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COMMERCIAL
ARBITRATION:
CASES AND PROBLEMS

■

Christopher R. Drahozal



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COMMERCIAL ARBITRATION

CASES AND PROBLEMS

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PREFACE

This book provides an overview of the law and practice of commercial arbitration. By agreeing to arbitrate, parties “opt out” of the public court system in favor of having a private judge (or judges) resolve their dispute. Courts can continue to play a role — by enforcing arbitration agreements and awards, as well as by providing assistance to the arbitrators during the course of the proceeding. But in most cases, arbitration provides an alternative to judicial dispute resolution that operates without any court involvement.

Commercial arbitration is growing rapidly as a form of alternative dispute resolution. The use of arbitration to resolve international commercial disputes is commonplace and will continue to grow with the increasing “globalization” of national economies. In the last several decades, however, a series of decisions by the United States Supreme Court — expanding the arbitrability of federal statutory claims and restricting the power of states to regulate commercial arbitration—have led to the increasing use of arbitration to resolve consumer and employment disputes. The policy issues raised by this “consumerization” of arbitration recur in various contexts throughout the book.

The book addresses four main topics: enforcing agreements to arbitrate (Chapters 1-5); the arbitration proceeding (Chapter 6); enforcing arbitration awards (Chapter 7); and drafting arbitration clauses (Chapter 8). Each chapter contains a number of problems that require careful analysis of the relevant statutes, cases, and rules. The problems provide a focal point for class discussion, as well as setting the legal and policy issues in a practical context. Some of the problems (or at least some of the sub-parts of the problems) are quite easy. That is intentional. I have tried to design the problems so that they begin with the easy cases and progress to the more difficult ones, rather than presenting only the difficult (albeit often more interesting) cases.

The materials in the book consist largely of court cases, with some secondary materials. I have included the leading United States Supreme Court cases dealing with commercial arbitration, as well as other cases that contain either useful discussions of the issues or particularly interesting facts. Omissions from the text of cases and articles are indicated by ellipses. I have deleted citations and footnotes without so indicating, and have used short citation forms when the case appears elsewhere in the text. The governing treaties and statutes are reprinted in the accompanying documentary supplement, as are a number of sets of arbitration rules and related materials.

The book also includes a handful of arbitration awards. Unlike judicial opinions, arbitration awards generally are not published. Indeed, one of the important attributes of commercial arbitration is its greater degree of

confidentiality, which precludes routine publication of awards. I have tried to choose court cases and secondary readings that describe arbitration proceedings and typical practices in arbitration, in an attempt to deal with the limited availability of arbitration awards. I also include or refer to empirical studies on commercial arbitration (particularly with respect to the terms of arbitration clauses) to add further insight into actual arbitration practice.

I am grateful to a number of people for assistance and support. My thanks to Amy Schmitz for the feedback she provided while using earlier versions of these materials in class, and to Steve Ware for his helpful comments on the text. Thanks also to my commercial arbitration classes at the University of Kansas and the London Law Consortium, for their questions and comments both in and out of class. I appreciate the research assistance of John Richer and especially Jeff Stowell, and financial support from the University of Kansas School of Law and the University of Kansas General Research Fund.

I hope you find this material as interesting and challenging as I do.

Christopher R. Drahozal

May 2001

Lawrence, Kansas

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