

ADR
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ARBITRATION QUIZ

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1. Commercial arbitration developed as a method for people in a common trade or business to resolve disputes by using a person, knowledgeable in the trade or business, whom they trust to make a fair and prompt decision that makes sense for the trade or business, and without necessarily applying the law as a judge unfamiliar with the trade or business might do.

_____ True _____ False

2. Arbitration has been used in unionized companies or organizations as a way to resolve disputes without a strike, and to apply "the law of the shop" to resolve disputes even if the standards are not fully set out in the collective bargaining agreement between the employer and the union.

_____ True _____ False

3. The Federal Arbitration Act, in Section 2, applies to any "contract evidencing a transaction involving commerce." Despite the term "transaction involving commerce," it is not limited only to contracts for actual interstate commerce in goods or services. Instead, it applies broadly to all contracts that would be subject to Congressional regulation under the Commerce Clause of the Constitution.

_____ True _____ False

4. The Federal Arbitration Act (Sec. 1) provides that "[n]othing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" Because it is a federal law and can **only** apply to transactions involving interstate commerce, and because it *excludes* "contracts of employment of . . . *workers* engaged in . . . *interstate commerce*," (emphasis supplied) it cannot apply to any workers. It was intended to, and applies to, commercial contracts, not to employment ones.

_____ True _____ False

5. The Federal Arbitration Act provides that agreements to submit disputes to arbitration are binding “save upon such grounds as exist at law or in equity for the revocation of any contract.” (Sec. 2) Unconscionability is a ground for the revocation of any contract. An agreement to arbitrate that is unconscionable is thus not binding or enforceable.

True False

6. When a claim is so small (less than \$100, say) that it would not be economically feasible to pursue it as an individual claim, as a practical matter a claimant may only obtain relief through a class action or similar joint proceeding. If an arbitration clause includes a provision that all disputes must be brought in arbitration, and may not be brought in court, and also may only be brought as an individual claim, and not as a class action, such an arbitration clause would be unconscionable and thus unenforceable because, in effect, it deprives a claimant of any practical remedy.

True False

7. Arbitrators may decide whether an agreement that includes an arbitration clause is unconscionable.

True False

8. States may restrict arbitration to assure that parties understand the terms to which they agree (such as by requiring notice in large type, or by requiring a separate signature on arbitration clauses), or to prevent or limit arbitration when there is a substantial disparity in resources or power between the parties.

True False

9. If in making an award an arbitrator makes a mistake about the applicable law, the aggrieved party may appeal any arbitrator’s award to a court, and the court may vacate the arbitrator’s award on the grounds that the arbitrator made an error of law.

True False

10. Arbitrators must follow any applicable law that applies to the parties’ situation, rather than their own good sense and relevant experience of what is fair, or right, or best for the parties.

True False