

The title of this book and accompanying materials, *Arbitration: Practice, Policy, and Law*, reflects a unique focus that places primary emphasis on practice and problem-solving for counselors, advocates, and arbitrators. The authors, two prominent leaders in the ADR and arbitration fields, brought to the effort not only decades of teaching, but also broad practical experience as advocates, arbitrators, expert witnesses, and active participants in the development of statutes, arbitration procedures, ethics standards, and practice guidelines, and even as leaders of or advisors to arbitration institutions.

Instead of simply addressing arbitration law and doctrine (the strong emphasis of most arbitration texts), we begin by introducing the broad range of processes that fall within the rubric of “arbitration” and how arbitration fits in a landscape that includes negotiation, mediation, and litigation. We then explore the practical opportunities and challenges presented by arbitration; our sequential treatment ranges from crafting arbitration agreements to selecting arbitrators to conducting the pre-hearing process, managing hearings, and dealing with arbitrator decisions, or awards. Only then do we move to discussion of the extensive legal framework supporting these out-of-court processes. We intend that this approach will provide students (including both neophytes and experienced practitioners) with a more complete and useful picture that allows users to see arbitration as a special set of tools in their toolbox for managing and resolving disputes and not simply another source of work for courts.

Our book also offers a multi-perspective approach that should translate well in a variety of arbitration courses—for law students as well as for masters’ programs that also serve non-lawyers. We wrote the book primarily from the perspective of lawyers representing clients, but it is equally useful for would-be neutrals from a variety of backgrounds—which is entirely appropriate, since not all arbitrators are lawyers. We also took pains to carefully distinguish practice, policy, and law commonly associated with commercial (business-to-business) arbitration, well-established for generations, and arbitration under contracts between consumers or employees and various companies, which has been the focus of considerable controversy and political debate in recent decades. Our treatment of the history of arbitration includes nods to two of our country’s greatest presidents, while our analysis of contemporary trends includes recent “soft-law” guidelines, key court decisions, and up-to-the-minute statutory developments, including the brand-new “#MeToo”-inspired law that limits enforcement of pre-dispute arbitration clauses in sexual harassment cases. The discussion is punctuated by accounts of actual disputes and literary examples that vividly illustrate key points.

Nowhere is the currency and uniqueness of this book more evident than in our attention to technology and its expanding impact on dispute resolution—a trend dramatically accelerated by the recent pandemic. Professor Schmitz, one of

the most visible experts and thinkers about online dispute resolution (ODR) and online arbitration (or, to use a term she coined, “OArb”), developed new questions and problems that allow students to actively engage with the technological changes now being embraced in practice. Indeed, a great strength of our book and materials is the strong emphasis placed on questions and interactive problems, many of which were inspired by real-life experiences of the authors or colleagues. Along with extensive practical exercises (including “The Arbitration Game”) and role-plays in the Teachers Manual, these elements bring the readings and other materials to life. They afford students opportunities to develop practice skills (counseling, negotiating, drafting, advocacy, managing prehearing preparation, conducting hearings, and rendering arbitration awards); to engender familiarity with various leading arbitration rules (AAA, JAMS, CPR), ethical standards, and legal doctrine; and to provoke critical thinking about the readings and other class materials.

At the same time, those interested in engaging students in the application of relevant legal doctrine will find ample coverage in this book. Our primary emphasis is on the Federal Arbitration Act (FAA), the body of federal law which has expanded exponentially in recent decades to play a critical role in state as well as federal courts. The evolution of the law is traced through carefully edited excerpts of cases and accompanying questions and problems. The discussion then shifts focus to explore the impact of arbitration provisions in standardized contracts of adhesion affecting employees and consumers. Importantly, the materials do not take any sort of political stance on these issues. Instead, they supplement an extensive discussion of developments in the courts, in legislatures, through “community protocols,” and other approaches.

The book concludes with two chapters highlighting important developments in dispute resolution that may be relevant to students of arbitration. Chapter 9 offers a fresh and important discussion around “mixing and matching” in dispute resolution, either in multifaceted court programs or “mixed-mode” approaches that include stepped dispute resolution processes and hybrid roles for neutrals (such as single-neutral med-arb or arb-med). Chapter 10 explores three expanding directions in ADR practice: dispute systems design (DSD), online dispute resolution (ODR), and human rights applications. These emergent areas are shaping the field in exciting ways, and it is our hope that students who are interested in ADR continue studying these and other areas.

Instructors using this book should be aware of the many supplemental materials available on this book’s website, including an extensive library of PowerPoint presentations covering the topics of the course. The website also offers links to 100 “Arbitration Conversations”—Professor Schmitz’s interviews with arbitration practitioners, arbitrators, and scholars that provide expert guidance on critical issues in arbitration practice and law.

A note about form: In order to focus discussion and conserve space, we have substantially edited the readings and have converted all in-line citations of articles to endnotes. Deletions of material are shown by three dots, but omitted footnotes and other references are not indicated.

This book, a culmination of our combined decades of teaching, practicing, and shaping dispute resolution in legal contexts, could not have been developed without the efforts and input of the many students (and practicing lawyers) we have had the pleasure of teaching, or with whom we co-taught. They were instrumental in the preparation of a book and materials that we hope will have a significant impact on the next generation of lawyers and arbitrators.

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