ARBITRATION

I. INTRODUCTION

Arbitration is a dispute-resolution process in which the parties select a neutral third party to resolve their claims. Parties typically agree to arbitrate in order to avoid the time, expense, and complexity of litigation. Arbitration clauses that require parties to submit all disputes to arbitration are widely used in domestic consumer and employment contracts. International arbitration is also an important and growing legal field as arbitration provisions within treaties often establish the sole method by which signatories must resolve disputes arising under the treaty.

Arbitration tribunals set their own rules and they are typically not bound by the procedural formalities employed by courts, nor are they always bound to follow the substantive laws that govern traditional court systems. Nonetheless, primary law and decisions handed down by other arbitrators deciding similar issues can be important sources of persuasive authority in resolving issues sent to arbitration. This research guide provides an introduction to some of the more important sources of information on handling both domestic and international arbitration cases.

II. SECONDARY SOURCES

Although arbitration tribunals often incorporate procedures similar to a trial court, such as the submission of briefs, the introduction of documents, and hearing witness testimony and counsel arguments, the process is much more informal. The following treatises and handbooks provide a good foundation for understanding how arbitration is conducted nationally and internationally.

I. Treatises and Handbooks

Domestic Arbitration: best place to start:

One of the most comprehensive and well-known treatises on the topic of labor arbitration is Elkouri & Elkouri, How Arbitration Works, 7th Ed. (KF3424.E44 & online in Bloomberg Law). This work is the “go to” resource of many practitioners and it is often cited in arbitration opinions. Published by the ABA section of Labor and Employment Law and updated regularly, chapters address common arbitration issues and include citations to applicable statutes and arbitration decisions.

Other Works:

- Carbonneau, The Law and Practice of Arbitration, 5th Ed. (KF9085.C37 2014). This is a comprehensive treatise on the origin and practice of arbitration law in the United States. It addresses arbitration of domestic as well as international claims.
• Domke, *Domke on Commercial Arbitration: The Law and practice of commercial arbitration*, 3rd Ed. (KF9085.D62 & online in Westlaw). Described as an easy to read guide that covers all stages of the arbitration process, from drafting the agreement through enforcement of the award. Includes forms, checklists, and practice tips.

• Huber, Weston, *Arbitration: Cases and Materials*, 3rd Ed. (KF9085. H83 2011), LexisNexis. This textbook covers the origins of arbitration and walks through the seminal statutory and case law that shaped current day arbitration. Also included are chapters on enforceability of arbitration provisions, arbitration procedures, powers of and ethical constraints on arbitrators, and judicial review of awards.

• Von Mehren, *American Arbitration, Principles and Practice*, (KF9085.V66 [binder] & online in Bloomberg Law). Published by Practising Law Institute and updated regularly, this volume covers the history of arbitration through enforcing the award. It also includes chapters on arbitrating in particular legal areas, such as labor and construction.

### International Arbitration

• Born, *International Commercial Arbitration*, 2nd Ed. (K2400.B673 2014 & online in Kluwer Arbitration). This three-volume set provides a comprehensive commentary on international commercial arbitration, including the legal framework for international arbitration agreements, international arbitral procedures, and the form, content, and consequences of awards.


• *Kluwer Arbitration*, a research database accessible through Goodson Law Library with NetID and password, includes numerous works on international arbitration, including:

II. Practitioner Materials

- Practical Law, International Arbitration (through Westlaw), Includes sample agreements, practice and procedure guidance, and general information on both domestic and international arbitration.
- Transnational Dispute Management: TDM (online access), Includes peer-reviewed journal articles, legal and regulatory documents, news and events, and excerpts of arbitration case decisions.
- Kluwer Arbitration. Research portal that includes arbitration news, journals, and practice tools, in addition to books and arbitration opinions.
- Mistelis et. al., eds., The World Arbitration Reporter: International Encyclopedia of Arbitration Law and Practice, Juris (K2400 .W672). Includes commentary on the arbitration law of selected countries, national and international arbitral institutions, and treaties as well as bilateral and regional agreements.

III. ARBITRATION ORGANIZATIONS: RULES AND FORMS

There are numerous arbitration tribunals, both nationally and internationally, that conduct alternative dispute resolution proceedings. The organizations listed below are some of the most well-known arbitration and mediation services, and the resources linked below give the rules and procedures for each organization. For a more comprehensive list of organizations with links to information about each, see Georgetown Law Library, International Commercial Arbitration Research Guide, Arbitral Institutions and Procedural Rules [http://guides.ll.georgetown.edu/c.php?g=363504&p=2455947](http://guides.ll.georgetown.edu/c.php?g=363504&p=2455947), and Columbia University Law School, International Commercial Arbitration, Major International Arbitration Institutions [http://library.law.columbia.edu/guides/International_Commercial_Arbitration#Major_International_Arbitration_Institutions](http://library.law.columbia.edu/guides/International_Commercial_Arbitration#Major_International_Arbitration_Institutions).

A. AAA (American Arbitration Association)

The American Arbitration Association is a nonprofit organization that arranges domestic alternative dispute resolution services.

- AAA Website (Rules & Forms tab) [https://www.adr.org](https://www.adr.org)
- AAA Arbitration Step-By-Step Guides, (online access through Practical Law, International Arbitration, Procedure & Evidence link)

• **Commercial Arbitration Rules & Mediation Procedures (AAA)**, (online access through Lexis Advance).

B. **CPR (International Institute for Conflict Prevention & Resolution)** CPR is a membership-based nonprofit organization that helps resolve business-related disputes.

• **CPR Rules for Arbitration, Mediation, and International/Other** [http://www.cpradr.org/RulesCaseServices/CPRRules.aspx](http://www.cpradr.org/RulesCaseServices/CPRRules.aspx)

• **CPR Domestic Arbitration Flowchart, Thomson Reuters Practical Law** (online through Westlaw).


C. **FINRA (Financial Industry Regulatory Authority arbitration, subject to SEC oversight)** FINRA operates the largest securities dispute resolution forum in the United States. Eligibility is limited to disputes involving entities registered with FINRA.


D. **ICC (International Court of Arbitration)**. The ICC is part of the International Chamber of Commerce, and its purpose is to help resolve international commercial disputes. There are no restrictions on who can use ICC Arbitration or who can act as arbitrators. The only requirement is that the parties to a contract, treaty, or separate arbitration agreement have agreed on ICC Arbitration.


• **ICC Arbitration (2012 Rules), A Step-by-Step Guide**, Thomsom Reuters Practical Law (online through Westlaw) (see also **ICC Arbitration Toolkit** and **Commencing ICC Arbitration** guides).
E. **ICDR (International Center for Dispute Resolution, the International Arm of the AAA)** ICDR was formed in 1996 as the global component of AAA, and it handles matters involving cross-border transactions.

- **ICDR website** [http://info.adr.org/icdrrules/](http://info.adr.org/icdrrules/); rules can be downloaded as HTML or in pdf
- **ICDR International Dispute Resolution Procedures (Including Mediation and Arbitration Rules) 2014** (online through Kluwer Arbitration)

F. **ICSID (International Centre for Settlement of Investment Disputes)** The ICSID is an international organization that offers institutional and procedural support for alternative dispute resolution between international investors. It is funded by the World Bank, and participation is through state membership.

- **ICSID Arbitration: a step-by-step guide**, Thomson Reuters Practical Law, (online through Westlaw, see also ICSID arbitration flowchart and ICSID arbitration toolkit).

G. **JAMS (formerly Judicial Arbitration and Mediation Service)** JAMS bills itself as the largest private alternative dispute resolution (ADR) provider in the world, and it specializes in multi-party business and commercial cases. JAMS International handles cross-border disputes.

H. TAS/CAS (Tribunal Arbitral du Sport- Court of Arbitration for Sport) The CAS only has jurisdiction to rule on disputes connected with sport. A dispute may be submitted to the CAS if there is an arbitration agreement between the parties which specifies recourse to the CAS. The CAS hears both commercial and disciplinary disputes related to sport.


I. UNCITRAL (United Nations Commission on International Trade Law). UNCITRAL does not conduct arbitrations, but it has published a set of recommended rules and procedures for alternative dispute resolution of international commercial disputes. These rules are widely used and cover all aspects of the arbitral process.

- *Arbitrating under the UNCITRAL Rules 2010 and 2013: A Step-By-Step Guide*, (online in Practical Law, Westlaw) (see also, *UNCITRAL: standard recommended arbitration clauses*, and *UNCITRAL arbitration (2010 Rules) flowchart*.)
IV. **Arbitrator Profiles**

The importance of an earlier arbitration decision as persuasive authority is influenced both by the similarity of the facts and issues and by the experience of the arbitrator. In fact, the arbitrator’s name is included in the citation in briefs filed for some forums. The following resources can help you find and evaluate individual arbitrators’ expertise.

A. **AAA’s list of arbitrators** is treated as proprietary. Once parties have signed up for dispute resolution, AAA will send a list of ten arbitrators with specialization in the subject area of the dispute from whom the parties can choose. Qualification criteria can be found on the AAA website (Arbitrators & Mediators tab).

B. **Bloomberg BNA, Labor & Employment Law Resource Center**, Directory of Arbitrators

http://laborandemploymentlaw.bna.com/lerc/display/split_display.adp?vname=ledirarb; Alphabetical listing by last name of arbitrators, including education, experience, professional affiliations, and arbitration rosters on which they appear.

C. **Energy Arbitrators List**: Database of arbitrators accessed through ICDR website; filter by country and specialty. Information given on education, qualifications, arbitration experience, and affiliations of each arbitrator

http://www.energyarbitratorslist.com/ealsearch/faces/eal?_adf.ctrl-state=nqkfis222_4

D. **ICSID** database of panel members, searchable by name, type of panel, or country.


E. **JAMS** searchable database of “neutrals” http://www.jamsadr.com/neutrals-search/ (search by name, resolution center, area of expertise, language, or keyword). Information includes contact number, education and background, work experience, past matters arbitrated, and professional affiliations.

F. **Kluwer Arbitration**, Practice Tools tab > IAI Arbitrator Tool: search for profiles of arbitration specialists by country, language, and arbitration experience. Tool requires user to select two arbitrators, and the resulting chart shows comparative qualifications.

G. **TAS/CAS** arbitrator list, searchable by name, spoken language, and nationality. Site gives general information on educational background and professional affiliation, with some attached resumes. http://www.tas-cas.org/en/arbitration/list-of-arbitrators-general-list.html

H. **Westlaw Profiler- Profiles of Arbitrators** (online through Westlaw, Arbitration Materials link): enter name of arbitrator into search form. Information can be sparse, and academic accounts do not have full access to Westlaw arbitrator information databases.
Arbitration Decisions

Citation to arbitration decisions arising from unrelated disputes as persuasive authority is becoming increasingly common. This practice is not without controversy. It has been noted that citing to other arbitration decisions defeats one of the advantages of arbitration, which is its informality and strict adherence by the arbitrator to the terms of the underlying agreement. Nonetheless, parties often do cite to and discuss prior arbitration awards that address similar disputes, and arbitrators seek to learn from others’ experience. Since arbitration decisions are often private, most (an estimated 90%) are not available. The following resources contain arbitration opinions from a variety of sources.

A. International Business Arbitration Decisions

Print materials

- *ICC Dispute Resolution Bulletin* (2015-)
  (Earlier years, called the ICC International Court of Arbitration Bulletin. Contains extracts from awards by ICC arbitral tribunals, comment and statistical analysis on law and practice, reports of the ICC Commission on Arbitration, guidelines on procedural and substantive issues, and news of interest to ICC users.) (K2400.A13 I57).
  (decisions and commentaries from the Stockholm International Arbitration Report; see additional volumes under this call number for earlier years)

Electronic Resources

- *Kluwer Arbitration* (online access through Goodson Law Library), Use the advanced search function to fill out search template, select “organization”
from drop down box and “awards” filter. Search by keyword, title, date, party, or topic.


- **Transnational dispute Management: TDM** (online access through Goodson Law Library), Includes case abstracts of arbitral awards.


**B. Labor and Employment Decisions**

- **BNA Labor Arbitration Decisions** (1945-current), (online through Bloomberg Law (Search & Browse, All Legal Content, U.S. Courts, Alternative Dispute Resolution, National Arbitration Forum)

- **Bloomberg BNA: Labor & Employment Law Resource Center>** Arbitration Award Navigator; Filter by topic, industry, arbitrator, and other parameters.

- **Westlaw> Arbitration Materials> Labor & Employment Arbitration Awards**: Search by keyword. Filter by case type, jurisdiction and award range. ***Note that academic accounts have limited access to some arbitration awards.

- **Lexis Advance> Browse> Sources> AAA Labor Arbitration Awards**, AAA Employment Arbitration Awards> Get documents
C. Sports Arbitration Decisions

- **TAS/CAS Tribunal Arbitral du Sport, Database of CAS awards** since 1986: filter by sport, year, or use advanced search for keyword searching [http://jurisprudence.tas-cas.org/Help/Home.aspx](http://jurisprudence.tas-cas.org/Help/Home.aspx)
- **TEAM USA: Arbitration and Hearing Panel Cases**: Indexed by year and USOC Bylaw Section claim is filed pursuant to (§ 9, 10, or 11). Olympics administrative matters [http://www.teamusa.org/Footer/Legal/Arbitration-and-Hearing-Panel-Cases/Section-9](http://www.teamusa.org/Footer/Legal/Arbitration-and-Hearing-Panel-Cases/Section-9)
- **USADA Arbitration Decisions**: decisions of both AAA and CAS, listed alphabetically by year. Very limited collection, no keyword searching other than ctrl-F title search. [http://www.usada.org/testing/results/arbitration-decisions/](http://www.usada.org/testing/results/arbitration-decisions/)

D. Financial Industry Arbitration Decisions

- **FINRA Arbitration Awards**: Includes FINRA and historical NASD awards. Searchable by keyword, date of award, forum, and panel composition: [https://www.finra.org/arbitration-and-mediation/arbitration-awards](https://www.finra.org/arbitration-and-mediation/arbitration-awards)
- **Lexis Advance> Browse Sources> FINRA/NASD Arbitration Awards**, AAA Employment Arbitration Awards> Get documents
- **Lexis Advance> Browse Sources> NYSE> Get documents**

VI. U.S. Arbitration Enforcement Statutes

In 1925, Congress passed the Federal Arbitration Act (FAA), Pub. L. No. 68-401, 43 Stat. 883(1925), which is now codified in Title 9 of the U.S. Code. The FAA established the enforceability of valid arbitration provisions in commercial contracts. A Uniform Arbitration Act (UAA) was created by the National Conference of Commissioners on Uniform State Laws in 1955, and the UAA has been adopted by 35 states, with all of the remaining states adopting similar legislation. These laws address the applicability and administration of arbitration provisions within contracts, including selection of arbitrators, conduct of the proceedings, confirmation of awards and the ability to appeal awards.
A. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention)
The New York Convention is a multi-state agreement that requires courts of contracting states to enforce private arbitration agreements and to recognize arbitration awards made in other contracting states. There are currently more than 150 member states. It is considered to be one of the foundational agreements for international arbitration.

- **New York Arbitration Convention website**
  http://www.newyorkconvention.org/
  Provides Convention texts, list of member states, court decisions organized by topic and country, other related documents, and related news.


B. Uniform Arbitration Act


- **Lexis Advance, Uniform Law Commission Model Acts**

  http://www.uniformlaws.org/Act.aspx?title=Arbitration%20Act%20%282000%29 (shows map of states in which the Uniform Arbitration Act has been adopted)

- **Westlaw, Statutes and Court Rules, Uniform Laws Annotated, Business & Financial** (UAA versions are listed in this section)

C. State Arbitration Acts: Fifty State Surveys


- **Lexis Advance, Civil Procedure – Pretrial Matters: *Alternative Dispute Resolution in Civil Actions* (provides a summary of and links to arbitration statutes in all 50 states)**

- **Tyler, Richard J, *Discovery in Arbitration, The Construction Lawyer* 35.1 (Winter 2015): 5-6,11-21,45-49, Compendium of State Arbitration Laws, Table 1, pages 7-10 (Chart includes every state, statute citation, and comment)**

- **Westlaw, Statutes and Court Rules, Uniform Laws Annotated** (table of jurisdictions in which the UAA has been enacted is linked to UAA (1956)).