

## **Arbitration Law and Practice Syllabus (Fall 2014)**

Wednesday; 6:30pm-9:45pm  
Room 206

Professor Gabe Bowne  
gabriel.bowne@coco.ocgov.com; gabebowne@gmail.com  
949-838-7167  
Office Hours: After class each week

### **What Is Arbitration?**

In many ways, arbitration is like a courtroom trial. Two parties are fighting it out, presenting evidence and making legal arguments, trying to convince a decision-maker to side with them. But, there are some important differences.

First, the parties are in arbitration because (usually) a contract they agreed to has a clause in it that requires them to submit to arbitration -- rather than filing a lawsuit in court. Second, the arbitration hearing itself is not held in a state or federal courtroom, but is instead often held in a conference room or other meeting room in a neutral office building, or even in the office building of one of the attorneys or parties. Third, rather than a judge or jury, the evidence is submitted to an arbitrator for decision. The arbitrator is a neutral person (often a retired judge, attorney or industry insider) the parties have hired to hear the evidence and arguments and make a determination about who should prevail. The arbitrator's decision is (usually) binding and (usually) cannot be appealed. Fourth, the rules of procedure, evidence and discovery that apply in state and federal courts often do not apply in arbitration. Instead, the contractual arbitration clause is typically the first place the parties will look in determining what procedural and evidentiary rules might apply, and the parties are mostly free to include as much or as little of those formal rules when they draft the arbitration clause. This means that, for example, the parties might agree in an arbitration clause that there can be very little discovery leading up to the arbitration and that the rules of evidence do not apply during the hearing.

In sum, an arbitration hearing is an efficient and streamlined version of a courtroom trial, where the focus is on coming to a quick yet equitable decision to a contract dispute.

### **What Will We Learn In This Class?**

This class will explore a variety of subjects related to the arbitration process, including the law of arbitration, and the practice of arbitration. This means that students will not only learn about relevant statutory and case law, but also about the practical skills an attorney will need to practice in the field.

In many ways, this will be a trial skills class as much as it will be lecture class about arbitration law.

There are two required textbooks and there will be additional reading assignments that can either be that will either be handed out in class, or emailed to the students.

1. Arbitration (Third Edition); Rau, Sherman, Peppet; Foundation Press
2. Fundamental Trial Advocacy (Second Edition), Rose; West Publishing

I understand that buying two textbooks puts an extra burden on each of you, but because of the dual nature of this class (substantive law and trial skills), I feel it is necessary. I can assure you that the extra expense will be worth it.

### **How Will We Be Graded?**

This will not be a typical lecture class. A sizable portion of your grade will come from in-class practice skills tests. You will, for example, learn how to do opening and closing statements, question witnesses and draft an arbitration contract clause – and you will be tested on your ability to perform these skills. There will also be a written final exam that will test your ability to apply substantive arbitration law.

Your final class grade will be broken down as follows:

In-Class Arbitration Clause test (October 15): 20%  
In-Class Opening Statement presentation (October 22): 20%  
In Class Mock Arbitration (Nov. 12, 19 and TBD): 25%  
Written take-home exam (TBD): 25%  
Class Participation and Attendance: 10%

## **WEEKLY READING, CLASS TOPICS, ACTIVITIES and SCHEDULE:**

### **Week 1 (September 24):**

*Topics: Intro and Commercial Arbitration, Basic Trial Skills intro*

Arbitration pgs. 1- 10; 26-32

The Legal Structure for Domestic and International Commercial Arbitration; Markham Ball (PDF)<sup>1</sup>

### **Week 2 (October 1):**

*Topics: International Arbitration, Labor Arbitration, Consumer Arbitration*

Arbitration pgs. 33-42, 51-58; 387-392; 398-404

### **Week 3 (October 8):**

*Topics: FAA and California law; Arbitration Clause*

Arbitration pgs. 99-103

Green Tree Financial v. Randolph, 531 US 79 (2000) (PDF) (Partial)

AT&T Mobility v. Conception, 131 S.Ct. 1740 (2011) (PDF)

Resolving Disputes; Folberg; pg. 708-722; Judicial Policing of Arbitration Agreements in Consumer and Employment Contracts; Folberg (PDF)

Townsend, Drafting Arbitration Agreements (PDF)

---

<sup>1</sup> All reading assignments in PDF form will be provided to students via email or as a handout.

**Week 4 (October 15):**

*Topics: Arbitration Clause and intro to trial skills*

Bishop, A Practical Guide for Drafting International Arbitration Clauses (***Please skim, don't read closely***) (PDF)

IBA Guidelines for Drafting International Arbitration Agreements (PDF)

Arbitration; Pg. 362-375

Fundamental Trial Advocacy, pg. 63-66; 72-84; 89-102 (opening statements)

*In Class Arbitration Clause Test*

**Week 5 (October 22):**

*Topics: Arbitrability, Fairness issues to consumers; direct examination*

Arbitration, pgs.112-126;

EEOC v. Waffle House, 535 US 279 (2002) (PDF)

Fundamental Trial Advocacy, pg. 109-111; 127-138 (Direct Examination)

*In Class Opening Statement test*

**Week 6 (October 22):**

*Topics: What powers do the Courts have over Arbitration?; cross examination*

Arbitration, pgs. 136-146, 171-176

Fundamental Trial Advocacy, pg. 147-149, 155-157, 165-187 (cross-examination)

**Week 7 (October 29):**

*Topics: What powers do the Courts have over Arbitration?*

Arbitration, pg. 176-187; 198-203; 208-224

Fundamental Trial Advocacy, pg. 205 (bottom)-212 (Exhibits), Fundamental Trial Advocacy; Pg. 253-558 (Impeachment)

**Week 8 (November 5):**

*Topics: Powers of the courts over arbitration and an introduction to the Arbitration Proceeding*

Arbitration; pg. 237-240, 243-249, 252-256, 269-275, 280-293

Fundamental Trial Advocacy; Pg. 361-375 (Closing Statements)

**Week 9 (November 12):**

In Class Mock Arbitrations

**Week 10 (November 19):**

In Class Mock Arbitrations

**Week 11 (Date TBD):**

In Class Mock Arbitrations