

General Arbitration
Syllabus and Course Information
Professor Kendall D. Isaac

Course Overview and Objectives

This course will examine arbitration principles and practices and how the courts have progressed in the acceptance of it as a legitimate forum for the binding resolution of disputes. The course will discuss all aspects of arbitration, including the Federal Arbitration Act (FAA), state and federal court interpretations of arbitration provisions and proceedings, and issues within arbitration such as unconscionability, adhesion, compulsion, and public policy concerns. The class will consist of lectures, small group work, open discussions, and simulations and exercises to help reinforce the principles discussed. The objectives of this course are as follows:

- (1) To increase your understanding of arbitration theory and practice;
- (2) To increase your awareness of the advantages and disadvantages of arbitration; and
- (3) To teach you about how to creatively solve problems, design arbitral processes and resolve disputes.

Required Materials

Carbonneau, Thomas, *Cases and materials: Arbitration Law and Practice*
(6th ed.)

Contact Information

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While I do not have office hours, if you would like to set up an appointment, please call or e-mail me. If I need to contact you, I will use your Capital e-mail account or your mailbox here at school. You are responsible for checking these locations regularly.

Class Attendance and Participation

The Law School has a mandatory attendance policy, pursuant to which any student who misses more than 20% of classes will receive an "F." In addition to the mandatory Law School policy, in my class your grade may be adjusted downward up to a full letter grade for unexcused absences, excessive tardiness, or lack of class preparedness or participation in the exercises, discussions, and role play activities. Likewise, your grade may be upward for exceptional attendance, preparedness and participation.

Classroom Policies

You will fill out a seating chart on the first day of class, and I'd ask that you sit in the same seat for the semester. Laptop or notebook computers are permitted only for use in taking notes and only if they are not distracting to others. Cell phones should be turned off or put on vibrate, and other electronic devices are not permitted. If your electronic devices become a distraction, it will negatively impact your grade.

Assignments

As you do the readings, consider what makes sense to you and what does not. Do not assume that everything in the readings is the only or necessarily correct perspective. For most issues in this course, there are multiple valid perspectives. Consider what generalizations you can develop that you can use to advance your clients' interests.

Discussion in class will inevitably cover some but not all of the material in the readings. If you have questions about the readings, please ask them, preferably in class. Readings for class are also listed below. There may be supplemental readings assigned throughout the semester. There may be short written assignments distributed as well that will require some work both inside and outside of the classroom.

Grading

1. **10%** Attendance, preparation and participation. Students are expected to attend class, and to be on time. You should come to class prepared to discuss all of the cases, articles and other content in the text and to participate in the role play activities and exercises. Students are expected to volunteer in class, but will be called on if there are no volunteers. The quality, not quantity, of class participation is important. If a student is not prepared to participate in the discussion intelligently, I may consider that student absent from class.
2. **30%** Motion Project. The paper should be no less than 5 and no more than 15 pages long, in a 12-point font, one-inch margins on each page, double-spaced. As a helpful hint, if your paper is only 5 pages, it must be exceptional in order to secure a decent grade on the project. The paper should look and read exactly like a motion worthy of filing in court, as you will be graded on style as much as content. Your text book contains all of the case law necessary to complete the project; outside research is unnecessary. Your motion will be either a memorandum in opposition or a memorandum in support of arbitration. We will discuss which side you will argue in class. The fact pattern is below. You must work alone on this project. The project is due by 12 Noon on Monday.
3. **60%** Final Exam. The exam will be a take-home exam. In real life you will be able to utilize resources to answer challenging legal questions. Therefore, you can utilize your book and notes for the exam in this class. You will have the entire weekend to complete the exam and turn it in. The exam will be distributed at the end of Class 5 on Friday and turned in no later than the following Monday by 12 Noon.

Readings and Due Dates

Understand that because this class is condensed into one week, there are substantial reading assignments. I will let you know that you do not need to read any of the **Notes and Questions** sections that appear frequently in the book. I will not test you on any of the material in these areas. They do, however, provide insight (albeit heavily opinionated at times) into the subject matter that you might find interesting. The most important thing to understand and absorb is the case law. I will not expect you to know the names of cases, but I expect you to grasp the concepts within them. We may not cover all of the cases in class but we will certainly cover, and you will be tested on, the concepts.

- Class 1 – Chapters 1 through 3
- Class 2 – Chapter 4
- Class 3 – Chapter 5
- Class 4 – Chapter 8
- Class 5 – Chapters 6, 7 and 9 (Sections 1 through 4 only)

Note that I do not expect you to have a mastery of any of the topics in these chapters assigned for Class 5. We will skim through these chapters. If there is anywhere you can take a shortcut in the readings, it would be here. I do expect you to be able to engage in class discussions on the issues discussed on this day, because by this time you should be grasping where the courts are headed in regards to arbitral proceedings.

Motion Project Fact Pattern

Bob's Construction (BC) is domiciled and builds new homes in Ohio. BC presented a contract to Ohio based Suzy's Gardens (SG), where SG would provide flowers, grass and shrubs for the lawns of the houses. The contract has the following provision:

Arbitration. All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the state of Ohio or another location mutually agreeable to the parties. An award of arbitration may be confirmed in a court of competent jurisdiction. There will be a 3 arbitrator panel and the fees will be paid by the losing party. The arbitrator can only award compensatory damages.

SG was to be paid \$2,000 per home. Six months into the contract, SG had not been paid for any of the ten lawns she worked on for BC. BC is refusing to pay because eight of the lawns died. SG says it is because of unseasonably hot weather and because BC didn't water them. BC claims it is because SG didn't water them. The contract is silent on who is to water the lawns. Before Suzy could take action, she took ill and has become incompetent. Her daughter Beth is now owner of the company, but under the same name. The contract does not indicate if it flows to heirs and assigns. Beth, believing she should have the right to take this matter to court, especially considering the limited remedies in the contract, timely sues BC in the Federal Court for the Southern District of Ohio.