Handout for Lecture 14

by Roger Batchelor

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Lecture 14 Judicial Review of Arbitration – Kahoot! Course

This is to supplement the courseware for Crestpoint University – Alternative Dispute Resolution

Judicial Review of Arbitration Awards

SEMINAR MATERIALS ARBITRATION LAW

Tonight's class tackles one of the most contested tensions in American arbitration law: **to what extent can, should, and will a court review an arbitration award?** The question sits at the intersection of procedural policy, constitutional concerns, and the fundamental purpose of arbitration as an alternative — not merely a precursor — to litigation.

Courts have labored to strike a delicate balance. On one side lies the risk that permitting robust appellate-style review would effectively convert every arbitration into a mere preliminary hearing, undermining the speed, finality, and cost savings that make arbitration attractive. On the other side lies the equally serious risk that insulating arbitral awards from any meaningful scrutiny could entrench unfairness, reward procedural misconduct, and allow arbitrators to disregard the law with impunity.

We will work through the doctrinal standards that govern judicial review, examine the statutory grounds enumerated in the Federal Arbitration Act, and interrogate how courts have interpreted — and at times stretched — those grounds. We will also analyze concrete fact patterns that straddle the border between permissible arbitral latitude and reviewable error, asking: *when does an arbitrator's decision cross the line from "arguably right" to legally unacceptable?*

Review of the The Core Tension: Finality vs. Fairness from the last class

The foundational dilemma in arbitral review doctrine is not merely procedural — it is philosophical. Arbitration derives its value precisely from its finality. Parties who choose arbitration are presumed to be trading away the full panoply of appellate rights in exchange for a faster, cheaper, and more expert resolution of their dispute. If every losing party could march back into federal court and relitigate the merits, arbitration would lose its distinctive character entirely.

And yet finality without accountability breeds its own pathologies. An arbitrator who ignores controlling law, accepts bribes, or refuses to hear material evidence causes real harm. The question is not *whether* courts should intervene in such extreme cases — virtually no one argues otherwise — but rather *how liberally or narrowly* the grounds for intervention should be drawn.

This tension is not unique to American law, but the United States has resolved it in a distinctive way through the Federal Arbitration Act of 1925, a statute that reflects a strong congressional preference for arbitration. As the Supreme Court reiterated in *AT&T Mobility LLC v. Concepcion* (2011), the FAA embodies a "liberal federal policy favoring arbitration agreements." That policy has profound consequences for how courts approach review petitions.

The Case for Finality

- Preserves arbitration's efficiency and cost advantages
- Respects party autonomy and contractual choice
- Prevents courts from becoming de facto appellate arbitration panels
- Encourages robust private dispute resolution ecosystems

The Case for Review

- Protects parties from corrupt or biased arbitrators
- Ensures minimum procedural fairness guarantees
- Maintains public confidence in adjudicative legitimacy
- Prevents arbitrators from openly defying controlling law

The Federal Arbitration Act: Statutory Grounds for Vacatur

The primary statutory vehicle for challenging an arbitration award in the United States is **Section 10 of the Federal Arbitration Act, 9 U.S.C. § 10**. Congress deliberately enumerated only four narrow grounds for vacatur, each reflecting a distinct category of arbitral pathology. Understanding these grounds — and their precise limits — is essential for any practitioner or judge navigating this area.

1

Corruption, Fraud, or Undue Means

§ 10(a)(1): The award was procured by corruption, fraud, or undue means. Courts require that the fraud not have been discoverable by due diligence before or during arbitration. Mere post-award suspicion is insufficient.

2

Evident Partiality or Corruption

§ 10(a)(2): Evidence of partiality or corruption in one or more of the arbitrators. The leading case, *Commonwealth Coatings Corp. v. Continental Casualty Co.* (1968), established that arbitrators must disclose relationships that might create an appearance of bias.

3

Misconduct in Procedure

§ 10(a)(3): The arbitrators were guilty of misconduct in refusing to postpone the hearing, refusing to hear pertinent and material evidence, or misbehavior prejudicing the rights of a party.

4

Exceeding Powers

§ 10(a)(4): The arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award was not made. This is the most frequently litigated ground.

Notice what is *absent* from this list: there is no statutory ground for vacatur based on an arbitrator's error of law or erroneous findings of fact. This omission is deliberate and consequential, and it sets up the central doctrinal puzzle we will explore throughout the evening.

The "Manifest Disregard of the Law" Doctrine

Because the FAA's four statutory grounds offer only limited relief, courts developed a judicially-created doctrine — **"manifest disregard of the law"** — that purports to fill the gap. The doctrine originated in a single, somewhat cryptic line in *Wilko v. Swan*, 346 U.S. 427 (1953), where the Supreme Court suggested that an award might be vacated for "manifest disregard" of the law, though without elaborating on what that standard required.

Lower courts seized on this language and developed a demanding two-part test. To establish manifest disregard, the challenging party must show: (1) the arbitrator knew of a governing legal principle yet refused to apply it or ignored it altogether; and (2) the law ignored was well-defined, explicit, and clearly applicable to the case. Mere legal error — even significant legal error — does not suffice. The doctrine requires something closer to conscious defiance.

The doctrine's survival, however, is uncertain. In *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008), the Supreme Court held that the FAA's grounds for vacatur are *exclusive* and cannot be supplemented by contract. The majority did not expressly abolish manifest disregard but declined to affirm it as an independent ground, leaving open whether it survives as (a) a free-standing non-statutory ground, (b) a gloss on § 10(a)(4)'s "exceeded powers" language, or (c) a dead letter. The circuit courts have split dramatically on this question.

Circuits Retaining the Doctrine

2nd, 6th, 9th Circuits — treat manifest disregard as surviving *Hall Street*, either as independent ground or via § 10(a)(4).

Circuits Restricting the Doctrine

5th, 8th, 11th Circuits — hold that *Hall Street* limited vacatur to FAA statutory grounds only; manifest disregard is not independently available.

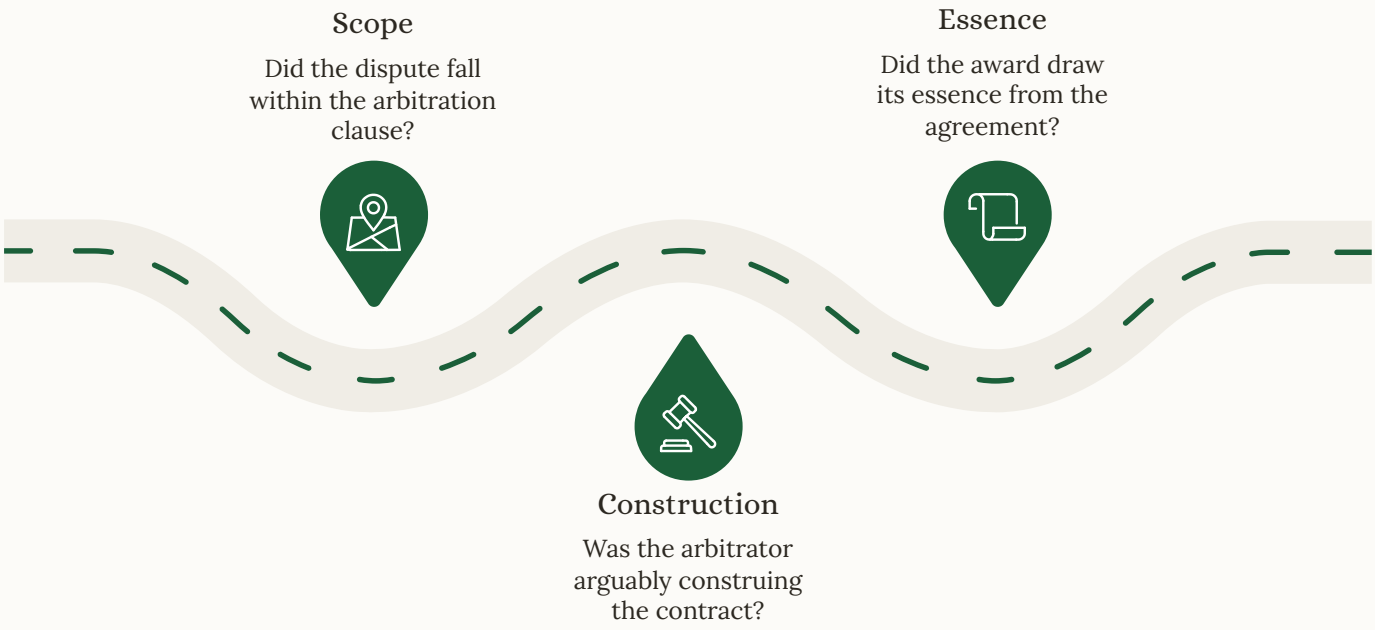
Circuits in Between

Other circuits fold manifest disregard into the "exceeded powers" analysis, preserving its practical effect while remaining technically within the statutory framework.

Exceeding Arbitral Powers: Drawing the Line

The most frequently litigated ground for vacatur — § 10(a)(4) — asks whether the arbitrators "exceeded their powers." This deceptively simple phrase raises profound questions about the source and limits of arbitral authority. An arbitrator's power flows entirely from the parties' agreement; an award that goes beyond the scope of that agreement is, in theory, no award at all.

The Supreme Court addressed the § 10(a)(4) standard directly in *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564 (2013), reaffirming the "extremely deferential" standard of review. The Court held that as long as an arbitrator is *"arguably construing or applying the contract"*, a court must enforce the award, even if the court is convinced the arbitrator committed a serious error. The critical inquiry is not whether the arbitrator got it right, but whether the arbitrator was even attempting to interpret the contract at all.



The "essence of the agreement" formulation — borrowed from the labor arbitration context of *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) — has migrated into commercial arbitration doctrine. An award fails this test only when the arbitrator's interpretation is so untethered from the contract's text and purpose that no rational reading could support it. Courts emphasize that they are not to substitute their reading of the contract for the arbitrator's, even where the arbitrator's reading strains credibility.

Procedural Fairness: The Hearing Rights Floor

While courts are extraordinarily reluctant to review the merits of arbitral decisions, they have been somewhat more willing — though still quite cautious — to police procedural fairness under § 10(a)(3). This provision addresses misconduct in the conduct of the hearing itself: the refusal to postpone proceedings when good cause exists, the exclusion of pertinent and material evidence, or other misbehavior that prejudices a party's rights.

The standard remains demanding. Courts have consistently held that arbitrators are not bound by the Federal Rules of Evidence and enjoy broad discretion in managing their proceedings. The question is not whether the arbitrator's evidentiary ruling was correct, or even whether a court would have made the same ruling — the question is whether the exclusion of evidence was so fundamentally unfair as to deny a party a reasonable opportunity to present its case. This is a high bar, and most procedural challenges fail.

Critically, § 10(a)(3) requires not merely procedural irregularity but **prejudice**. A party cannot obtain vacatur by pointing to an evidentiary ruling in the abstract; it must demonstrate that the excluded evidence was material to the outcome and that its exclusion likely affected the result. This causation requirement screens out technical grievances and focuses judicial attention on genuine miscarriages of procedural justice.

→ Identify the Procedural Irregularity

Was there a refusal to postpone, an evidence exclusion, or other arbitrator misbehavior? Document the specific ruling or conduct.

→ Establish Materiality

Was the excluded evidence or denied opportunity pertinent and material to the dispute? Irrelevant evidence exclusions will not support vacatur.

→ Prove Prejudice

Did the irregularity likely affect the outcome? Courts require a nexus between the procedural failing and the adverse award.

Evident Partiality: The Disclosure Obligation

Among the four statutory grounds, **evident partiality under § 10(a)(2)** generates some of the most fact-intensive and nuanced litigation. Unlike fraud or corruption, which require proof of intentional wrongdoing, evident partiality can arise from undisclosed relationships or interests that create an unacceptable appearance of bias — even absent any proof of actual influence on the outcome.

The leading Supreme Court authority is *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968), a fractured decision that has generated more confusion than clarity. A plurality required that arbitrators disclose "any dealings that might create an impression of possible bias." A concurring opinion by Justice White, however, cautioned that the standard should not require vacatur for trivial or insubstantial relationships — only for "substantial dealings" that a reasonable person would view as compromising.

The Disclosure Framework

Courts have generally synthesized *Commonwealth Coatings* to require disclosure of relationships that a reasonable person would consider likely to affect impartiality. The test is objective, not subjective — the question is how the relationship would appear to a reasonable observer, not whether the arbitrator subjectively felt biased.

The circuit courts have further refined this standard. The Ninth Circuit applies a relatively stringent "reasonable impression of partiality" test, while other circuits have emphasized that *evident* partiality requires something more than a technical disclosure failure — the nondisclosure must be significant enough that a reasonable person would conclude the arbitrator was partial.

Must Disclose

- Prior business relationships with a party
- Financial interests in the outcome
- Prior representations of parties
- Significant social or professional ties

Typically Need Not Disclose

- Remote or trivial prior contacts
- Industry familiarity common to all arbitrators
- Relationships with counsel's firm (in some circuits)

Contractual Modification of Review: The Hall Street Problem

One of the more vexed questions in post-FAA arbitration doctrine is whether parties may contractually *expand* the grounds for judicial review beyond what § 10 provides. The practical appeal is obvious: sophisticated commercial parties might prefer the security of knowing that a court will correct significant legal errors, and they might be willing to pay for that protection through a broader review clause in their arbitration agreement.

The Supreme Court answered this question in *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008), holding that the FAA's enumerated grounds are *exclusive* — parties cannot contractually expand (or, by implication, contract) review beyond what the statute provides. The Court reasoned that allowing private parties to rewrite the review standard would undermine the FAA's purpose of ensuring that arbitration awards are treated as "nearly final" rather than as merely advisory opinions subject to de novo judicial second-guessing.

Hall Street's holding raises important follow-on questions that remain contested. May parties *contract for less* review — for example, agreeing that no court shall vacate an award even for evident partiality? The Court expressly reserved this question. May parties pursue vacatur through state law rather than the FAA, thereby potentially accessing a broader set of review grounds under state arbitration statutes? Courts have divided on this question, and it remains an active area of litigation. The intersection of the FAA with the California Arbitration Act and the Revised Uniform Arbitration Act, for example, has generated persistent doctrinal friction.

Socratic Focus: If Hall Street holds that the FAA grounds are exclusive when parties invoke the FAA, what happens when parties draft their agreement to invoke state arbitration law instead? Does the FAA preempt a more permissive state review standard? Does the answer change if the agreement involves interstate commerce?

Fact Patterns for Discussion: Straddling the Border

The following hypothetical scenarios are designed to test your understanding of where the doctrinal lines fall. For each, consider: (a) which ground for vacatur, if any, is most plausibly available; (b) what additional facts would strengthen or defeat the challenge; and (c) how a court applying the deferential review standard would likely rule.

The Misread Contract

An arbitrator awards damages based on a reading of the damages clause that both parties' counsel agree — in post-award briefing — is plainly contrary to the contract's unambiguous text. The arbitrator's opinion cites no authority and offers no interpretive rationale. Does this constitute "manifest disregard" or "exceeding powers"? Does it matter which circuit you are in?

The Undisclosed Relationship

After the award issues, the losing party discovers that the neutral arbitrator sat on the board of a nonprofit foundation to which the prevailing party had donated $50,000 two years earlier. The arbitrator did not disclose this. The donation was publicly listed on the foundation's website. Does this constitute "evident partiality"? What is the relevance of the losing party's failure to independently investigate?

The Excluded Witness

The arbitrator refuses to allow a key damages expert to testify on the ground that her report was submitted two days late, even though the other side suffered no prejudice from the delay and the parties' arbitration rules contained no express deadline. Is this § 10(a)(3) misconduct? What must the challenging party show to obtain vacatur?

Standards of Review: A Comparative Summary

Understanding the applicable standard of review for each type of challenge is essential to advising clients, briefing courts, and analyzing arbitral awards. The following table synthesizes the governing standards across the principal grounds for vacatur, the degree of deference courts apply, and the practical likelihood of success for a challenging party.

Ground for Challenge	Governing Standard	Degree of Deference	Practical Success Rate
Error of Law / Fact	No review — not a cognizable ground under FAA	Absolute deference	None
Manifest Disregard of Law	Arbitrator knew of, and consciously ignored, clear governing law	Extremely deferential	Very low (~5–10%)
Exceeded Powers § 10(a)(4)	Award not "arguably construing" the contract; fails "essence" test	Highly deferential	Low (~10–15%)
Procedural Misconduct § 10(a)(3)	Material evidence excluded; prejudice to outcome demonstrated	Moderately deferential	Low-moderate
Evident Partiality § 10(a)(2)	Significant undisclosed relationship; reasonable appearance of bias	Moderately deferential	Low-moderate
Fraud / Corruption § 10(a)(1)	Award procured by fraud not discoverable by due diligence	Less deferential (if proven)	Rare but viable when proven

These success-rate estimates are necessarily rough, but they illustrate an important reality: vacatur petitions fail the overwhelming majority of the time. Courts take the finality norm seriously, and a party seeking to undo an arbitration award faces a formidable uphill battle regardless of which ground it invokes. This reality should inform how practitioners counsel clients both before and after arbitration.

Policy Dimensions: Why the Balance Matters

The legal doctrine of arbitral review does not exist in a vacuum. It reflects — and in turn shapes — broader policy choices about who should have access to dispute resolution, how power imbalances between repeat-player arbitration users and one-time parties should be managed, and what role courts should play in a system increasingly dominated by private adjudication.

Critics of the current deferential regime argue that it systematically disadvantages weaker parties — employees and consumers who are required to arbitrate under mandatory clauses and who lack the resources to mount sophisticated arbitration proceedings. When an arbitrator makes a legal error that disadvantages such a party, the combination of restricted judicial review and prohibitive re-arbitration costs means the error is, as a practical matter, unreviewable and unrectifiable. This is a structural fairness concern that the doctrine, as currently calibrated, does not adequately address.

Defenders of the deferential standard respond that the alternative — robust judicial review — would destroy the institutional value of arbitration. If every losing party could relitigate before a federal court, the two-tier system would impose massive costs without corresponding benefits. They further argue that parties who wish for greater legal accuracy can contract for it through choice of forum, robust arbitration rules, and panel composition requirements — options that sophisticated commercial parties exercise routinely.

Statutory Framework

FAA establishes narrow grounds; reflects pro-arbitration congressional policy

Policy Critique

Academic and advocacy pressure for reform; ongoing legislative proposals to expand consumer and employee protections

Judicial Interpretation

Courts apply deferential standards; split on manifest disregard post-Hall Street

Party Behavior

Parties draft agreements, select arbitrators, and structure proceedings to manage review risk

Key Cases at a Glance

The following landmark decisions form the doctrinal backbone of arbitral review law. Each repays careful study. Be prepared to discuss not merely the holdings, but the reasoning, the dissents, and the unresolved questions each decision leaves in its wake.

Wilko v. Swan (1953)

First Supreme Court reference to "manifest disregard" as a potential vacatur ground — in dicta. Sets in motion decades of doctrinal uncertainty about non-statutory review grounds.

United Steelworkers v. Enterprise Wheel (1960)

Establishes the "essence of the agreement" test in the labor arbitration context. The test's migration into commercial arbitration has been enormously consequential.

Commonwealth Coatings Corp. v. Continental Casualty Co. (1968)

Seminal case on evident partiality and the arbitrator disclosure obligation. Fractured decision creates ongoing circuit conflict about the breadth of the disclosure duty.

First Options of Chicago, Inc. v. Kaplan (1995)

Establishes that questions of arbitrability are reviewed de novo unless parties clearly delegated them to the arbitrator — an important exception to general deference.

Hall Street Associates v. Mattel, Inc. (2008)

FAA grounds for vacatur are exclusive; parties cannot contractually expand them. Throws the survival of manifest disregard into serious doubt. Creates the circuit split that persists today.

Oxford Health Plans LLC v. Sutter (2013)

Reaffirms extremely deferential standard under § 10(a)(4). Even an arbitrator's "good argument can be" wrong and the award still survives if the arbitrator was "arguably construing the contract."

Seminar Preparation: Questions to Bring to Class

The following questions are designed to focus your preparation and anchor our Socratic dialogue. For each question, ground your answer in specific case holdings and statutory text. Avoid conclusory statements — the goal is to expose the doctrinal fault lines and defend a position under challenge.

1 After *Hall Street*, is manifest disregard dead, dormant, or simply relocated?

Consider the different ways circuits have responded. Which approach is most faithful to the FAA's text? Which is most faithful to its purpose? Are these the same thing?

2 Where is the line between an arbitrator "arguably construing the contract" and one who has simply exceeded their powers?

Use the hypotheticals from Section 9. For each, can you articulate a principled distinction, or does the line ultimately rest on judicial intuition about egregious outcomes?

3 Does the current regime adequately protect structurally weaker parties in mandatory arbitration settings?

If not, is the appropriate remedy expanded judicial review, or should reform target the enforceability of mandatory arbitration clauses at the contracting stage?

4 Should the standard for vacating a labor arbitration award differ from the standard applicable to commercial arbitration?

The doctrine has its roots in labor law. Does the institutional context of collective bargaining agreements justify a different calibration of deference than in pure commercial disputes?

Reading Assignment Reminder: Come prepared with your annotations on *Hall Street Associates v. Mattel* and *Oxford Health Plans v. Sutter*. We will use both decisions as our primary anchors for tonight's discussion of § 10(a)(4) and the manifest disregard doctrine.