**Arbitration**

# Fall, 2023 Prof. Joan Stearns Johnsen

Mondays: 3:00 – 5:00 pm

MLAC 106

E-mail: johnsen@law.ufl.edu

Cell: 617-549-0742

# Class Syllabus and Policies

**Required Course Materials:**

ARBITRATION: THEORY, PRACTICE, AND LAW, FOLBERG, GOLANN, STIPANOWICH, KLOPPENBERG

(WOLTERS KLUWER, CUSTOM EDITION, 3RD EDITION, 2016). (“TEXT”)

Please note that this text is taken from a larger textbook for courses that also cover negotiation and mediation. For this reason, the first chapter in this shorter book is chapter 17. *Given the number of exercises and guests, it may be necessary to make changes to this syllabus during the semester to accommodate the schedules of our guests or to allow for additional time to fully explore a particular exercise or assignment.* Thank you in advance for your flexibility and patience.

**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 two hours preparing for every hour of in-class instruction each week. While readings will be primarily from the text, you will also be asked to read some recent court decisions and other supplemental materials. In addition, you will be expected to spend time preparing for in-class exercises as part of your outside of class preparation time.

Arbitration is a binding method of dispute resolution arrived at contractually. It is used in many different practice areas which means you may expect to encounter arbitration regardless of your area of specialty. Arbitration is commonly used to resolve- for example- corporate commercial disputes, international disputes, construction disputes, consumer disputes, labor disputes, employment disputes, antitrust class action disputes, intellectual property disputes, and securities disputes. Its popularity is due to its flexibility, finality, and potential savings in time and money. While arbitration superficially appears like litigation in court, it is not.

This course is an introduction to arbitration law, process, and advocacy skills. At the end of the course, you will understand how arbitration differs from litigation in court, how it fits in the dispute resolution continuum, the differences between various arbitration processes, and when and why to choose arbitration instead of litigation in court.

You will also learn how to draft an arbitration agreement, conduct a prehearing conference and an arbitration hearing, and how arbitrators deliberate and draft awards. Given the pandemic, arbitrations are increasingly being conducted through Zoom or other similar platforms. Although this semester we will be in-person, we will include a discussion of the evolving practice of video remote arbitration. This class will familiarize you with how practitioners utilize the technology as well as how they adapt their skills to accommodate these changes.

**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- December 11, 2023, remote exam- 65% of your grade; and on your attendance and preparation and participation in class work including any written assignments, and your preparation and participation in the final mock arbitration hearing. You must participate in the final mock arbitration to satisfactorily complete this course.

Your two-hour exam will count for 65% of your grade; your attendance, in-class participation, participation and performance in your final mock arbitration, and other written work during the semester will count for 35% of your grade.

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/current-students/forms-applications/exam-delays-accommodations-form>.

The grading scale for the course is:

Grade Point Grade Point Grade Point

A (Excellent) 4.0 C+ 2.33 D- 0.67

0.67

A- 3.67 C (Satisfactory) 2.00 E (Failure). 0.0

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 Office Hours are Mondays 8:00am-9:00am for in-person meetings and Tuesdays from 8:30 to 9:30 for Zoom meetings. Additionally, I am always available for meetings by appointment. **You will find my remote Office Hours Zoom Link in a Canvas Module called “Office Hours.”** I will use the same link each week.

**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/) 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, 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 and Preparation**: This is largely a skills class. As such your attendance is essential to your ability to learn the material as well as to learn how to apply the skills. This is not material that you can learn from the text exclusively. Also, since you will be working in teams, any absences will not only hurt you, but will also disadvantage those with whom you have been paired. For this reason, please prepare thoroughly, do not miss class, and arrive on time. I do take attendance. Please e-mail me if you will be absent. Excused absences are still absences. Anything in excess of 5 hours of missed class time may render a student ineligible to receive credit for the course. Missing the final mock arbitration may also render a student ineligible to receive credit for the course. Excused absences are consistent with University policies.

**Caveat**: Given that we continue to be in a pandemic, if you are ill, stay home. your absence is excused!

(https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx) and require appropriate documentation.

**Canvas:** This class requires familiarity with Canvas. Our assignments and role plays as well as supplemental materials will be posted on Canvas. Please check Canvas regularly for new postings, announcements, and information. I also communicate regularly through the email feature of Canvas. **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, 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.**

**Reading Assignments and Important Dates**

Week One:

**Text Chapter 1-** Introduction and The Big Picture

Week Two:

**Text Chapter 2- Arbitration Agreements and Pathological Clauses**

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

***Exercise and Assignment due to be submitted by Friday, 9/3, on Canvas****: Client Counseling and Drafting: International House of Crepes / Wee Willie’s Waffelhaus Client Counseling, Negotiation and Drafting.* **N.B. You will *not* be using the AAA Commercial Rules for this Exercise. You will be using the CPR Commercial Administered Rules.** These rules are available online at https://www.cpradr.org/resource-center/rules/arbitration/administeredarbitration-rules-2019

**-- Labor Day—No Class**

Week Three:

**Text Chapter 3–** Selecting Arbitrators (First Hour)

During the second hour of class, we will review your arbitration clauses.

**Guest Speaker: Allen Waxman, President and CEO, CPR,**

Week Four:

**Text Chapter 4-**  Arbitration Procedures and Awards

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

Week Five:

**Text Chapter 5-** The Law of Arbitration: Judicial Enforcement of Arbitration Agreements

Week Six:

**Text Chapter 6 –** The Law of Arbitration: Judicial Enforcement of Arbitration Awards.

***Prepare for In-class Exercise*** ***for next week****: Planning the Arbitration Process Pre-hearing*

Week Seven:

**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:

**Text Chapter 8-** Fairness in Arbitration part II: Recent Legislative and Judicial Developments..

Debrief of Pre-hearing exercise and

Discussion of Chapters 7 and 8

Week Nine:

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

**Arbitration Advocacy**

**Guest Speaker—Prof. Sarah Wolke**

Week Ten:

**In class preparation for Mock Arbitration**

Week Eleven:

**First Hour-- Guest Speaker Amy Schmidt on AI in Arbitration and—**

**Second Hour—begin Mock Arbitration**

Week Twelve:

**Complete Mock Arbitration**

**Debrief**

**We will use our debrief to review for the exam**

Week Thirteen: Final Class--

**Additional** **Review**