

Syllabus for U.S. Commercial Arbitration: Principles & Practice

Karl Bayer

Fall 2012

Course Description This course is an introduction to the law of U.S. commercial arbitration and practical skills necessary to effectively represent clients in arbitration proceedings. Through some traditional (and not so traditional) teaching methods, students will learn substantive law and practical written advocacy techniques and practice with real world problems. We will discuss arbitrations involving the sales of goods and services, construction, employment, consumers, securities, sports and entertainment. We will also discuss online and electronic assisted arbitrations.

Course Meetings **This class will meet on Wednesdays from 3:45-6:45pm in room TNH 3.124.**
Students will also be required to have one individual meeting with me after they have turned in their outlines for their final paper.

Required Texts **Arbitration, Selected Pages from Resolving Disputes Theory, Practice, and Law,** Second Edition, Folberg, Golann, Stipanowich, Kloppenberg, 2010 Aspen Publishers. This text is no longer in print, but the University Co-Op has made arrangements with the printer to make copies for this class. Therefore, the UT Co-Op will be the only outlet for this text.

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Dispute Resolution Assistant: Alyson Chaky, email: alyson@karlbayer.com
UT Faculty Assistant: Debbie Steed, email: dsteed@law.utexas.edu

Office Hours Wednesday from 1:45pm-3:45pm, Room #: 3.119E

Attendance Policy Each student will be allowed one non-excused absence and one excused absence. Any other absence will result in an F grade.

Electronic Device Policy The use of laptops, electronic notebooks, smart phones, and any other electronic device is prohibited during class.

Grades Grades will be based on class participation, student's blogs and comments, and writing assignments (see chart below). There is no mid-term or final exam.

1/3	Class participation, blogging assignments, written portion of roleplay
1/3	Claimant's or Respondent's Brief
1/3	Hot topic paper

****Note:** An important part of this course will be centered around discussion of current cases, events, developing issues, and hot topics in arbitration. The syllabus is therefore subject to change based on the class' progression through the course materials as well as new developments in current cases, events, and hot topics.

Class Calendar & Assignments

Date	Class
August 29 CLASS 1	<p><u>Intro to Syllabus and Housekeeping</u></p> <p><u>Lecture: Arbitration—The Big Picture</u></p> <ul style="list-style-type: none"> • A Brief History of Arbitration • Arbitration vs. Litigation • The Many Faces of Arbitration • The Framework of Arbitration <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • Problems and questions from reading • Blogs <p><u>Assignments due by today's class:</u></p> <ul style="list-style-type: none"> • Read Chapter 16 (21 pages) • Set up (1) Skype or FaceTime (for Apple users) or Google Hangout account, (2) Blog (either Word Press or Blogger), and (3) Google Drive or Drop Box account • Email me your (1) Skype/FaceTime name or gmail address associated with your Google Hangout account, (2) Blog address, (3) access to Google Drive or DropBox • On call days—Send me five class dates that you will be on call. Please note that not being prepared for your on call days will heavily affect your participation grade. On call days are subject to change if necessary to evenly distribute the number of students on call each class throughout the semester. • Find a current on-going arbitration from one of the seven types of arbitration from the “Many Faces of Arbitration” portion of the reading and blog on the case. • Comment on 5 of your classmates’ blogs
September 5 CLASS 2	<p><u>Lecture: Arbitration Agreements, Procedures, and Awards—Part 1 (pgs. 561-584)</u></p> <ul style="list-style-type: none"> • Contractual Foundations of Arbitration <ul style="list-style-type: none"> ○ Drafting Arbitration Agreements ○ Scope of Agreement • Arbitrator(s) <ul style="list-style-type: none"> ○ Selection ○ Disclosure and Challenges ○ Ethical Standards <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • Problems and questions from reading • Blogs

	<p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • Read Chp 17 (pgs. 561-584) • Read the AAA Code of Ethics for Arbitrators in Commercial Disputes and the JAMS Arbitrators Ethics Guidelines • Blog on reading by midnight Sunday (9/2) • Comment on 5 of your classmates' blogs by midnight Monday (9/3)
<p>September 12</p> <p>CLASS 3</p>	<p><u>Lecture: Arbitration Agreements, Procedures, and Awards—Part 2 (pgs. 584-609)</u></p> <ul style="list-style-type: none"> • Overview of Arbitration Process <ul style="list-style-type: none"> ○ Prehearing Conference ○ Jurisdictional Issues ○ Dispositive Motions ○ Information Exchange and Discovery ○ The Hearing ○ Remedies ○ Awards • Arbitration in Multistep Agreements • When an Arbitrator wears multiple hats <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • Problems and questions from reading • Blogs • Brief Problem <p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • Read Chp 17 (pgs. 584-609) • Blog on reading by midnight Sunday (9/9) • Comment on 5 of your classmates' blogs by midnight Monday (9/10)
<p>September 19</p> <p>CLASS 4</p>	<p><u>Lecture: Brief Writing</u></p> <ul style="list-style-type: none"> • Continue discussion of arbitration process • Continue discussion of brief writing • Discussion of brief assignment • Discussion of blog assignment <p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • Complete Problem 6 in Chapter 17 on p. 594 for you blog by midnight (9/16). • Comment on 5 of your classmates' blogs by midnight Monday (9/17) • Distribution of brief assignment on Monday (9/17). Read brief assignment before class.

<p>September 26</p> <p>CLASS 5</p>	<p><u>Lecture: The Legal Framework Supporting Arbitration—Part 1 (pgs. 611-636)</u></p> <ul style="list-style-type: none"> • The FAA/TAA/RUAA • Arbitrability <ul style="list-style-type: none"> ○ First Options Of Chicago, Inc. v. Kaplan ○ Separability <ul style="list-style-type: none"> ▪ Prima Paint Corp. v. Flood & Conklin Mfg. Co. ○ Public Policy <ul style="list-style-type: none"> ▪ Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc. <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • Problems, questions, and cases from reading • FAA v. TAA <p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • Read the FAA, TAA and the RUAA • Read Chp 18 (pgs. 611-636) • Blog on reading by midnight Sunday (9/23) • Comment on 5 of your classmates' blogs by midnight Monday (9/24)
<p>October 3</p> <p>CLASS 6</p>	<p><u>Lecture: The Legal Framework Supporting Arbitration—Part 2 (pgs. 636-659)</u></p> <ul style="list-style-type: none"> • Preemption of State Law by the FAA <ul style="list-style-type: none"> ○ Southland Corp. v. Keating ○ Allied-Bruce Terminix Companies v. Dobson ○ Doctor's Associates, Inc. v. Cassarotto • Recent Decisions on Arbitrability and the FAA <ul style="list-style-type: none"> ○ Green Tree Financial Corp. v. Bazzle ○ Buckeye Check Cashing, Inc. v. Cardegna • Other Forms of Preaward Judicial Support of Arbitration Proceedings <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • Problems, questions, and cases from reading • Blogs • General comments on outlines <p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • **Outline and bibliography for Brief due by email to me, Alyson and Debbie • Read Chp 18 (pgs. 636-659) • You do not have to blog this week, but you will receive extra credit if you do!

<p>October 10</p> <p>CLASS 7</p>	<p><u>Lecture: The Legal Framework Supporting Arbitration—Part 3 (pgs. 659-690)</u></p> <ul style="list-style-type: none"> • Judicial Treatment of Arbitral Awards <ul style="list-style-type: none"> ○ Overview of Statutory Standards for Confirmation, Vacation, and Modification (ss 9, 10, 11 of the FAA) ○ Corruption, Fraud, and Undue Means ○ Evident Partiality or Corruption <ul style="list-style-type: none"> ▪ Positive Software Solutions, Inc. v. New Century Mortgage Corp. ○ Arbitral Misconduct ○ Arbitrators Exceed Their Powers <ul style="list-style-type: none"> ▪ David Company v. Jim Miller Construction, Inc. ○ Contractual Provisions Attempting to Expand or Narrow Grounds for Vacatur of Award <ul style="list-style-type: none"> ▪ Hall Street Associates, L.L.C. v. Mattel, Inc. <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • Problems, questions, and cases from reading • Blogs <p><u>**Second draft of outline and bibliography due by email to me, Alyson, and Debbie by COB Friday. Please also add a draft to Dropbox or Google Drive.</u></p> <p><u>Assignments due by today’s class:</u></p> <ul style="list-style-type: none"> • Read Chp 18 (pgs. 659-690) • Blog on reading by midnight Sunday (10/7) • Comment on 5 of your classmates’ blogs by midnight Monday (10/8)
<p>October 17</p> <p>CLASS 8</p>	<p><u>Lecture: Fairness in Arbitration: Developments In Employment, Consumer, and “Adhesion” Contexts—Part 1 (pgs. 691-708)</u></p> <ul style="list-style-type: none"> • Pro-Consumer Dispute Resolution: State Lemon Laws and the Magnuson-Moss Warranty Act • Predispute Arbitration Clauses in Consumer and Employment Contracts and Related Fairness Concerns <ul style="list-style-type: none"> ○ Gilmer v. Interstate/Johnson Lane Corp. ○ Sarah Rudolph Cole, Incentives and Arbitration: The Case Against Enforcement and Executory Arbitration Agreements Between Employers and Employees <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • Problems, questions, and cases from reading • Hot Topic papers <p><u>*Second Outline with comments returned to students</u></p>

	<p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • Read Chp 19 (pgs. 691-708) • Blog on reading by midnight Sunday (10/14) • Comment on 5 of your classmates' blogs by midnight Monday (10/15)
<p>October 24</p> <p>CLASS 9</p>	<p><u>Lecture: Fairness in Arbitration: Developments In Employment, Consumer, and "Adhesion" Contexts—Part 2 (pgs. 708-731)</u></p> <ul style="list-style-type: none"> • Judicial Policing of Arbitration Agreements in Consumer and Employment Contracts <ul style="list-style-type: none"> ○ Engalla v. Permanente Medical Group, Inc. ○ Hooters of America, Inc. v. Phillips ○ Cole v. Burns International Security Services • Organizational and "Community" Responses to Fairness Issues: Due Process Protocols and Standards • Legislative Intervention <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • Problems, questions, and cases from reading • Blogs • Hot Topic papers <p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • Read Chp 19 (pgs. 708-731) • Blog on the reading by midnight Sunday (10/21) • Comment on 5 of your classmates' blogs by midnight Monday (10/22)
<p>October 31</p> <p>Mr. Bayer will be out</p> <p>CLASS 10</p>	<p><u>Lecture: Commercial, Construction, and Securities Arbitrations with Guest Speakers</u></p> <p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • You do not have to blog this week, but you will receive extra credit if you do. • Your class participation grade for this week is showing up to class.
<p>November 7</p> <p>CLASS 11</p>	<p><u>Lecture: Sales Arbitration I</u></p> <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • <i>Stolt-Nielsen S.A. v. AnimalFeeds International Corp.</i>, 130 S.Ct. 1758 (2010) • <i>Rent-A-Center, West, Inc. v. Jackson</i>, 130 S.Ct. 2772 (2010) • <i>AT&T Mobility LLC v. Concepcion</i>, 131 S.Ct. 1740 (2011) • Blogs

	<p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • **Brief on Arbitration Problem (not more than 15 pages) due on Monday, November 5th by email to me, Alyson, and Debbie. Please also put the final version in Dropbox or Google Drive. • Read <i>Stolt-Nielsen S.A. v. AnimalFeeds International Corp.</i>, 130 S.Ct. 1758 (2010); <i>Rent-A-Center, West, Inc. v. Jackson</i>, 130 S.Ct. 2772 (2010); <i>AT&T Mobility LLC v. Concepcion</i>, 131 S.Ct. 1740 (2011) • Blog on reading by midnight Sunday (11/4). Blog on only one of the three cases. • Comment on 5 of your classmates' blogs by midnight Monday (11/5)
<p>November 14</p> <p>CLASS 12</p>	<p><u>Lecture: Sales Arbitration II</u></p> <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • Professor Rau's Article • Blogs <p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • **Hot Topic Paper outline and bibliography due by email to me, Alyson, and Debbie. Please also put in Dropbox or Google Drive. • Read Alan S. Rau, <i>Arbitral Power and the Limits of Contract: The New Trilogy</i> • Blog on reading by midnight Sunday (11/11). Blog on the Rau article. • Comment on 5 of your classmates' blogs by midnight Monday (11/12)
<p>No Class on November 21 or November 28</p>	<p>You are encouraged to discuss your hot topic papers with Professor Bayer by video conference during these two weeks.</p>
<p>December 5 LAST DAY OF CLASS</p> <p>CLASS 13</p>	<p><u>Lecture: Arbitration Case Management, Discovery, Evidence, Arbitration Procedure</u></p> <p><u>Be ready to discuss:</u></p> <ul style="list-style-type: none"> • Professor Rau's Article • College of Commercial Arbitrator's Protocol • Blogs <p>Assignments due by today's class:</p> <ul style="list-style-type: none"> • **FINAL PAPERS DUE (up to 15 pages) by email to me, Alyson and Debbie. Please also add to Dropbox or Google

	<p>Drive.</p> <ul style="list-style-type: none"> • Read Alan S. Rau, <i>Evidence and Discovery in American Arbitration: The Problem of “Third Parties”</i> • Read College of Commercial Arbitrator’s Protocol • Blog on reading by midnight Sunday (12/2) • Comment on 5 of your classmates’ blogs by midnight Monday (12/3)
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