15% (you will still be required to act as a witness in the arbitration hearings).

Syllabus

Week	Topic	Assignment
August 21 and 22	Introduction to Arbitration Be prepared to discuss problems 7.1-7.5 Arbitration Video	pp. 1-6, 67-83 FAA, §§1-4
August 28 and 29	Federalism/Preemption Issues Problems 7.6-7.9	pp. 6-10, 16-21 and full Southland at p. 84 and Preston at p. 9. Reread FAA §§ 1-4
September 4 and 5	Class actions and arbitration, RUAA Problems 7.10-7.16.	pp.10-16, RUAA
September 11 and 12	Arbitrability Fraud in Contract Formation Problems 7.17-7.23 Receive initial hearing information	pp. 21-28, Howsam and Jackson at 171 and 176.
September 18 and 19	Arbitration and Statutory Claims Problems 7.24 – 7.25	pp. 28-35 plus Gilmer + Wilko, Gardner-Denver, Wright and Pyett (pp. 119-71).
September 25	Arbitration Advocacy	(Handouts)
September 26 and Oct 2	First Hearing	
October 3 and 9	Statutory Claims and Unconscionability Problem 7.37 (be prepared to discuss)	pp. 35-45, Morrison at p. 113, Arbitration Fairness Act and ACR Response (179-200)
October 16 and 17	Judicial Review of Arbitration Awards Party Expansion of Basis for and Judicial Review Problems 7.38-7.41	pp. 48-55 and pp. 13-16 and Stolt- Nielsen Sutter at p. 109.
	First Arbitrator Opinions due 10/17.	

October 23 and 24	Second Hearing	
October 30 and 31	EEOC role, Drafting enforceable arbitration agreements. Confidentiality.	pp. 45-48
November 6 and 7	Third Hearing	
November 13	Ethics and Arbitration Problems 7.42-43 Code of Ethics for Labor Arbitrators and Commercial Arbitrators Med-Arb Second Hearing Arbitrators' Opinions Due 11/14.	pp. 55-56, 58-66 (Handout)
November 14	International Commercial Arbitration	(Handout)
November 20 and 21	TBA/Paper presentations Third Hearing Arbitrators' Opinions Due 11/21	