**COMMERCIAL ARBITRATION OF BUSINESS DISPUTES**

[**Fordham University School of Law**](http://www.fordham.edu/law)

**Spring 2023 Course Syllabus**

***December 19, 2022***

Prof. [George H. Friedman](http://www.fordham.edu/info/23644/e_-_f/7813/george_h_friedman), Esq.

This course is offered to students interested in acquiring knowledge of arbitration as it relates to business disputes. We will cover the impact of *five* recent Supreme Court decisions involving arbitration. We will also track other arbitration-centric cases where *Certiorari* has been requested. We will also follow the progress of several arbitration-related bills that were introduced in the last Congress, and one that was enacted: The *Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act*, which amends the Federal Arbitration Act to empower employees and class reps to opt out of mandatory predispute arbitration agreements and class action waivers in cases involving claims of sexual harassment or assault. Students registering for this course do not need any prerequisites except those already established by the law school as to the manner and selection of elective course offerings. A general background in contract law and civil procedure is helpful.

Learning Outcomes:

* Acquire in-depth knowledge of arbitration as it relates to domestic and international business disputes.
* Master the key statutes, cases, and regulations impacting arbitration.
* Learn about the several important Supreme Court decisions.
* Gain perspective on the emerging legislative and regulatory challenges to mandatory predispute arbitration clauses in consumer and employment contracts.
* Examine how the new Congressmay impact arbitration law and administrative policies.
* Become familiar with the basics of other alternative dispute resolution methods, such as mediation, mini-trial, court-annexed arbitration, negotiation, and hybrids.
* Examine how the COVID-19 pandemic accelerated the movement to online ADR and which changes will be lasting.
* Identify, analyze, and apply acquired knowledge through in-class group exercises.

Class Policies:

* Classes meet **MONDAY** afternoonsfrom **4:00 p.m. to 5:50 p.m.** live via Zoom unless otherwise noted. All classes will be recorded for later student access. There is little if any asynchronous study. Students are requested to activate their video during class.

*After registering, students will receive a confirmation email containing the Zoom link for joining the class.*

* Attendance and participation is expected. Students can improve their paper by one-half a grade through class participation.
* *This course is subject to the mandatory grading curve*.
* In lieu of a final examination, students will submit a [paper](#PaperRequirementInfo) on a pre-approved ADR topic. A sample list is attached to this syllabus. There is **no** subject matter preemption (more than one student can write about the same topic). Professor Friedman will submit the best paper(s) to the Dispute Resolution Journal and the Securities Arbitration Alert for possible publication (former students’ papers were published and are used for class).
* Students will receive a free online subscription to the weekly [*Securities Arbitration Alert*](http://www.secarbalert.com) for the semester.
* Outlines or PowerPoints used in class will be posted immediately following each class.

Prof. Friedman can be contacted as follows:

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Assigned Text: This class is taught without an assigned textbook. All materials needed are linked in this syllabus or will be available later through [www.gfriedmanadr.com/fordham](http://www.gfriedmanadr.com/fordham) (the class website).

***Note: because there is no assigned textbook, it is imperative that students review assigned/linked materials before each class.***

Recommended:

* **Class website:** There is a class website: <http://www.gfriedmanadr.com/fordham/>. The website contains the class syllabus and links to cases, articles and authorities covered in the course. Class exercises and study aids are separately linked in the syllabus, and are [collected here](http://www.gfriedmanadr.com/law-class-pdfs). Other useful links are [collected here](https://www.gfriedmanadr.com/useful-links/). Although everything needed is available on the class website, the class is also listed in the TWEN course management system.
* **Other websites:** The class website site also contains links to free websites of interest, including:
  + American Arbitration Association, [http://www.adr.org](http://www.adr.org/)
  + ABA Dispute Resolution Section (has an excellent [resources page](https://www.americanbar.org/groups/dispute_resolution/policy_standards.html))
  + Arbitrate.com, <https://arbitrate.com/>
  + Arbitration Resolution Services, Inc., [www.arbresolutions.com](http://www.arbresolutions.com)
  + Financial Industry Regulatory Authority (FINRA), <https://www.finra.org/arbitration-mediation>
  + Global Arbitration News, <https://globalarbitrationnews.com/>
  + Investment Treaty Arbitration ([www.italaw.com](http://www.italaw.com)). Free awards and case info
  + Lexology (<https://www.lexology.com>)
  + Oyez ([www.oyez.org](http://www.oyez.org)). SCOTUS decisions, oral argument transcripts and recordings
  + SCOTUSBlog ([www.scotusblog.com](http://www.scotusblog.com))
  + Securities Expert’s Roundtable (<http://www.securitiesexpert.org/>)
  + Securities Arbitration Alert ([www.secarbalert.com](http://www.secarbalert.com)
* **Apps**: There are also many good free ADR mobile apps: AAA, JAMS, and the Federal Arbitration Act. Also, Covington has an excellent app, *The Arbitration Handbook,* compiling international arbitration rules, treaties, national laws and guidelines.
* **Blogs**: Professor Friedman has an ADR blog at the [*Securities Arbitration Alert*](http://www.secarbalert.com/blog/author/george-friedman/) and [Arbitration Resolution Services](https://www.arbresolutions.com/author/george-friedman/). The following ADR blogs are very good:
  + [Arbitration Nation](http://arbitrationnation.com/)
  + [Center for Public Resources](http://blog.cpradr.org/)
  + [Indisputably (ADR Law Profs](http://www.indisputably.org/))
  + [JAMS](http://jamsadrblog.com/)
  + [NY State Bar Ass’n Resolution Roundtable](http://nysbar.com/blogs/ResolutionRoundtable/)
  + ["Top 50 ADR Blawgs to Follow"](https://www.adrtimes.com/adr-blawgs/)
* **Articles:** Professor Friedman’s blog posts and articles are collected at <http://www.gfriedmanadr.com/articles/>. Scholarly works are on his SSRN Author page: <http://ssrn.com/author=2492175>.

Skim/Optional/Supplemental Material: Material so marked will usually be of interest or use to those writing on the subjects covered in that class.

**SPRING 2023 COURSE SCHEDULE AND SYLLABUS**

**Class 1 [Jan. 23]: Introduction and Overview, the Midterm Election** **and SCOTUS**

Assignment: Review and print the “[ADR Continuum](http://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546b87afe4b0ec4522ffc889/1416333231795/ADR+continuum.pdf).” Read N. Freeman Enstrom, [*The Diminished Trial*](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3232185)*,* 81 Fordham L. Rev. 2131 (2018).

Also read:

* Friedman, George, [*Tales from the Arbitration Crypt*](https://www.secarbalert.com/blog/tales-from-the-arbitration-crypt/)*,* 2021:40 Sec. Arb. Alert 1 (Oct. 28, 2021)
* Friedman, George, [*The SCOTUS “Arbitration Quartet” – What You Need to Know*](https://www.secarbalert.com/blog/he-scotus-arbitration-quartet-what-you-need-to-know/), 2022:26 Sec. Arb. Alert 1 (Jul. 7, 2022)
* Friedman, George, [*First Monday in October: Some Arbitration-Centric Cases Worth Following*](https://www.secarbalert.com/blog/first-monday-in-october-some-arbitration-centric-cases-worth-following/) (Oct. 3, 2022)

Skim these items:

* G. Friedman, [*SCOTUS to Take Up FAA Section 16 Question*](SCOTUS%20to%20Take%20Up%20FAA%20Section%2016%20Questionhttps:/www.secarbalert.com/blog/scotus-to-take-up-faa-section-16-question/)(Dec. 10, 2022)

* G. Friedman, [*Sorry About That, Chief, But it Does Matter Who Appointed the Judge*](https://www.secarbalert.com/blog/sorry-about-that-chief-but-it-does-matter-who-appointed-the-judge/)(Nov. 11, 2021)
* G. Friedman, [*FAIR Act Published. It’s Pretty Much the Same As the Last Iteration*](https://www.secarbalert.com/blog/fair-act-published-its-pretty-much-the-same-as-the-last-iteration/)(Mar. 18, 2021)

Supplemental/Optional:

* The Court Statistics Project has a wealth of statistics at <http://www.courtstatistics.org/>
* R. Weinstein, C. Edes, J. Hale and N. Pearsal, [*Efficiency and Economic Benefits of Dispute Resolution through Arbitration Compared with U.S. District Court Proceedings*](http://go.adr.org/rs/294-SFS-516/images/Economic%20Impact%20of%20Delay%20Micronomics%20Final%20Report%20%282017-03-07%29.pdf)(March 2017)

**Class 2 [Jan. 30]: Mediation – Overview of the Process**

Assignment (all short):

* G. Friedman, [*How Do You Explain Mediation? Practical Tips on how to Approach the Mediation Process*](https://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/5672b353a976af1587a757d0/1450357587804/Expert+Advice+How+Do+You+Explain+Mediation.pd)*,* California Lawyer (Dec. 2015)
* M. Levi, [*Mediating Commercial Disputes: Understanding the Process to Maximize the Benefits*](https://blog.cpradr.org/2022/04/26/mediating-commercial-disputes-understanding-the-process-to-maximize-the-benefits/), CPR Blog (Apr. 26, 2022)
* J. Krivis, [*The Five Stages of Mediation*](http://www.mediate.com/articles/krivis.cfm#.)(Dec. 1999)
* G. Friedman, [*Mediator’s Pre-mediation Instructions*](https://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/5a6e1517652dea30bdf1cf6d/1517163800356/Mediation+Instructions.pdf)
* J. Yellin and E. Larkin, [*Ten Tips for an Effective Securities Mediation*](https://www.finra.org/sites/default/files/neutral-corner-volume-4-2018-1218.pdf), The Neutral Corner (Dec. 2018)

We will view:

* Parts of the [AAA video](https://youtu.be/Wwm8mW17q3c), "Hearing Procedures in a Construction Mediation." Please review the [guide to the video](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2907e4b0c3b5cc211998/1416505607385/mediation+video+diagram.pdf).

🡪 We will also do a group problem-solving [exercise](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e28d2e4b003fc6e321421/1416505554367/mediation_benefits_exercise.pdf) on mediation benefits and drawbacks.

Skim:

* [*Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association*](https://adr.org/sites/default/files/Commercial_Rules_Web.pdf)(Sep. 1, 2022). **Read only the Mediation Procedures, rules M1– M17.**
* G. Friedman, [*Mediation No Longer the Rodney Dangerfield of Dispute Resolution?*](http://www.sacarbitration.com/blog/mediation-no-longer-rodney-dangerfield-dispute-resolution/) (Mar. 29, 2016)

**Class 3 [Feb. 6]: Arbitration I - Overview**

Assignment: Read: NY State Bar Ass'n, [*An Arbitration Primer for Litigators*](https://www.nysba.org/Sections/Dispute_Resolution/Dispute_Resolution_PDFs/An_Arbitration_Primer_For_Litigators.html)*.* J. Berkelhammer, [*Arbitration: A Comparison of the Pros and Cons*](http://www.lexology.com/library/detail.aspx?g=36fbe82c-37ea-4abf-8218-7f2b28531479)*.* Also, NY Civil Practice Law & Rules, [Art. 75](https://www.nysenate.gov/legislation/laws/CVP/A75), Federal Arbitration Act ["FAA"] [§ 1 – 16](https://www.law.cornell.edu/uscode/text/9/chapter-1) and new [Chapter 4](https://www.law.cornell.edu/uscode/text/9/chapter-4) (sexual harassment and assault disputes), and [Revised Uniform Arbitration Act](https://www.uniformlaws.org/committees/community-home?CommunityKey=a0ad71d6-085f-4648-857a-e9e893ae2736) (2000).

Also read:

* B. Repa, [*Arbitration Pros and Cons*](https://www.nolo.com/legal-encyclopedia/arbitration-pros-cons-29807.html)*,* NOLO (Feb. 2018)
* Taylor, D & Doiron, K., [*The Debate: Arbitration or Court: Know the Pros and Cons*](https://www.bradley.com/insights/publications/2022/10/the-debate-arbitration-or-court-know-the-pros-and-cons)*,* Construction and Procurement Law News (Oct. 27, 2022)
* [*Significant Updates to AAA Commercial Arbitration Rules and Mediation Procedures*](https://www.reedsmith.com/en/perspectives/2022/09/significant-updates-to-aaa-commercial-arbitration-rules-and-mediation)*,* ReedSmith LLP Blog (Sep. 16, 2022). [Click here](https://go.adr.org/2022-commercial-rules-update.html) for a summary of the key changes.
* Friedman, George, [*More on Amended AAA Commercial Rules*](https://www.secarbalert.com/blog/more-on-amended-aaa-commercial-rules/) (Sep. 7, 2022)

We will view:

* The 8-minute *LawShelf* video, [*Alternative Dispute Resolution: Arbitration*](https://lawshelf.com/videos/entry/arbitration-as-a-form-of-alternative-dispute-resolution). It offers a nice intro to arbitration
* A 4-minute AAA video, [*Stages of Arbitration*](https://www.youtube.com/watch?v=bDJhrP7r-uM)

Optional/Supplemental:

* CPR Dispute Resolution Services, [*Commercial Arbitration Rules Comparison Tool*](https://www.cpradr.org/resource-center/rules/arbitration/index/_res/id=Attachments/index=0/Domestic%20Commercial%20Arbitration%20Rules%20Comparison%2009.30.2022.pdf)(Nov. 2022)
* G. Friedman, [*Exactly Where is an Arbitration Award in Cyberspace Made? Time to Modernize the Federal Arbitration Act*](https://www.arbresolutions.com/modernize-federal-arbitration-act/)(Aug. 23, 2018)
* Schulte Roth & Zabel LLP, [*Arbitration Formalities in USA*](https://www.lexology.com/library/detail.aspx?g=08915145-fd29-43d9-babe-402dccdc441b) (Aug. 15, 2019)
* FINRA, [*Resources for Investors Representing Themselves*](https://www.finra.org/arbitration-mediation/resources-investors-representing-themselves) (Aug. 2022)

🡪 We will also do a group [problem-solving exercise](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2beee4b02a5aa7576d2b/1416506349998/Arbitration+Benefits+Exercise+%282015%29.pdf) on arbitration benefits and drawbacks.

**\*\*\* Selection of Term Paper Topic Due February 6 \*\*\***

**Class 4 [Feb. 13]:** [[[[**Arbitration II - Enforcing the Promise to Arbitrate**](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://caselaw.lp.findlaw.com/nycodes/law16/art55.html)](http://caselaw.lp.findlaw.com/nycodes/law16/art55.html) **+ Who Decides Arbitrability – Judges or Arbitrators?**

Assignment: Read New York’s [CPLR §§ 7501 - 4](https://www.nysenate.gov/legislation/laws/CVP/A75), [FAA §§ 1 – 4](https://www.law.cornell.edu/uscode/text/9/chapter-1), [Revised Uniform Arbitration Act](https://www.uniformlaws.org/committees/community-home?CommunityKey=a0ad71d6-085f-4648-857a-e9e893ae2736) (2000) sections 6 and 7. See especially [CPLR § 7515](https://www.nysenate.gov/legislation/laws/CVP/7515), a 2019 amendment that bans mandatory arbitration of ***any*** employment discrimination disputes *“except where inconsistent with federal law”* (was effective October 2019). See [compilation](https://george-friedman.squarespace.com/s/TheNewYorkArbitrationLaw-28.docx) of CPLR and FAA sections on enforcing arbitration agreements in class website.

Also, read and review the [AAA Construction Demand for Arbitration Form](https://www.adr.org/sites/default/files/Commercial%20Demand%20for%20Arbitration.pdf).

Read these cases:

* ***Each case below will be assigned to a student volunteer to present a brief summary in class, focusing on the core holding. Participation credit will be awarded. The rest of the class need only skim these cases.***
* [*Prima Paint v. Flood & Conklin*](https://supreme.justia.com/cases/federal/us/388/395/)*,* 388 U.S. 395 (1967) (separability of arbitration clause)
* [*Buckeye Check Cashing v. Cardegna*](https://supreme.justia.com/cases/federal/us/546/440/)*,* 546 U.S. 440 (2006) (separability of arbitration clause; delegation to arbitrators of “arbitrability” issues)
* [*Rent-A-Center, West, Inc. v. Jackson*](https://supreme.justia.com/cases/federal/us/561/63/), 561 U.S. 63 (2010) (who decides arbitrability?)
* [*Archer & White Sales v. Henry Schein, Inc*.](https://www.supremecourt.gov/opinions/18pdf/17-1272_7l48.pdf), 139 S. Ct. 524 (2019) (no “wholly groundless” FAA exception to delegation).
* [*Morgan v. Sundance Inc*](https://www.supremecourt.gov/opinions/21pdf/21-328_m6ho.pdf)*.*, 142 S.Ct. 170 (May 23, 2022) (Court ruled unanimously that there is no prejudice requirement under the FAA for a court to find a waiver of arbitration rights)

🡪 We will also do a group problem-solving [exercise](https://www.gfriedmanadr.com/s/Arbitration-II-exercise-current.docx) [on enforcing the promise to arbitrate](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e40a6e4b08da8ca3b1f4c/1416511654029/enforcing+promise+exercise+%282015+NO+ANSWERS%29.pdf)

Skim these other “who decides?” cases:

* [*First Options v. Kaplan*](https://supreme.justia.com/cases/federal/us/514/938/)*,* 514 U.S. 938 (1995)
* [*Howsam v. DeanWitter*](https://supreme.justia.com/cases/federal/us/537/79/case.html)*,* 123 U.S. 588 (2002)

Supplemental/Optional:

* Fazilatfar, Hossein, [*In Defense of Separability: Prima Paint, Buckeye, & Rent-A-Center*](https://ssrn.com/abstract=4152312)*,* 54 (2) Texas Tech Law Review 183-230 (2022).

**Class 5 [*\*\*\*Tuesday* Feb. 21]:** [[[[**Arbitration III - Federal Arbitration Act Preemption**](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://caselaw.lp.findlaw.com/nycodes/law16/art55.html)](http://caselaw.lp.findlaw.com/nycodes/law16/art55.html) **of State and Federal Arbitration Laws**

**\*\*\* School Closed Monday for Presidents Day \*\*\***

Assignment: Read the U.S. Constitution’s Supremacy Clause,([US Const., Art. 6, para 2](http://www.law.cornell.edu/constitution/articlevi)); and the Commerce Clause ([US Const., Art. 1, sec. 8, clause 3](http://www.law.cornell.edu/wex/commerce_clause)). Also, New York [[GBL § 399-c](http://law.justia.com/newyork/codes/general-business/gbs0399-c_399-c.html)](http://codes.findlaw.com/ny/general-business-law/gbs-sect-399-c.html) (2006); compare to [CPLR § 7515](https://www.nysenate.gov/legislation/laws/CVP/7515), and [*Citizens Bank v. Alafabco*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=02-1295)*,* 539 U.S 52 (2003) (defines interstate commerce for FAA arbitration clause enforcement purposes)

* ***Each State law skim case below will be assigned to a student volunteer to present a brief summary in class, focusing on the core holding. Participation credit will be awarded. The rest of the class need not read each case***.

**State law** preemption cases:

* [*Southland v. Keating*](https://supreme.justia.com/cases/federal/us/465/1/)*,* 465 U.S. 1 (1984)
* [*Allied-Bruce Terminix v. Dobson*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=U10326), 513 U.S. 265 (1995)

* [*Doctor's Associates v. Casarotto*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=U10181), 517 U.S. 681 (1996)
* [*Marmet Health Care v. Clayton Brown*](https://supreme.justia.com/cases/federal/us/565/530/)*,* 565 U.S. 530 (2012)
* [*Kindred Nursing Centers v. Clark*](https://www.supremecourt.gov/opinions/16pdf/16-32_o7jp.pdf), 137 S.Ct. 1421 (2017)
* [*Viking River Cruises, Inc. v. Moriana*](https://www.supremecourt.gov/opinions/21pdf/20-1573_8p6h.pdf),142 S.Ct. 1906 (Jun. 15, 2022): Court held 8-1 that California’s [Private Attorneys General Act](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=13.&chapter=&article=) (“PAGA”) was in part preempted by the FAA, insofar as PAGA allowed employees to evade bilateral predispute arbitration agreements. The lone dissenter was Justice Thomas, who held to his long-standing view that the FAA does not apply in state courts.
  + Skim also: [*Chamber of Commerce of the United States v. Bonta*](https://cdn.ca9.uscourts.gov/datastore/opinions/2021/09/15/20-15291.pdf), No. 20-15291 (9th Cir. Sep. 15, 2021). There, a split Ninth Circuit in *Chamber of Commerce* ruled on the validity of California [AB-51](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB51) – a law that restricts predispute arbitration clauses (“PDAA”) in employment relationships. The divided Court held that the mandatory PDAA use preclusions in the new law withstand FAA preemption scrutiny, but the criminal and civil penalties for mandatory PDAA use do not.

On **August 22, 2022,** the Ninth Circuit Panel issued a two-page [Order](https://cases.justia.com/federal/appellate-courts/ca9/20-15291/20-15291-2022-08-22.pdf?ts=1661187753) stating: “A majority of the panel has voted sua sponte to grant panel rehearing. Judge Fletcher and Judge Ikuta voted in favor of rehearing, and Judge Lucero voted against rehearing. The opinion and dissent filed on September 15, 2021 … are withdrawn, and the case is resubmitted.

Read**: Federal law** preemption cases and new law:

* [*Gilmer v. Interstate/Johnson Lane Corp*](https://supreme.justia.com/cases/federal/us/500/20/case.html)*.,* 500 U.S. 20 (1991)
* [*CompuCredit v. Greenwood*](https://www.supremecourt.gov/opinions/11pdf/10-948.pdf)*,* 132 S.Ct. 65 (2012)
* [*Epic Systems Corp. v. Lewis*](https://www.supremecourt.gov/opinions/17pdf/16-285_q8l1.pdf), 137 S.Ct. 809 (2018)
* [*Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021*](https://www.congress.gov/bill/117th-congress/house-bill/4445), codified as FAA [Chapter 4](https://www.law.cornell.edu/uscode/text/9/chapter-4).

🡪 We will also do a group [problem solving exercise on Federal Arbitration Act State law preemption.](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2cb5e4b08af7083958fc/1416506549599/Preemption+Mad+Libs.pdf)

Supplemental/Optional:

* *[Masseau v. Luck](http://www.vermontjudiciary.org/sites/default/files/documents/op20-131.pdf" \t "_self)*, 2021 VT 9 (Feb. 19, 2021) (FAA preempts a Vermont statute ([12 V.S.A. § 5652(b)](https://legislature.vermont.gov/statutes/section/12/192/05652)) requiring a separate “Acknowledge of Arbitration” citing *Doctor’s Associates*)
* [*Lyons v. PNC Bank,* *N.A*](https://www.ca4.uscourts.gov/opinions/211058.p.pdf)., No. 21-1058 (4th Cir. Feb. 15, 2022):” We find that a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) that amends TILA prohibits consumer agreements related to residential mortgage loans from requiring the arbitration of claims. Because we find that this provision precludes arbitration of Mr. Lyons’s claims related to both of his deposit accounts, we affirm in part and reverse in part.”
* [*The FAA Precludes New York From Exempting Claims From Arbitration*](https://www.maglaw.com/publications/articles/2021-02-17-the-federal-arbitration-act-precludes-new-york-from-exempting-claims-from-arbitration/_res/id=Attachments/index=0/NYLJ02162021480634Morvillo.pdf), NYLJ (Feb. 17, 2021): “In [*Gilbert v. Indeed*](https://www.courtlistener.com/recap/gov.uscourts.nysd.537245/gov.uscourts.nysd.537245.67.0.pdf), 513 F. Supp. 3d 374 (S.D.N.Y. 2021), U.S. District Court Judge Lewis J. Liman for the Southern District of New York found that § 7515 is preempted by the FAA, and thus cannot be used to exempt from arbitration claims that otherwise would be arbitrable under the FAA…. Judge Liman observed that two other courts in this district, [*White v. WeWork Cos*](https://cases.justia.com/federal/district-courts/new-york/nysdce/1:2020cv01800/533310/22/0.pdf?ts=1591975105)., No. 20-1800, 2020 WL 3099969 (S.D.N.Y. 2020) (McMahon, C.J.), and [*Latif v. Morgan Stanley & Co*](https://www.seyfarth.com/images/content/7/8/v1/7882/LatifvMorgan_Stanley.pdf)., No. 18-11528, 2019 WL 2610985 (S.D.N.Y. 2019) (Cote, J.), recently reached the same conclusion.”

**\*\*\*** [**Paper Outline and List of Resources**](http://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/565c9322e4b08c62b9ed2e81/1448907554988/Sample+Outline.pdfhttp:/www.proffriedman.homestead.com/files/outlineonline.htm) **Due \*\*\***

**Class 6 [Feb. 27]: Arbitration IV - Class Actions and Consumer Arbitration**

Assignment: Read AAA, [*Supplementary Rules for Class Arbitrations*](https://www.adr.org/sites/default/files/document_repository/Supplementary%20Rules%20for%20Class%20Arbitrations.pdf) (July 1, 2010). Also, FINRA Rules [12204](https://www.finra.org/rules-guidance/rulebooks/finra-rules/12204) (customer arbitrations) and [13204](https://www.finra.org/rules-guidance/rulebooks/finra-rules/13204) (industry), both of which state that class arbitrations are prohibited in the FINRA ADR forum and allow the investor/employee to opt out of arbitration to participate in a class action in court. See also FINRA [Rule 2268](https://www.finra.org/rules-guidance/rulebooks/finra-rules/2268), which governs the use of arbitration clauses in customer account agreements.

Read:

* N. Aschen, *Tearing Down the Wall Protecting Mandatory Arbitration: A Critical Evaluation of Mandatory Arbitration Clauses in Consumer Contracts*, 71:3 Disp. Res. Journal 55 (Dec. 2016). The author, class of 2017, is my former student (Spring 2016). The paper in PDF will be emailed to the students, with permission of the AAA.
* Sections 921, 922, and 1028 -- **only these sections** -- of the [Dodd-Frank Wall Street Reform and Investor Protection Act of 2010](http://docs.house.gov/rules/finserv/111_hr4173_finsrvcr.pdf). This link will give you the entire massive statute.
* [*Varela v. Lamps Plus, Inc.,*](https://www.supremecourt.gov/opinions/18pdf/17-988_n6io.pdf)139 S. Ct. 1407 (2019) (the Court holds 5-4 that an express agreement is required for there to be class arbitration)

* *[Abernathy v. DoorDash, Inc](https://static.reuters.com/resources/media/editorial/20200211/doordash--ordercompellingarbitration.pdf)*., 438 F.Supp.3d 1062 (N.D. Calif. 2020) (**Be careful what you ask for**: because of class action waiver, two groups of more than 5,000 drivers brought *individual arbitrations* at the AAA, resulting in a bill to DoorDash for over $12 million in administrative fees). *See, to the same effect*, [*Adams v. Postmates, Inc*](https://www.wagehourblog.com/files/2020/03/ND-of-CA_Jamal-Adams-et-al-vs.-Postmates-Inc_Order-Denying-Postmates-Motion-to-Stay-Pending-Appeal_03.05.2020.pdf)*.,* 414 F.Supp.3d 1246 (N.D. Calif. 2020), *aff’d*, [No 19-17362.](https://cases.justia.com/federal/appellate-courts/ca9/19-17362/19-17362-2020-09-29.pdf?ts=1601411433)(9th Cir. 2020) (employer compelled to participate and pay over $10 million in fees in over 10,000 individual AAA consumer arbitrations involving the same issue -- whether Postmates improperly classified them as independent contractors, rather than employees. In response, AAA promulgated [*Supplementary Procedures for Multiple Case Filings*](https://www.adr.org/sites/default/files/Supplementary_Rules_MultipleCase_Filings.pdf?mkt_tok=Mjk0LVNGUy01MTYAAAF-80zgXtWZ_5UTHc06_b-jKC0EbDK-dp3qdIKMGa3OuL6FFupArDSSlBWnXvxG5TQ0ZtfJo7-vwHgc0TOA3p2BKjAm6WnlswIxFFl4-oDHAHo) (Aug. 1, 2021).

Skim (cases discussed in the Aschen article):

* ***Each case below will be assigned to a student volunteer to present a brief summary in class, focusing on the core holding. Participation credit will be awarded. The rest of the class need not read the cases***.
* [*AT&T Mobility v Concepcion*](https://h2o.law.harvard.edu/cases/3607)*,* 131 S.Ct. 1740 (2011) (FAA permits class action waivers in arbitration clauses; preempts contrary state law)
* [*Stolt-Nielsen, S.A. v. AnimalFeeds International Corp*](https://supreme.justia.com/cases/federal/us/559/662/opinion.html). 559 U.S. 662 (2010) (“a party may not be compelled under the [Federal Arbitration Act] to submit to class *arbitration* unless there is a contractual basis for concluding that the party agreed to do so”)
* [*Oxford Health Plans, LLC v. Sutter*](https://supreme.justia.com/cases/federal/us/569/564/)*,* 133 S.Ct. 2064 (2013) (arbitrator’s Award ordering classwide *arbitration* upheld 9-0)
* [*American Express Co. v. Italian Colors Restaurant*](https://supreme.justia.com/cases/federal/us/570/12-133/)*,* 570 U.S. 228 (2013) (the parties expressly provided in their arbitration agreement that there would be no class wide arbitrations. Thus the plaintiffs’ sole recourse in this antitrust matter was an individual arbitration. Also, Court affirmed its prior decisions holding that a challenger must show that Congress, in enacting the involved federal statute, intended to bar arbitration of claims thereunder arising)

Supplemental:

* G. Friedman, [*Are We Seeing the Start of a Tectonic Shift on Mandatory PDAAs in the Financial Services Field?*](https://www.secarbalert.com/blog/are-we-seeing-the-start-of-a-tectonic-shift-on-mandatory-pdaas-in-the-financial-services-field/)(Jun. 10, 2021)
* K. Boy-Skipsey,[*FINRA Securities Arbitration is Fair and Beneficial to Investors and It Should Not Be Barred or Restricted*](https://files.constantcontact.com/4fbf8441301/741cbc48-5e3d-48b3-a897-e5940e11ff99.pdf) 2019:3 Securities Arbitration Commentator 1 (July 2019). The author is my former student (Spring 2019)
* [*An Ideologically Divided SCOTUS Holds 5-4 in Lamps Plus that Class Arbitration Takes Place Only Where the Parties Expressly Provide for It*](http://www.sacarbitration.com/blog/scotus-holds-5-4-in-lamps-plus-that-class-arbitration-takes-place-only-where-the-parties-expressly-provide-for-it/) (Apr. 26, 2019)

[[[**[Class 7 [Mar. 6]: Arbitration V - The Arbitration Hearing](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=949246)**](http://www.law.cornell.edu/ny/ctap/091_0039.htm)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/01-800.html)](http://www.proffriedman.homestead.com/files/arbhealthcare.pdf)

Assignment: Read [CPLR § 7506,](http://codes.lp.findlaw.com/nycode/CVP/75/7506) [FAA §7](http://codes.lp.findlaw.com/uscode/9/1/7). See also [these study aids](https://george-friedman.squarespace.com/s/Hearing-Study-Aids-2023.docx). We will view the short AAA video, [*Presenting Your Case in Arbitration*](https://www.youtube.com/watch?v=-pNpn9_Vf-A) and part of an AAA arbitrator training video ([read fact pattern](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2d13e4b0d415b9ad8544/1416506643270/hearing_video_fact_pattern.pdf)).

Also, read:

     [*ZF Automotive US, Inc. v. Luxshare, Ltd*.](https://www.supremecourt.gov/opinions/21pdf/21-401_2cp3.pdf), 142 S. Ct 2078 (Jun. 13): Court ruled unanimously that [28 U.S.C. § 1782(a)](https://www.law.cornell.edu/uscode/text/28/1782), which permits litigants to use American courts to obtain discovery in aid of “a foreign or international tribunal,” applies only to governmental fora and does not extend to private commercial arbitral tribunals.

* [*Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association*](https://adr.org/sites/default/files/Commercial_Rules_Web.pdf)(Sep. 1, 2022). **Read only the arbitration rules on hearings, rules R-25 to R-37.**
* Matthews, Ksenia, [*Distinguishing Discovery Procedures in Commercial Arbitration: A Comparative Analysis of AAA and FINRA Rules*](https://www.secarbalert.com/blog/distinguishing-discovery-procedures-in-commercial-arbitration-a-comparative-analysis-of-aaa-and-finra-rules/)*,* 2021:23 Sec. Arb. Alert 1 (Jun. 17, 2021). The author is my former student (Spring 2021)

Skim:

* FINRA [*Discovery Guide*](https://www.finra.org/sites/default/files/ArbMed/p394527.pdf)

Supplemental/Optional:

* Center for Public Resources, [*Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration*](https://www.cpradr.org/resource-center/protocols-guidelines/protocol-on-disclosure-of-documents-presentation-of-witnesses-in-commercial-arbitration/_res/id=Attachments/index=0/Protocol%20on%20Disclosure%20of%20Documents%20&%20Presentation%20of%20Witnesses%20in%20Commercial%20Arbitration%20Revised%202021.pdf)*.*
* Those interested in a comparative analysis of how different arbitration agencies appoint arbitrators should peruse Association of the Bar of the City of New York, [*Arbitrator Appointment Procedures of Arbitral Institutions in Commercial Arbitrations*](http://s3.amazonaws.com/documents.nycbar.org/files/2017366-Appointment_Procedures_Commercial.pdf) (April 2018)

**\*\*\* No Class March 13 – Spring Break \*\*\***

[[[**Class 8 [Mar. 20]: Arbitration VI – Enforcing or Challenging the Arbitration Award**](http://www.adr.org/index2.1.jsp?JSPssid=15747)](http://www.adr.org/index2.1.jsp?JSPssid=15747)](http://www.adr.org/index2.1.jsp?JSPssid=15747) **+ Growing Judicial Impatience with Frivolous Attacks on Awards**

Assignment: Read [CPLR §§ 7507-11](https://www.nysenate.gov/legislation/laws/CVP/A75) and [7515](https://www.nysenate.gov/legislation/laws/CVP/7515). Also [FAA §§ 9 -12](http://codes.lp.findlaw.com/uscode/9/1/9)

See also [these study aids](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e2d51e4b0f30e9c653ae5/1416506705392/award+vacatur+grounds.pdf). Please read the *AAA Commercial Arbitration Rules* [sections on arbitration awards](https://www.gfriedmanadr.com/s/Award-Study-Aids-2023.docx). See sample [AAA Award](http://www.arbchek.com/files/pdf/52%20Y%20148%2000144%2012.pdf) and FINRA [Award](https://www.finra.org/sites/default/files/aao_documents/21-00200.pdf).

🡪 We will also do a group [problem-solving exercise](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e32f8e4b0bb6434ea5eb2/1416508152581/vacate.pdf) on statutory grounds for vacating arbitration awards under the FAA and NY CPLR.

[[[[[Skim and be prepared to discuss:](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://www.adr.org/index2.1.jsp?JSPssid=15747)](http://www4.law.cornell.edu/uscode/9/ch1.html)](http://www.adr.org/index2.1.jsp?JSPssid=15747)](http://www.adr.org/index2.1.jsp?JSPssid=15747)

* ***Each case below will be assigned to a student volunteer to present a brief summary in class, focusing on the core holding. Participation credit will be awarded***. ***The rest of the class need only skim.***

      [*Commonwealth Coatings Corp. v. Continental Casualty Corp*](http://www.law.cornell.edu/supremecourt/text/393/145)., 393 U.S. 145 (1968), *reh. den*. 393 U.S. 1112 (1969) (deals with **arbitrator bias** ground for vacating under FAA; failure to disclose a relationship with an arbitration participant creates an “impression of possible bias”)

And skim: [*Morelite Constr. Corp. v, New York City Dist. Council*](https://www.casemine.com/judgement/us/5914c305add7b049347c386c), 747 F.2d 79 (2d Cir. 1984), and [*U.S. Electronics v. Sirius Satellite Radio*](http://www.courts.state.ny.us/CTAPPS/Decisions/2011/Nov11/185mem11.pdf)*,* 17 N.Y.3d 912 (2011) (“impression of possible bias” standard in plurality decision in *Commonwealth* is not controlling; a “reasonable person” standard should be used to decide challenges for arbitrator bias under the FAA, in both New York and the Second Circuit)*.*

* [*Wilko v. Swan*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=346&invol=427), 346 U.S. 427, 74 S.Ct. 182 (1953). Read **only** the text surrounding the dicta on “manifest disregard” of the law.

Also [*Stolt-Nielsen, S.A. v. AnimalFeeds International Corp*](https://supreme.justia.com/cases/federal/us/559/662/opinion.html). 559 U.S. 662 (2010) **FN 3 only** (“**manifest disregard” of the law**)

* [*Hall Street Associates v. Mattel*,](https://supreme.justia.com/cases/federal/us/552/576/) 552 U.S. 52 (2008) (limits of attacks permitted by the FAA)

* *[Badgerow v. Walters](https://www.supremecourt.gov/opinions/21pdf/20-1143_m6hn.pdf)*, 142 S.Ct. 1310 (Mar. 31, 2022) (case involving a FINRA award -- where the Court ruled 8-1 that the “look through” doctrine does not apply to actions to confirm or vacate an arbitration award under sections 9 and 10 of the Federal Arbitration Act (“FAA”), even though it does for motions to compel arbitration under section 4))

[[[[For Those Writing on the Topic:](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/393/145.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=977801&exact=1)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=977801&exact=1)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/346/427.html)

* [*Masseau v. Luck*](http://www.vermontjudiciary.org/sites/default/files/documents/op20-131.pdf), 2021 VT 9 (Feb. 19, 2021) (unanimous 5-0 holding – with two “reluctant” occurrences – cites several core SCOTUS holdings, including that: the **sole grounds for moving to vacate** are those articulated in the FAA ([*Hall Street v. Mattel*](https://www.law.cornell.edu/supct/html/06-989.ZS.html)*,*552 U.S. 52 (2008)) [while “manifest disregard of the law” may still be viable, awards cannot be vacated for ordinary errors of law])
* [*MEMC II, LLC v. Cannon Storage Sys., Inc*](https://casetext.com/case/memc-ii-llc-v-cannon-storage-sys-inc-1)*.*, 763 F. App'x 698 (10th Cir. 2019) (nice primer on FAA vacatur limitations)
* [*Barr v. Tigerman*](https://scholar.google.com/scholar_case?case=14328027920395702567&hl=en&as_sdt=6&as_vis=1&oi=scholarr), 140 Cal.App.3d 979 (1983) (arbitrator held liable for late award; since legislatively overruled)
* [*Stevens v. Jiffy Lube International*](https://cases.justia.com/federal/appellate-courts/ca9/17-15965/17-15965-2018-12-27.pdf?ts=1545933673), 911 F. 3d 1249 (9th Cir. 2018) (FRCP governs how to calculate the three-month time period in FAA § 12 for moving to vacate awards)
* [*Garrity v. Lyle-Stuart*](http://scholar.google.com/scholar_case?case=14016683496433993604&hl=en&as_sdt=2&as_vis=1&oi=scholarr), 40 N.Y.2d 354, 386 N.Y.S.2d 831 (1976)(**punitive damages**)
* G. Friedman, [*Like Rodney Dangerfield,*Commonwealth Coatings *“Don’t Get No Respect” – and it Shouldn’t!*](http://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/55ae4954e4b0f7975558af11/1437485396245/SAC+2015-03Feature+Dangerfield.pdf)*,* 2015:3 Securities Arbitration Commentator 1 (July 2015)
* G. Friedman, [*Federal Courts on Frivolous Motions to Vacate Arbitration Awards: “I’m Mad as Hell and I’m Not Going to Take this Anymore!”*](https://www.arbresolutions.com/federal-courts-frivolous-motions-vacate-arbitration-awards/#.VG4Sk_ldX84) (Sep. 12, 2013)
* Timken, Nelson, [*A Survey: When Does Functus Officio Permit an Award’s Clarification or Correction?*](https://www.secarbalert.com/blog/a-survey-when-does-functus-officio-permit-an-awards-clarification-or-correction/)*,* 2021:30 Sec. Arb. Alert 1 (Aug. 12, 2021). The author is my former student (Spring 2021).

[[[**[Class 9 [Mar. 27]: Arbitration VII – Statutory Employment Arbitration](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/u10306.html)**](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/u10306.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/u10306.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/u10306.html)

Assignment: Read [FAA §§ 1 – 2](http://codes.lp.findlaw.com/uscode/9/1/1). Read [*Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021*](https://www.congress.gov/bill/117th-congress/house-bill/4445) (“the Act”), codified at Federal Arbitration Act (“FAA”) [Chapter 4](https://www.law.cornell.edu/uscode/text/9/chapter-4). This new law expressly amends the FAA to make predispute arbitration agreements voidable at the option of the victim. The law was effective immediately March 3, 2022 for: “any dispute or claim that arises or accrues on or after the date of enactment of this Act.” See amended CPLR [section 7515](https://www.nysenate.gov/legislation/laws/CVP/7515), prospectively rendering null and void mandatory predispute arbitration agreements covering employment discrimination disputes, *“except where inconsistent with federal law”* (effective October 2019)

Read:

* ***Each case below will be assigned to a student volunteer to present a brief summary in class, focusing on the core holding. Participation credit will be awarded. The rest of the class need only skim***.
  + [*Gilmer v. Interstate/Johnson Lane Corp*](https://supreme.justia.com/cases/federal/us/500/20/case.html)*.,* 500 U.S. 20 (1991) (first case dealing with arbitrability of claims asserted under federal statutes protecting employees). This was a skim case for the February 24 FAA preemption class.
* [*Circuit City Stores v. Adams*](http://www.law.cornell.edu/supct/html/99-1379.ZO.html)*,*532 U.S. 105 (2001) (FAA section 1 exemption for “workers engaged in interstate commerce” is narrowly construed)
* [*New Prime, Inc. v. Oliviera*](https://www.supremecourt.gov/opinions/18pdf/17-340_o7kq.pdf), 139 S. Ct. 1407(2019) (does FAA section 1 cover independent contractors or only “employees”?)
  + [*Southwest Airlines Co. v. Saxon*](https://www.supremecourt.gov/opinions/21pdf/21-309_o758.pdf), 142 S.Ct. 1783 (Jun. 6, 2022) (Court ruled unanimously that the FAA [section 1](https://www.law.cornell.edu/uscode/text/9/1) exemption of “workers engaged in foreign or interstate commerce” includes classes of workers who are part of the flow or stream of interstate commerce, and that there is no FAA requirement that these individuals actually cross state lines.)

Skim:

* + Friedman, George*,* [*President Biden Signs Into Law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act. It Became Effective Immediately – Part I*,](https://www.secarbalert.com/blog/ending-forced-arbitration-of-sexual-assault-and-sexual-harassment-act-to-become-law/) 2022:08 Sec. Arb. Alert 1 (Mar. 3, 2022)
  + Friedman, George, [*President Biden Signs Into Law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act. It Became Effective Immediately – Part II*](https://www.secarbalert.com/blog/president-biden-signs-into-law-the-ending-forced-arbitration-of-sexual-assault-and-sexual-harassment-act-it-became-effective-immediately-on-march-3-part-ii/)*,* 2022:09 Sec. Arb. Alert 1 (Mar. 10, 2022)

* *[Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relationship](https://www.adr.org/sites/default/files/document_repository/Employment%20Due%20Process%20Protocol_0.pdf)* (1995)

🡪 We will also do a group problem-solving [exercise](https://george-friedman.squarespace.com/s/employment-Exercise-current.docx) on key issues in employment arbitration.

[[[[Supplemental/Optional Materials:](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=977801&exact=1)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=977801&exact=1)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/346/427.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/393/145.html)

* Friedman, Gary D., Chan, Celine J., and Ramsini, Larsa K., [*Is This the “Last Mile” for the “Last Mile Drivers”? Navigating the Federal Arbitration Act’s Transportation Worker Exemption*](https://www.weil.com/-/media/mailings/2021/q2/employer-update_may-2021.pdf)*,* Weil, Gotshal & Manges LLP Blog (May 2021)
* [*Epic Systems Corp. v. Lewis*](https://www.supremecourt.gov/opinions/17pdf/16-285_q8l1.pdf), 137 S.Ct. 809 (2018) (FAA trumps NLRA) This case was covered in Class 5.
* [*The FAA Precludes New York From Exempting Claims From Arbitration*](https://www.maglaw.com/publications/articles/2021-02-17-the-federal-arbitration-act-precludes-new-york-from-exempting-claims-from-arbitration/_res/id=Attachments/index=0/NYLJ02162021480634Morvillo.pdf), NYLJ (Feb. 17, 2021): “In [*Gilbert v. Indeed*](https://www.courtlistener.com/recap/gov.uscourts.nysd.537245/gov.uscourts.nysd.537245.67.0.pdf), No. 20-3826, 2021 WL 169111 (S.D.N.Y. Jan. 19, 2021), U.S. District Court Judge Lewis J. Liman for the Southern District of New York found that §7515 is preempted by the FAA, and thus cannot be used to exempt from arbitration claims that otherwise would be arbitrable under the FAA…. Judge Liman observed that two other courts in this district, [*White v. WeWork Cos*](https://cases.justia.com/federal/district-courts/new-york/nysdce/1:2020cv01800/533310/22/0.pdf?ts=1591975105)., No. 20-1800, 2020 WL 3099969 (S.D.N.Y. June 11, 2020) (McMahon, C.J.), and [*Latif v. Morgan Stanley & Co*](https://www.seyfarth.com/images/content/7/8/v1/7882/LatifvMorgan_Stanley.pdf)., No. 18-11528, 2019 WL 2610985 (S.D.N.Y. June 26, 2019) (Cote, J.), recently reached the same conclusion.”

[[[**[Class 10 [Apr. 3]: Arbitration VIII - Ethical Issues](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)**](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)

[[[[Assignment: Read:](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981246a.html) [*Revised AAA/ABA Code of Ethics for Arbitrators in Business Disputes (2004*)](https://www.adr.org/sites/default/files/document_repository/Commercial_Code_of_Ethics_for_Arbitrators_2010_10_14.pdf); JAMS [*Arbitrators Ethics Guidelines*](https://www.jamsadr.com/arbitrators-ethics/); and FINRA’s [*Oath of Arbitrator and Disclosure Checklist*](https://pdf4pro.com/view/oath-of-arbitrator-finra-org-49f113.html)*.*

🡪 We will also do a group problem-solving [exercise](https://george-friedman.squarespace.com/s/Ethics-Problems-Handout-current.docx) on ethics in arbitration (see [study aid](https://george-friedman.squarespace.com/s/ETHICS-Study-Aid-current.docx) on ethics and arbitration Codes, Rules, etc.)

Supplemental/Optional:

* FINRA’s [*Arbitrator Disqualification Criteria*](https://www.finra.org/arbitration-mediation/disqualification-criteria)
* [*AAA/ABA/ACR Model Standards of Conduct for Mediators*](https://cdn.ymaws.com/acrnet.org/resource/resmgr/docs/MODEL_STANDARDS_OF_CONDUCT.pdf) (revised Sep. 2005)
* New York State Bar Ass’n Cmte. on Professional Ethics, [Opinion No. 1178](https://nysba.org/ethics-opinion-1178/): *Lawyer as Third-party Neutral* (Dec. 13, 2019)
* Friedman, George, [*Michigan Revises Attorney Conduct Rules to Regulate PDAAs in Retainer Agreements*](https://www.secarbalert.com/blog/michigan-revises-attorney-conduct-rules-to-regulate-pdaas-in-retainer-agreements/) (Aug. 17, 2022)

     [*ABA/College of Commercial Arbitrators, Annotated Code of Ethics for Arbitrators in Commercial Disputes (2014)*](http://www.finra.org/sites/default/files/ArbMed/p123778.pdf)

[[**\*\*\* DRAFT PAPERS DUE 4/7/2023 (if being submitted) \*\*\***](http://www.ilr.cornell.edu/alliance/model_standards_of_conduct_for_m.htm)](http://www.ilr.cornell.edu/alliance/model_standards_of_conduct_for_m.htm)

**\*\*\* No Class April 10 – Easter Break \*\*\***

[**[Class 11 [Apr. 17]: Arbitration IX - International Arbitration](http://www.ilr.cornell.edu/alliance/model_standards_of_conduct_for_m.htm)**](http://www.ilr.cornell.edu/alliance/model_standards_of_conduct_for_m.htm)

Assignment: Read [*International Dispute Resolution Procedures*](https://go.adr.org/rs/294-SFS-516/images/ICDR_Rules.pdf)(March 1, 2021); this [short article](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e3418e4b02c501fb0004d/1416508440777/taba017.pdf) about nation-nation arbitration; Article 31 of the [US-Mexico-Canada Agreement](https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between). See [list](http://www.arbitration-links.de/printable/00000099670ba0802/index.html) of global international ADR organizations.

We view a few minutes of:

* [*The Quiet Triumph – How Arbitration Changed the World*](https://vimeo.com/205567614)
* [Short video](https://youtu.be/MMpApbfTjqY) on 60th anniversary of the *NY Convention*

Also read:

* G. Friedman, [*Enforcing International Arbitration Awards*](https://www.arbresolutions.com/enforcing-international-arbitration-awards/)) (Aug. 9, 2018)
* G. Friedman, [*AAA’s Amended International Rules: An Analysis*](https://www.secarbalert.com/blog/aaas-amended-international-rules-an-analysis) (Mar. 25, 2021)
* *[United Nations Convention on the Recognition and Enforcement of Foreign Arbitration Awards](https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards)* a/k/a the “New York Convention” (1958) (text and [list of signatory countries](https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2))
* Federal Arbitration Act [Chapter 2](https://codes.findlaw.com/us/title-9-arbitration/#!tid=N59BE098C56D6415295B278762941A2C8), §§ 201-208 (1970) (implements the NY Convention)

Skim the following for the core holding:

***Each case below will be assigned to a student volunteer to present a brief summary in class, focusing on the core holding. Participation credit will be awarded. The rest of the class need only skim these cases.***

* [*C&L Enterprises, Inc. v. Potawatomi Indian Tribes of Oklahoma*](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=00-292)*,* 532 U.S. 411 (2001) (waiver of sovereign immunity by Native American tribes via arbitration clause?)
* [*Blue Ridge Investments, LLC v. Republic of Argentina*](http://f.datasrvr.com/fr1/513/31245/4_Blue_Ridge_v_Argentina.pdf)*,* 735 F.3d 72 (2d. Cir. 2013) (did Argentina impliedly waive its immunity by becoming a party to the ICSID Convention?)
* [*Yusef Ahmed Alghanim & Sons. v. Toys “R” Us, Inc.*](https://caselaw.findlaw.com/us-2nd-circuit/1096715.html)*,*126 F.3d 15 (2d Cir. 1997) (delineates grounds available under the FAA to vacate international award)

* *[Goldgroup Resources, Inc. v. DynaResource De Mexico, S.A. de C.V.](https://cases.justia.com/federal/appellate-courts/ca10/20-1143/20-1143-2021-04-16.pdf?ts=1618588866)*, 994 F. 3d 1181 (10th Cir. 2021): in a case of first impression, the Tenth Circuit holds unanimously that, an “international” Award resulting from an arbitration conducted in the U.S. but subject to the [*Inter-American Convention on International Commercial Arbitration*](http://www.oas.org/en/sla/dil/inter_american_treaties_B-35_international_commercial_arbitration.asp) (the “*Panama Convention*”), may be attacked under § 10(a)(4) of the Federal Arbitration Act, in addition to the grounds enumerated in the *Convention*)
* [*GE Energy Power Conversion France SAS v. Outokumpu Stainless USA LLC*](https://casetext.com/case/ge-energy-power-conversion-france-sas-v-outokumpu-stainless-usa-llc), 140 S. Ct. 1637 (2020) (Supreme Court holds unanimously that the equitable estoppel doctrine can be used by a non-signatory to compel a signatory to arbitrate under the *UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and the Federal Arbitration Act)

***Also, please see this*** [***study aid***](https://george-friedman.squarespace.com/s/INTLCOMP2022-Rules.docx) ***comparing the AAA’s international and commercial arbitration rules.***

Those writing about or very interested in international ADR:

* History, texts, list of signatory countries and dates of ratification of the *NY Convention* should peruse <http://www.newyorkconvention.org/>, where all this and more may be found. Especially useful is a comprehensive, searchable [database](http://www.newyorkconvention.org/court+decisions/decisions+per+topic) of court cases from signatory countries applying the *Convention.*
* [*UN Convention on International Settlement Agreements Resulting from Mediation*](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/EN/Texts/UNCITRAL/Arbitration/mediation_convention_v1900316_eng.pdf), effective September 12, 2020 (see [list of signatory countries](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status))
* Consider subscribing to [*Global Arbitration News*](https://globalarbitrationnews.com/) (free)
* The Investment Treaty Arbitration [Website](http://www.italaw.com) publishes arbitration Awards and other case documents that, as the name implies, arise from various investment treaties calling for arbitration. This free service has a searchable database that not only has Awards from around the globe, but also contains related court decisions and other documents, and a [list](https://www.italaw.com/resources/investment-treaties) of investment treaties.
* See [*Internaves de Mexico S.A. de C.V. v. Andromeda Steamship Corp*.](https://cases.justia.com/federal/appellate-courts/ca11/17-12164/17-12164-2018-08-01.pdf?ts=1533133838), 898 F.3d 1087 (11th Cir. 2018) (provides a nice primer on the history of the Convention and the interplay between FAA [Chapters 1](https://www.law.cornell.edu/uscode/text/9/chapter-1) and [2](https://www.law.cornell.edu/uscode/text/9/chapter-2))
* The October 2021 Squire Patton Boggs Blog has an excellent primer on the Singapore Convention titled [*Recent Developments in International Dispute Resolution: Australia Signs the Singapore Convention*](https://www.squirepattonboggs.com/en/insights/publications/2021/10/recent-developments-in-international-dispute-resolution-australia-signs-the-singapore-convention)

[**[Class 12 [Apr. 24]: Hybrid ADR Systems](http://www.adr.org/index2.1.jsp?JSPssid=15747)**](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/00%2D292.html)**: COVID-19 Accelerates the Trend to Online ADR**

* Assignment: Review the “[ADR Continuum](http://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546b87afe4b0ec4522ffc889/1416333231795/ADR+continuum.pdf)” and read G. Friedman*,* [*A Funny Thing Happened on the Way to a Quiet Year in ADR: How a Pandemic Accelerated Profound, Lasting Changes*](https://www.secarbalert.com/blog/a-funny-thing-happened-on-the-way-to-a-quiet-year-in-adr-how-a-pandemic-accelerated-profound-lasting-changes/)*,* 2021:1 Securities Arbitration Alert 1 (Jan. 6, 2021)

Also read (fear not; these are all short):

* Read G. Friedman, [*On the 1st day of Christmas/Chanukah/Kwanzaa, My True Love Gave to me…a New Form of ADR*](https://www.arbresolutions.com/1st-day-christmaschanukahkwanzaa-true-love-gave-mea-new-form-adr/) (Dec. 23, 2014).
* [*Avista Management v. Wausau Ins. Co*](https://archive.fortune.com/2006/06/07/magazines/fortune/judgerps_fortune/index.htm)*.,* M.D. Fla. (2006) (the ultimate in court-annexed ADR). Also, [*Judge Orders a Truly Alternative Dispute Resolution*](https://www.legaljuice.com/post_411/)(Apr. 29, 2012)
* [*Zapruder Heirs Get $16 Million for Dallas Film*](http://www.nytimes.com/1999/08/04/us/zapruder-heirs-get-16-million-for-dallas-film.html)*,* NY Times (Aug. 4, 1999)
* [*Letter from the Editor: Change the FINRA Arbitration Code to Support Virtual Hearings*](https://www.secarbalert.com/blog/letter-from-the-editor-change-the-code-to-support-virtual-hearings/) (May 8, 2020)

🡪 We will also do a group problem-solving [exercise](https://george-friedman.squarespace.com/s/hybrid-group-exercises-current.doc) on hybrid forms of ADR.

Skim:

* D. C. Toedt III*,* [*EVALOA: A Better Way to Facilitate Settlements in Arbitration*](https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Evaluation%20Last%20Offer%20Arbitration_DC%20Toedt.pdf)(undated)
* [*ODR: Online Dispute Resolution Explained*,](https://www.adrtimes.com/online-dispute-resolution/) ADR Times (Dec. 1, 2021)

Supplemental/Optional:

* National Center for Technology and Dispute Resolution, [*Bibliography of Online ADR*](https://drive.google.com/file/d/11N-aWX3hxMjI1EUoWSegXTB7ka8xpOaG/view) (Nov. 2022)
* FINRA Dispute Resolution Services half-hour Neutral Workshop [video,](https://www.finra.org/arbitration-mediation/neutral-workshop-audio-and-video-files) *Tips for Virtual Hearings,* which was recorded December 2020
* Marrow, Paul Bennett and Karol, Mansi and Kuyan, Steven, [*Artificial Intelligence and Arbitration: The Computer as an Arbitrator — Are We There Yet?*](https://ssrn.com/abstract=3709032) 74 Dispute Resolution Journal 35 (Oct. 1, 2020)
* **ACUS Report on Federal Agency ADR Use.** The Administrative Conference of the United States in December 2021 issued [*Alternative Dispute Resolution in Agency Administrative Programs*](https://www.acus.gov/sites/default/files/documents/Final%20Report_ALTERNATIVE%20DISPUTE%20RESOLUTION%20IN%20AGENCY%20ADMINISRATIVE%20PROGRAMS%20(Dec%2017,%202021).pdf)*.* The 76-page report, authored by Kristen Blankley, Kathleen Claussen & Judith Starr, “studies how federal agencies use and might better use different types of ADR —including mediation, conciliation, facilitation, factfinding, minitrials, arbitration, and the use of ombuds—in the programs Congress has entrusted them to administer. It also addresses the use of ADR to resolve disputes before the initiation of a formal agency adjudicative proceeding or litigation involving the agency’s enforcement authority.”
* C. McCann and C. Qin, [*The Impact of ZOOM on FINRA Arbitration Hearings*](https://www.slcg.com/pdf/sampleresults/Impact%20of%20Zoom%20on%20FINRA%20Claimants%20Final.pdf), Securities Litigation and Consulting Group Blog (Jan. 2021) (contends that virtual hearings have not been beneficial to customer recovery prospects)

[[**Class 13 [May 1]: FINAL CLASS - Drafting the ADR Clause; Putting it All Together**](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/00%2D292.html)](http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/00%2D292.html)**. What does the future hold?**

Assignment: Read AAA, [*Drafting Dispute Resolution Clauses: a Practical Guide*](https://www.adr.org/sites/default/files/document_repository/Drafting%20Dispute%20Resolution%20Clauses%20A%20Practical%20Guide.pdf) and

[*JAMS Clause Workbook: A Guide to Drafting Dispute Resolution Clauses for Commercial Contracts*](https://www.jamsadr.com/files/Uploads/Documents/JAMS-Rules/JAMS-ADR-Clauses.pdf). View short AAA [videos](https://go.adr.org/aaaicdr-clauses.html) on clause drafting.

Also read my short blog post:

* [*Arbitration – Still the Wave of the Future*](https://www.arbresolutions.com/arbitration-still-the-wave-of-the-future/) (Aug. 16, 2018)

🡪 Students will be grouped in Zoom breakout teams for the purpose of developing an ADR clause for a given [set of facts](https://static.squarespace.com/static/53272e28e4b055350d946bcb/t/546e34e5e4b0116c45f5a3ee/1416508645565/drafting_form.pdf).

**Skim:**

* **AAA’s** [ClauseBuilder](https://www.clausebuilder.org/cb/faces/index?_afrLoop=923855852511304&_afrWindowMode=0&_adf.ctrl-state=rgv7bbcfr_4)**TM system**
* **CPR’s** [*Model ADR Clauses*](https://www.cpradr.org/resource-center/model-clauses/mediation-model-clauses)

**\*\*\* Friday May 5, 2023: TERM PAPERS DUE \*\*\***

**[FORDHAM UNIVERSITY SCHOOL OF LAW](http://law.fordham.edu/)**

[[[**Commercial Arbitration for Business Disputes**](http://www.adr.org/index2.1.jsp?JSPssid=9714&JSPsrc=upload\LIVESITE\Rules_Procedures\ADR_Guides\clausebook.html)](http://www.adr.org/index2.1.jsp?JSPssid=9714&JSPsrc=upload\LIVESITE\Rules_Procedures\ADR_Guides\clausebook.html)](http://www.adr.org/index2.1.jsp?JSPssid=9714&JSPsrc=upload\LIVESITE\Rules_Procedures\ADR_Guides\clausebook.html)

[[[**List of Topics for Student Papers**](http://www.fordham.edu/law)](http://www.fordham.edu/law)](http://www.adr.org/index2.1.jsp?JSPssid=9714&JSPsrc=upload\LIVESITE\Rules_Procedures\ADR_Guides\clausebook.html)

[[[1. Dispositive Motions in Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[2. Class Actions and Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[3. The Arbitration of Statutory Rights](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm) Claims

[[[4. Arbitrator Immunity](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[5. ADR and the Unauthorized Practice of Law](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[6. The Arbitration Clause as an Enforceable Contract of Adhesion](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[7. The Arbitration of Consumer Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[8. The Use of Discovery in Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm) (by agreement; ADR rules; FAA section 7)

[[[9. Judicial Review of Arbitration Awards](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[10. Mandatory ADR and the Right to a Jury Trial](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[11. Time Bars and Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[12. The Arbitrator's Duty to Disclose](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[13. Punitive Damages in Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[14. Enforceability of Online ADR Agreements](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[15. Enforceability of Agreements to Mediate](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[16. Must the Mediator Ensure Fairness?](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[17. Arbitration of Non-union Employment Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[18. Arbitration of Securities Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[19. Arbitration of Bankruptcy Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[20. The Use of ADR to Resolve Amateur Sports Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[21. The Use of ADR to Resolve Professional Sports Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[22. Use of Minitrial to Resolve Complex, Multi-Party Cases](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[23. Enforceability of Arbitration Awards Abroad [specify nation:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[24. Enforceability of Foreign Arbitration Awards in the U.S.](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

25. Federal Arbitration Act Preemption of State Law (statutory and judge-made)

26. Federal Arbitration Act Preemption of Federal Statutes (25 and 26 may be combined)

27. Arbitration rights under the Equitable Estoppel Doctrine

28. The “look through” doctrine and FAA federal jurisdiction

[[**[INFORMATION REGARDING PAPER REQUIREMENT](http://www.fordham.edu/law)**](http://www.fordham.edu/law)](http://www.fordham.edu/law)

Successful completion of this course requires that students fulfill a writing requirement by submitting a paper on a pre-approved topic. [[[Requirements are discussed below.](http://www.fordham.edu/law)](http://www.fordham.edu/law)](http://www.fordham.edu/law)

[[[***Paper Requirements***](http://www.fordham.edu/law)](http://www.fordham.edu/law)](http://www.fordham.edu/law)

Students are to prepare a 5,000 to 6,000-word, double-spaced paper (including notes) on a pre-approved topic. As to a page count, after years of experience, I decided to go with a **word** requirement, rather than **pages**. The reason: there are too many variables in terms of font type, font size, and margins. For example, a 5,200 word paper translates to: 45 pages in double spaced 12-point Courier typeface; and 37 pages in 11 point Ariel. The [*Blue Book*](https://www.legalbluebook.com/)*\** citation method should be followed. The usual number of footnotes will be about 50.

Deadlines are as follows:

* Select Topic: A topic should be selected by **February 6, 2023** using the form below OR by sending the Professor an email at [GFriedman@fordham.edu](mailto:GFriedman@fordham.edu). If a student desires to write about a topic not on the list, specific approval from Prof. Friedman is required. There is **no** subject matter preemption (more than one student can write about the same topic). ***Students can change their topic later if they desire; just advise the Professor by email***.
* Submit Short Outline: A short [Outline and List of Resources](http://static1.squarespace.com/static/53272e28e4b055350d946bcb/t/565c9322e4b08c62b9ed2e81/1448907554988/Sample+Outline.pdfhttp:/www.proffriedman.homestead.com/files/outlineonline.htm) is to be submitted by **February 20, 2023.** It should be no more than 2 - 3 pages in length, consisting of the basic outline the student intends to follow, and a list of just **the major** resources to be used (key cases, articles, authorities, etc.)
* Submit Draft Paper: Submit draft paper **by April 7, 2023** if you are using this course to satisfy the [Upper Class Writing Requirement](https://www.fordham.edu/info/21439/academic_regulations#:~:text=Upper%20Class%20Writing%20Requirement&text=The%20student%20must%20present%20a,carefully%20presented%2C%20and%20clearly%20written.). (see Academic Regulation V). All other students are not required to submit a draft paper, but you may do so if you desire.
* Submit Final Paper: The final paper is due **May 5, 2023.** ***There is a mandatory half-grade deduction for unexcused late submissions.***

\*See this free online *Blue Book* [cite generator](http://www.citethisforme.com/us/styles/bluebook-citation-generator) (not endorsed; just FYI)

[[[**SELECTION OF PAPER TOPIC**](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[**Commercial Arbitration for Business Disputes**](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[Student Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[**PAPER Topic Selected (circle number):**](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

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[[[13. Punitive Damages in Arbitration](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[14. Enforceability of Online ADR Agreements](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[15. Enforceability of Agreements to Mediate](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[16. Must the Mediator Ensure Fairness?](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[17. Arbitration of Non-union Employment Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[18. Arbitration of Securities Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[19. Arbitration of Bankruptcy Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[20. The Use of ADR to Resolve Amateur Sports Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[21. The Use of ADR to Resolve Professional Sports Disputes](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[22. Use of Minitrial to Resolve Complex, Multi-Party Cases](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[23. Enforceability of Arbitration Awards Abroad [specify nation:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

[[[24. Enforceability of Foreign Arbitration Awards in the U.S.](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

25. Federal Arbitration Act Preemption of State Law (statutory and judge-made)

26. Federal Arbitration Act Preemption of Federal Statutes (25 and 26 may be combined)

27. Arbitration rights under the Equitable Estoppel Doctrine

28. The “look through” doctrine and FAA federal jurisdiction

[[[Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)](http://www.proffriedman.homestead.com/files/outlineonline.htm)

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