

**COMMERCIAL ARBITRATION****MATERIALS**

The following books are required for this course: CHRISTOPHER R. DRAHOZAL, COMMERCIAL ARBITRATION: CASES AND PROBLEMS (3d ed. 2013); and DOCUMENTARY SUPPLEMENT TO CHRISTOPHER R. DRAHOZAL, COMMERCIAL ARBITRATION: CASES AND PROBLEMS (3d ed. 2013).

**POLICIES**

Regular class attendance and preparation are essential. I reserve the right to exclude from the exam any person whose attendance is unreasonably lax. I further reserve the right to reduce the grade of any person who is chronically unprepared or late for class. You will receive a warning and an opportunity to correct the problem before I take either of these steps.

The grade for the course will be based on a three-hour modified open-book essay examination.

The law school works with the Academic Achievement and Access Center (AAAC) to coordinate accommodations and services for students with disabilities. If you have a disability for which you intend to request classroom and/or exam accommodations, you may contact KU Law Student Counselor Kaitlin Brigman, [katstew@ku.edu](mailto:katstew@ku.edu), or any of your professors. You should notify someone at the beginning of the semester or as early as possible because the disability determination process can take time. Accommodations may not be possible if requests are made late in the semester.

**ASSIGNMENTS**

The following assignments are from the casebook. In addition, please read carefully the statutes and rules referred to in the text, which are reprinted in the Documentary Supplement.

		Casebook	Problems
I.	Introduction to Commercial Arbitration	1	
	A. A Theory of Private Dispute Resolution	2-19	1.1 & 1.2
	B. What is Arbitration?	19-32	1.3
	C. Why Arbitrate?	32-47	1.4
	D. A Brief History of Commercial Arbitration	48-61	1.5
II.	Enforcing Domestic Agreements to Arbitrate	63-64	
	A. Who Decides Arbitrability	64-88	2.1 - 2.3
	B. Default in Proceeding with Arbitration	89-99	2.4 & 2.5
	C. The Scope of the Arbitration Agreement	99-106	2.6
	D. General Contract Law Defenses	106	
	1. Assent & Formalities	107-124	2.7 - 2.10
	2. Lack of Consideration	125-129	2.11
	3. Unconscionability and Contracts of Adhesion	129-136	2.12
	4. Fraud and Breach of Fiduciary Duty	136-146	2.13
	5. Material Breach	146-152	2.14 & 2.15
	E. Procedural Issues – Part 1	159-167	2.17

III.	Federal Law Restrictions on the Enforceability of Arbitration Agreements	169-173	3.1
A.	Express Statutory Restrictions	174-188	3.2
B.	Implied Statutory Restrictions		
1.	The Nonarbitrability Doctrine	189-213	3.3 - 3.6
2.	Current Issues	213-230	3.7 - 3.9
C.	Arbitrability and Statutory Rights and Remedies	230-243	3.10 & 3.11
IV.	The Federal Arbitration Act and State Law		
A.	Preemption and the FAA	245-265	4.1 - 4.4
B.	Scope of the FAA	265-278	4.5 - 4.7
C.	FAA Preemption and Generally Applicable Contract Defenses	278-288	4.8
D.	Exceptions and Further Applications	288-301	4.9 & 4.10
E.	Choice-of-Law Issues	301-313	4.11 - 4.13
F.	Procedural Issues – Part 2	313-326	4.14 & 4.15
V.	Enforcing International Agreements to Arbitrate	327-328	
A.	Scope of the New York Convention		
1.	“Agreement in Writing”	328-335	5.1
2.	Foreign or Non-Domestic	335-341	5.2
3.	“Commercial”	341-346	5.3
4.	Reciprocity	346-350	5.4
B.	Defenses to Actions to Enforce International Arbitration Agreements		
1.	Who Decides Arbitrability	350-362	5.5
2.	Assent	362-368	5.6
3.	“Null and Void” Arbitration Agreement	368-376	5.7
4.	“Subject Matter Capable of Settlement by Arbitration”	380-387	5.9
C.	Procedural Issues	388-403	5.10 & 5.11
VI.	The Arbitration Proceeding	405-406	
A.	Initiating the Proceeding	406-412	6.1
B.	Representation	412-426	6.2 & 6.3
C.	Selecting Arbitrators		
1.	The Mechanics of Selecting Arbitrators	426-435	6.4 & 6.5
2.	Challenging Arbitrators for Partiality	435-454	6.6 & 6.7
D.	Provisional Remedies	454-470	6.8
E.	Consolidation and Class Arbitration	470-483	6.9 & 6.10
F.	Discovery	483-503	6.11 & 6.12
G.	Confidentiality	503-510	6.13
H.	Pre-Hearing Procedure and Motions Practice	510-516	6.14
I.	The Hearing	516-533	6.15 & 6.16
J.	The Award	533-545	6.17

VII.	Enforcing Arbitral Awards		
A.	Challenging Awards Before the Tribunal	553-563	7.1
B.	Enforcing and Challenging Domestic Awards		
1.	Grounds for Vacating Awards	563-593	7.2 - 7.8
2.	Procedural Issues	593-607	7.9
C.	Enforcing and Challenging International Awards		
1.	Actions to Enforce	607-622	7.10 & 7.11
2.	Grounds for Non-Enforcement	622-637	7.12 & 7.13
3.	Actions to Vacate	637-658	7.14 & 7.15
D.	Modifying the Standard of Review by Contract	658-667	7.16 & 7.17
VIII.	Drafting Arbitration Clauses		
A.	Empirical Studies of Arbitration Agreements	683-703	8.1 & 8.2
B.	Drafting an Arbitration Clause	703-713	8.3 & 8.4