Part I, Chapters 1 through 8 [1], infra, examines the enforceability of an arbitration requirement. This first chapter defines the phrase “predispute binding arbitration agreement” (sometimes called “forced arbitration” agreements), discusses why many consumers resist binding or “forced” arbitration, provides an overview of some of the studies on consumer arbitration, notes that corporations often try to avoid binding arbitration themselves, and contemplates the road ahead.

Chapter 2 [2], infra, examines a number of threshold and procedural issues involved when challenging arbitration clauses: how challenges to arbitration clauses arise procedurally, who decides the challenges, jurisdictional issues, discovery, jury trials, appeals of enforceability decisions, and the relationship between arbitration and class certification.

Chapter 3 [3], infra, addresses the principal substantive provision of the Federal Arbitration Act (FAA): that binding arbitration clauses are generally enforceable. It also covers the interaction between the FAA and state law.

Chapter 4 [4], infra, reviews whether a valid arbitration agreement has been consummated, including whether there has been valid consent, whether the agreement is supported by adequate consideration, whether its terms are clear, or whether it is an illusory agreement.

Chapter 5 [5], infra, analyzes arguments about the scope of arbitration clauses, including the question of whether a party who has not signed an arbitration clause may enforce the clause and the question of whether an arbitration clause may be enforced against a consumer who has not signed it.

Chapter 6 [6], infra, examines situations in which a party waives its right to compel arbitration by suing the other party, by delaying moving to enforce the arbitration clause, by refusing to participate in arbitration, or by some similar action.

Chapter 7 [7], infra, considers explicit federal limits on the enforceability of arbitration requirements, in particular those related to home mortgage and manufactured home credit transactions, most consumer credit involving active duty military personnel and their dependents, and admission agreements with schools participating in the Federal Direct Loan program. Also analyzed are potential limits on arbitration in disputes involving written warranties or when a case is in bankruptcy court.

Chapter 8 [8], infra, analyzes generally applicable contract defenses to predispute binding arbitration clauses—particularly the prohibition against unconscionable contracts and against contracts that prevent the effective vindication of federal statutory rights. The chapter also considers what happens if the arbitration agreement cannot be fulfilled according to its terms, for example when the chosen arbitration forum is unavailable. The chapter also discusses when a court may refuse to enforce the arbitration agreement and when it may decide merely to strip an offending provision from the arbitration agreement.

Part II, Chapters 9 through 12 [9], infra, examines the conduct of an arbitration proceeding. Chapter 9 [9], infra, is a new chapter for this edition, providing guidance on conducting cases in arbitration: how to select an arbitrator, the effect of a defendant’s failure to pay required fees, discovery, motions, evidence, and the like.

Chapter 10 [10], infra, addresses whether arbitration on a classwide basis is available, how such arbitration proceeds, and judicial review of a determination that arbitration should proceed on a classwide basis.

Chapter 11 [11], infra, addresses the procedure to confirm an award as a binding court judgment, and the limited scope of judicial review to vacate or modify an arbitration award, including an award of punitive damages. The chapter also examines the effect of an arbitration award on a subsequent court or arbitration proceeding.

Chapter 12 [12], infra, examines consumer defenses when arbitration is used to collect consumer debts. While arbitration is not presently being utilized to collect consumer debts, certain creditors and collectors in the past made extensive use of arbitration to do so. This chapter is included in case this practice is revived.

Appendix A [13], infra, reprints the Federal Arbitration Act. Appendix B [14], infra, reprints a number of federal statutes and regulations that limit the enforceability of arbitration agreements. Appendix C [15], infra, reprints rules and other information from the American Arbitration Association. Appendix D [16], infra, does the same for JAMS.
1.2.2 The Chapters and Appendices

Links
[1] https://library.nclc.org/nclc/link/ARB.01
[2] https://library.nclc.org/nclc/link/ARB.02
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