

## **Arbitration**

**Fall, 2023 Prof. Joan Stearns Johnsen**

Mondays: 1:15 – 3:15 pm

MLAC 106

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### **Class Syllabus and Policies**

#### **Required Course Materials:**

ARBITRATION: PRACTICE POLICY AND LAW, STIPANOWICH AND SCHMITZ (ASPEN CASEBOOK SERIES, 2023). (“TEXT”)

**Description and Goals of the Course:** This course is two credit hours. Please note that ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in class instruction. Accordingly, it is expected that you will spend four hours preparing for each week of class. Your preparation will consist of readings from the text, assigned court decisions, and other supplemental materials and preparing for in-class exercises.

Arbitration is a contract based method of dispute resolution. It is used in many different practice areas which means you may expect to encounter arbitration regardless of your area of specialization. Arbitration is commonly used to resolve corporate commercial disputes, international disputes, construction disputes, consumer disputes, labor disputes, employment disputes, antitrust class action disputes, intellectual property disputes, high profile divorces, and securities disputes. Its popularity is due to its flexibility, finality, privacy, and potential savings in time and money. While arbitration has attributes in common with litigation in court, it is a very different process.

Through class discussion, exercises, and class visits from recognized leaders in the field, you will learn best practices for conducting a prehearing conference, drafting an enforceable arbitration clause, and representing your client in an arbitration hearing. This class covers arbitration law, process, and advocacy. At the end of the course, you will understand how to counsel your clients between arbitration and litigation in court, where arbitration fits in the dispute resolution continuum, how to select from among various arbitration processes, the various legal frameworks governing arbitration and the implications of your choices.

**Final Mock Arbitration:** We will discuss this in greater detail during class. Attendance is mandatory.

**Grading:** You will be graded based on a two hour, open book, fixed date, remote exam- and on your preparation and participation in class work including any written assignments, and in the final mock arbitration hearing. You must participate in the final mock arbitration to satisfactorily complete this course. Attendance is mandatory.

Your two-hour exam will count for 70% of your grade; the remaining 30% (or 30 possible points) will be based on work throughout the semester. The thirty possible points will be allocated as follows:

Preparation for and participation in class discussions: 5 possible points

Participation in class exercises: 5 possible points

Preparation and participation in pre-hearing exercise 5 possible points

Preparation and participation in the final mock arbitration: 5 possible points

First Written Exercise – Drafting an Arbitration Clause and Memo 5 possible points

Second Written Exercise -- Selecting Arbitration Procedures for a Construction Contract 5 possible points.

**Artificial Intelligence Policy:**

I do not permit students to use artificial intelligence for written assignments or the exam for this class. As a caveat, my questions and assignments will require you to use critical thinking skills and judgment so this is not the best place to use AI. I also believe that when you use AI, you need the knowledge to verify that the results are accurate, so you are not necessarily saving yourself any work with this class. You may use it to assist you in other ways such as summarizing case law, but always check your results carefully and beware of AI hallucinations!

For questions about delays in submitting assignments, please refer to the law school’s policy, available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/currentstudents/forms-applications/exam-delays-accommodations-form>.

Subject to the class curve, the grading scale for the course is:

<u>Grade</u>	<u>Point</u>	<u>Grade</u>	<u>Point</u>	<u>Grade</u>	<u>Point</u>
A (Excellent)	4.0	C+	2.33	D-	0.67
A-	3.67	C (Satisfactory)	2.00	E (Failure).	0.0
B+	3.33	C-	1.67		
B (Good)	3.00	D+	1.33		
B-	2.67	D (Poor)	1.00		

Information on current UF grading policies for assigning grade points may be found at <https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx>.

**Office Hours:** My regular in-person Office Hours are Mondays 8:00am-9:00 am and Tuesdays from 8:30 to 9:30 for Zoom Office Hours. Additionally, I am always available for meetings by

appointment. **The link for Zoom Office Hours will be posted to an Announcement in Canvas before the beginning of class.** This is a recurring link available throughout the semester.

**Online Course Evaluations:** Students are expected to provide professional and respectful feedback on the quality of the instruction in this course by completing evaluations online via GatorEvals at <https://evaluations.ufl.edu>. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under Gator Evals. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

**UF Student Honor Code:** Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

**Accommodations:** Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, [www.dso.ufl.edu/drc/](http://www.dso.ufl.edu/drc/)) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester.

**Class Recording Policy:** The Office of Student Affairs will continue to record all classes via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings and the recordings will be password protected. These recordings will be retained only for a short period of time, and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

### **Preferred Name and Pronouns**

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. I would like to acknowledge your preferred name, and pronouns that reflect your identity. Please let me know how you would like to be addressed in class if your name and pronouns are not reflected by your UF rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

You may also change your "Display Name" in Canvas. Canvas uses the "Display Name" as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison." To update your display name, go to [one.ufl.edu](http://one.ufl.edu), click on the dropdown at the top right, and select "Directory Profile." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to

be displayed, and click "Submit" at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records

### **Discourse, Inclusion, and the Classroom Ethos**

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

- commit to self-examination of our values and assumptions
- speak honestly, thoughtfully, and respectfully
- listen carefully and respectfully
- reserve the right to change our mind and allow for others to do the same
- allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution.

**Attendance:** Your attendance is critical to your success in this class. Often you will be paired with another student or group of students. If you are absent from class or late, you will disrupt the exercise for your partners and classmates. For this reason, regular and *punctual* attendance at classes is mandatory. Classes will begin promptly at the scheduled time. Students arriving late will receive partial credit for attendance for that day. Anything in excess of 2 missed two hour classes regardless of whether excused or unexcused may lower your grade or even render you ineligible to receive credit for the class. Missing the final mock arbitration will similarly impact your grade or render you ineligible for credit. If you will miss class or be late, send an email to me and cc Michele Benedict at [Benedict@law.ufl.edu](mailto:Benedict@law.ufl.edu). Give us as much notice as possible to enable us to adjust the pairings.

Excused absences are consistent with University policies (<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>) and may require appropriate documentation.

**Canvas:** This class requires familiarity with Canvas. Assignments and supplemental materials will be posted to Canvas. Please check Canvas for weekly Announcements, and other postings. **Please, verify that you have not disabled the email forwarding feature.** If you have difficulty

accessing or working with Canvas, please let me know as soon as possible and reach out to the Help Desk.

### Health and Wellness Resources:

- *U Matter, We Care*: If you or someone you know is in distress, please contact [umatter@ufl.edu](mailto:umatter@ufl.edu), 352-392-1575, or visit [U Matter, We Care website](#) to refer or report a concern and a team member will reach out to the student in distress.
- *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](#) or call 352-392-1575 for information on crisis services as well as noncrisis services.
- *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](#).
- *University Police Department*: [Visit UF Police Department website](#) or call 352392-1111 (or 9-1-1 for emergencies).
- *UF Health Shands Emergency Room / Trauma Center*: For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](#).

**Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. If you are comfortable doing so, you may also notify me so that I can direct you to further resources.**

### UF Levin College of Law Class Recordings and Course Evaluations:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>

### Reading Assignments and Important Dates

***Given the number of exercises and guests, I expect it will be necessary to make changes to this part of the syllabus during the semester. Please pay attention to announcements in class and read the weekly Announcements posted to Canvas. You may also reach out to me. Thank you in advance for your flexibility and patience.***

Week One: August 19

Text Chapter 1- Introduction and The Big Picture

Exercise A1 and Sandy's Breakup

*Read:* International House of Crepes / Wee Willie's Waffelhaus Client Counseling, Negotiation and Drafting Exercise—Meet with your Team outside of class to prepare specific notes responding to your client's questions and concerns and charting a course of action in preparation for your negotiation next week. Next week you will have class time to negotiate your agreement.

Overview of arbitration as distinguished from litigation and mediation and (The Many Faces of Arbitration) arbitration processes in different contexts.

Week Two: August 26

Text Chapter 2- Arbitration Agreements and Pathological Clauses

*Read:* International House of Crepes / Wee Willie's Waffelhaus Client Counseling, Negotiation and Drafting Exercise—You will have some limited class time to begin to negotiate your agreement. You will have to continue negotiating outside of class. Your agreements and memos are due on Tuesday, September 3. (**Note: One submission for each set of two teams-- one joint document consisting of two memos and one joint clause.**)

-- Labor Day—No Class

Week Three: September 9

Text Chapter 3- Selecting Arbitrators

*In-Class Exercise: Deliberations: As Time Goes By;*

Week Four: (On Zoom) (Note we are taking these chapters out of order) September 16

Text Chapter 5– The Law of Arbitration: The Federal Arbitration Act and the Judicial Enforcement of Arbitration Agreements

Guest Speaker: Serena Lee, President and CEO, CPR,

Week Five: September 23

Text Chapter 4- Arbitration Procedures and Awards-September 23

Guest Speaker: Angela Romero, Vice President, American Arbitration Association

Week Six: September 30

Text Chapter 6 – The Law of Arbitration: The Federal Arbitration Act and Judicial Enforcement of Arbitration Awards.

*Pre-hearings are next week!*

Week Seven: October 7

*Read:* Text Chapter 7– Fairness in Arbitration, Part I, Employment; Consumer; and Adhesion Contracts.

In class exercise: Prehearing. You will be appearing before professional arbitrators. I will be observing your presentations. Please prepare thoroughly!

Week Eight: October 14

Read: Text Chapter 8- Fairness in Arbitration part II: Recent Legislative and Judicial Developments. Guest Speaker Professor Amy Schmitz, The Ohio State University  
<https://omc.osu.edu/people/amy-schmitz>

Debrief of Pre-hearing exercise and  
Discussion of Chapters 7 and 8

Written Exercise: Selection Arbitration Procedures for a Construction Contract available today.  
Due October 28.

Week Nine: October 21

Read: Text Chapter 9 – Mixing Modes: Multi-Door Programs, Stepped Dispute Resolution and Hybrid Processes.

Advocacy and Evidence in Arbitration guest speaker Prof. Sarah Wolking.

Week Ten: October 28:

Debrief of Written Exercise: Selection of Arbitration Procedures for a Construction Contract  
(Due before class begins today! No late submissions permitted.)  
and

In class preparation for Mock Arbitration.

Week Eleven: November 4

Mock Arbitration

Week Twelve: November 18

Debrief and begin review

Week Thirteen: Final Class—November 20 (Wednesday)

Review