

# Lecture 15 ADR Cases

## Judicial Review of Arbitration Awards

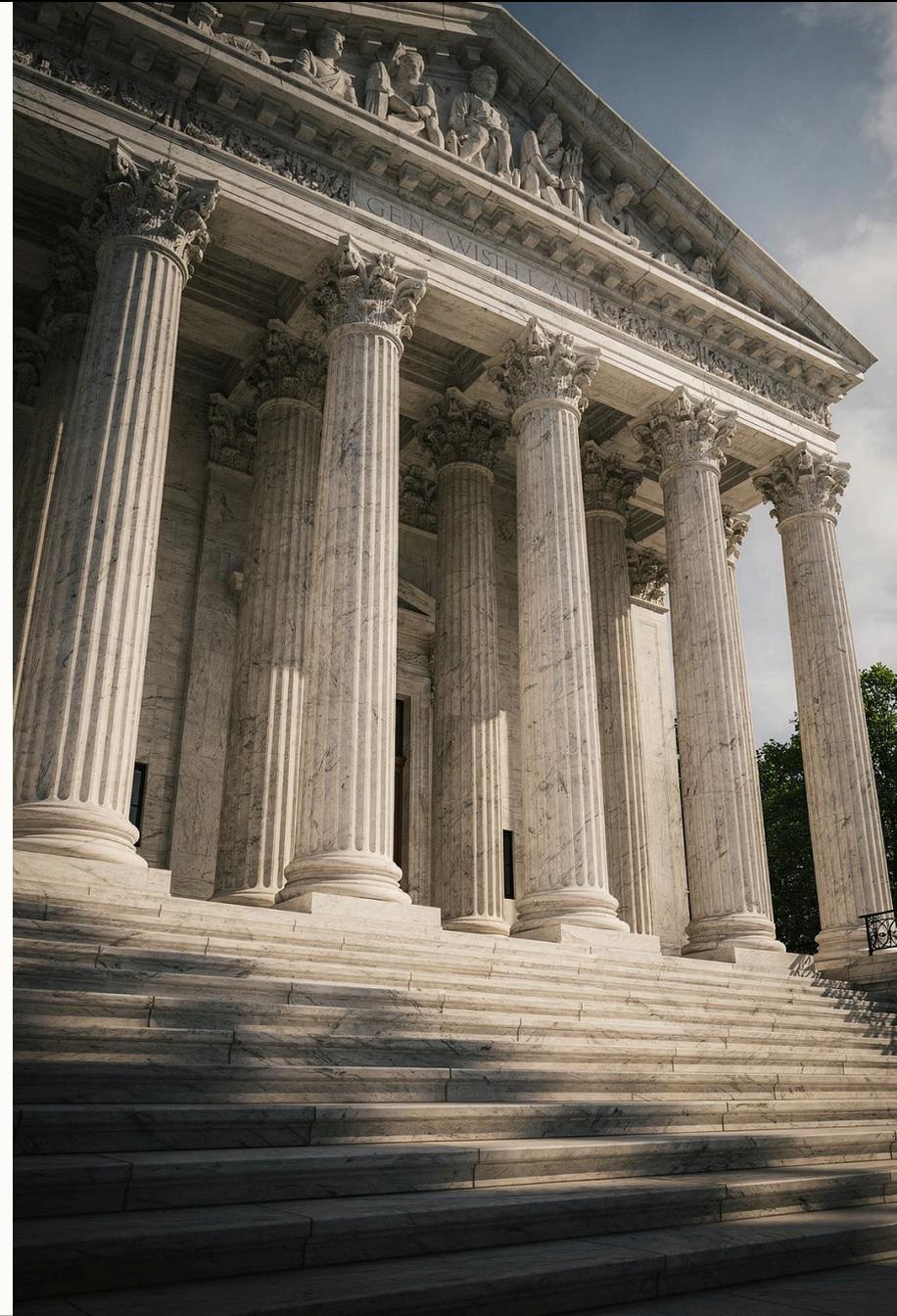
 by **Roger Batchelor**

A deep dive into the statutory framework, foundational case law, and the evolving policy ecosystem governing the limits of court oversight in U.S. arbitration.

ARBITRATION LAW

FEDERAL ARBITRATION ACT

JUDICIAL REVIEW



# The Policy Ecosystem: Four Pillars

Understanding judicial review of arbitration awards requires situating doctrine within a broader policy environment shaped by statute, judicial culture, party strategy, and reform advocacy.

## Statutory Framework

The FAA establishes narrow, exclusive grounds for vacatur — reflecting a strong pro-arbitration congressional policy dating to its enactment in 1925.

## Judicial Interpretation

Courts apply highly deferential standards. A persistent circuit split remains over whether "manifest disregard" survived as a viable standard after *Hall Street*.

## Party Behavior

Sophisticated parties draft arbitration agreements, select arbitrators, and structure proceedings to proactively manage the risk of adverse — and unreviewable — outcomes.

## Policy Critique

Academic commentary and advocacy groups continue to pressure for reform, with active legislative proposals aimed at expanding protections for consumers and employees.

# The Statutory Framework: FAA at Its Core

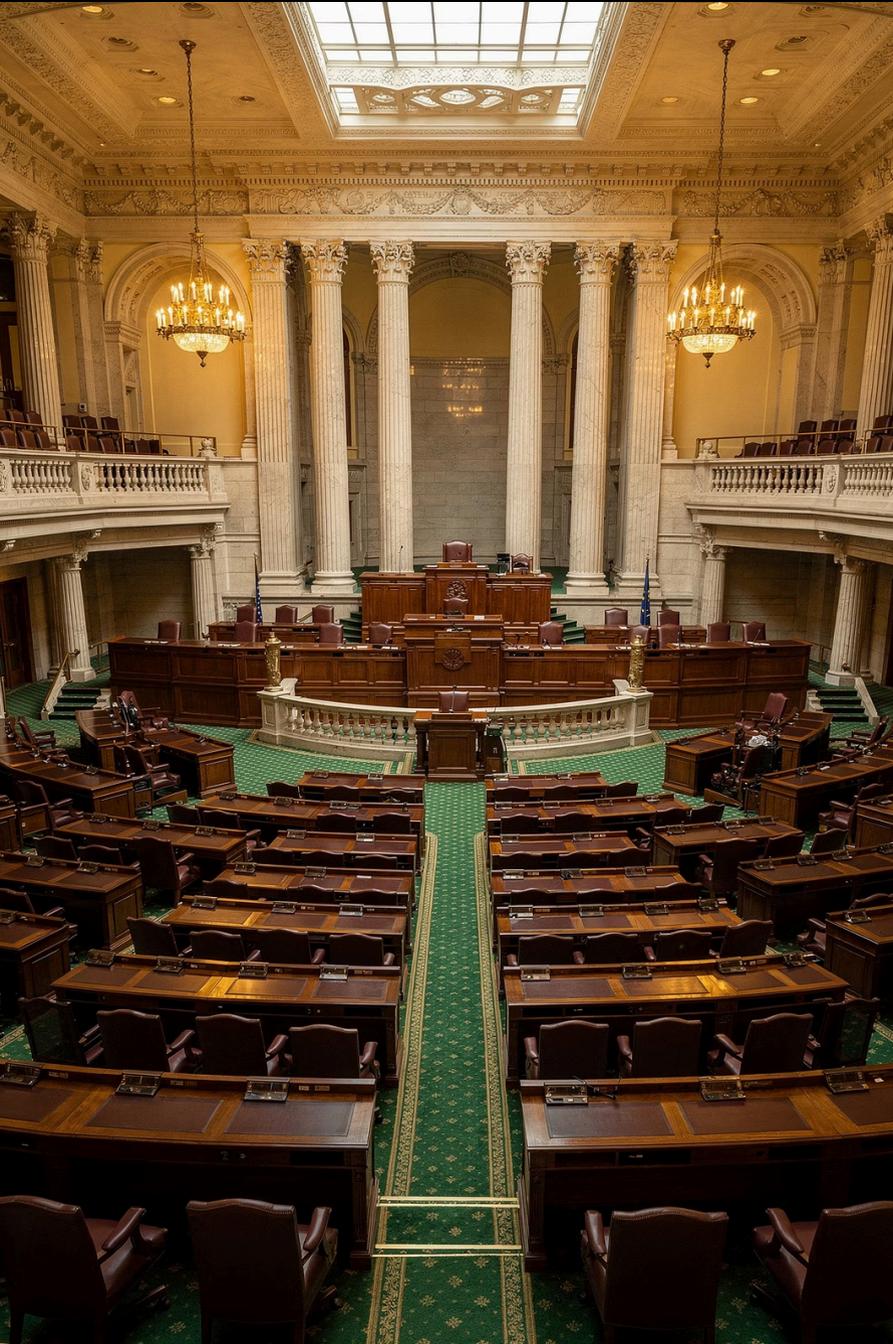
The Federal Arbitration Act of 1925 fundamentally reshaped the legal landscape by reversing centuries of judicial hostility toward arbitration agreements. Congress declared arbitration agreements "valid, irrevocable, and enforceable," placing arbitration on equal footing with other contracts.

## Grounds for Vacatur — § 10

- Award procured by corruption, fraud, or undue means
- Evident partiality or corruption in the arbitrators
- Arbitrator misconduct prejudicing a party's rights
- Arbitrators exceeded or imperfectly executed their powers

## The Deliberate Narrowness

Congress intentionally limited vacatur grounds to preserve the speed, finality, and party autonomy that make arbitration valuable. Courts have consistently interpreted these grounds narrowly, making successful vacatur petitions rare and difficult to sustain.



# Judicial Interpretation: Deference as Default

Federal courts consistently approach arbitration awards with a posture of extreme deference. The reviewing court does not function as an appellate body re-examining the merits – it asks only whether the award falls within the bounds the FAA permits.

## The Merits Are Off-Limits

A court may not vacate an award merely because the arbitrator misread the facts, applied the wrong legal rule, or reached a conclusion the court finds unwise. Error alone is not a ground for vacatur under the FAA.

## The Manifest Disregard Circuit Split

Following *Hall Street* (2008), circuits disagree on whether "manifest disregard of the law" remains viable – either as an independent ground or as a gloss on § 10(a)(4). Several circuits retain it; others have formally abandoned it.

## Why Deference Persists

Courts treat arbitral finality as a feature, not a bug. Robust review would undermine the efficiency and certainty that parties bargained for when they agreed to arbitrate in the first place.

# Party Behavior: Managing Review Risk

Because review is narrow and vacatur is the exception, sophisticated parties treat the drafting stage as their primary opportunity to shape outcomes. The architecture of the agreement – not the litigation – is where strategic decisions matter most.



## Agreement Drafting

Parties specify substantive law, seat, rules, and procedural safeguards.

After *Hall Street*, attempts to contractually expand vacatur grounds are unenforceable – making initial drafting even more consequential.



## Arbitrator Selection

Selection of arbitrators – their expertise, background, and institutional affiliation – is perhaps the most consequential decision parties make, given how little corrective review is available afterward.



## Structuring Proceedings

Parties use discovery protocols, briefing schedules, and reasoned-award requirements to build a robust record, anticipating that the award will be the final word on the dispute.

# The Reform Debate: Pressure for Change

The FAA's pro-arbitration framework has faced sustained critique from academics, consumer advocates, and labor organizations who argue that mandatory arbitration in adhesion contracts strips vulnerable parties of meaningful legal recourse.

## Core Academic Critiques

- Arbitration insulates corporate defendants from class-wide liability
- Narrow review leaves structural bias by repeat-player arbitrators unchecked
- Confidentiality suppresses development of protective legal norms
- Consent in consumer/employment contexts is often illusory

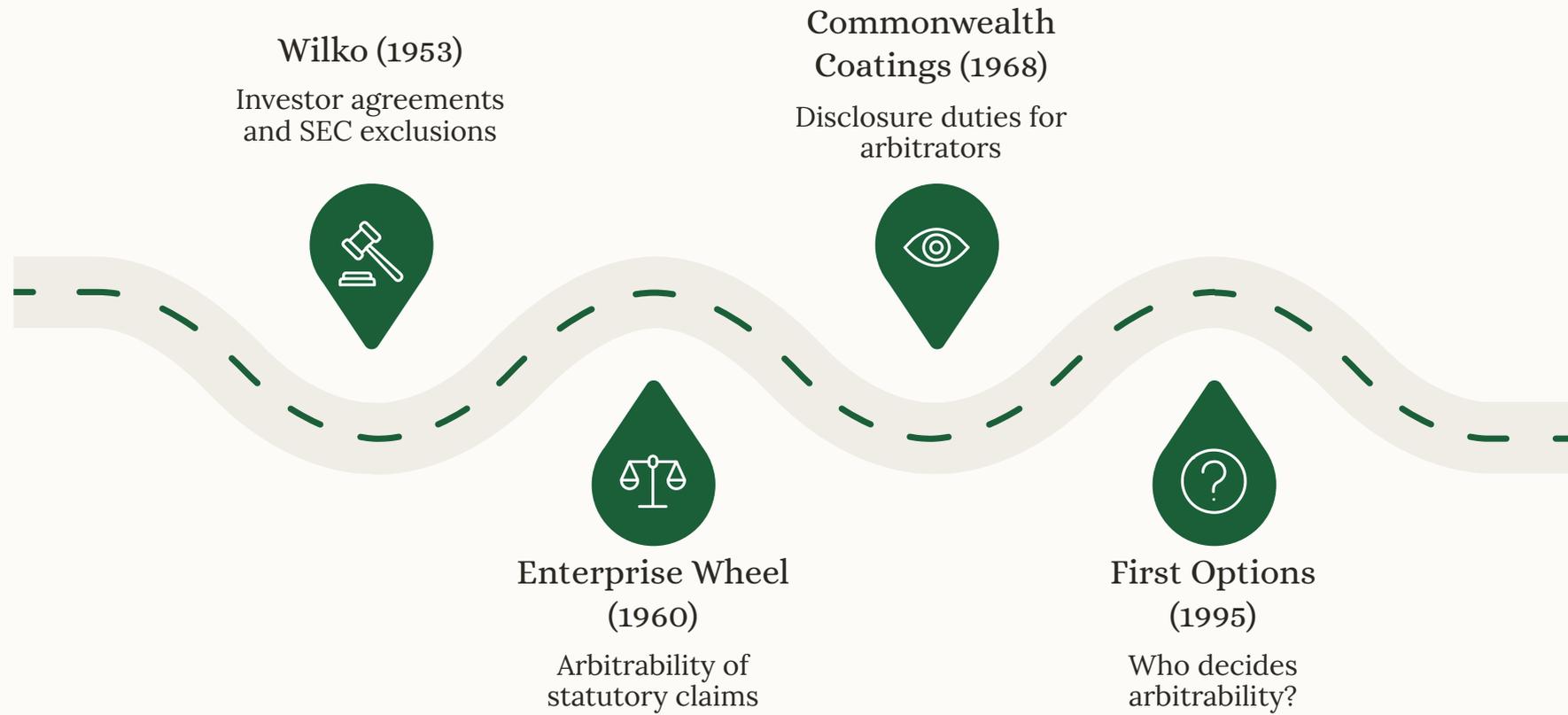
## Legislative Responses

- **FAIR Act:** Would ban mandatory pre-dispute arbitration in consumer and employment contracts
- **Ending Forced Arbitration of Sexual Assault Act (2022):** Already enacted — a significant carve-out from FAA preemption
- State-level reform efforts, largely preempted by the FAA under *Southland Corp. v. Keating*

## KEY CASES

# Foundational Arbitration Case Law at a Glance

A carefully selected canon of Supreme Court decisions has defined the contours of arbitral review, the scope of arbitrability, and the disclosure obligations that govern arbitrator conduct. What follows is a systematic examination of the cases every arbitration practitioner must know.



Each decision marks a doctrinal turning point – together, they form the constitutional grammar of U.S. arbitration law.

1953

## *Wilko v. Swan* (1953)

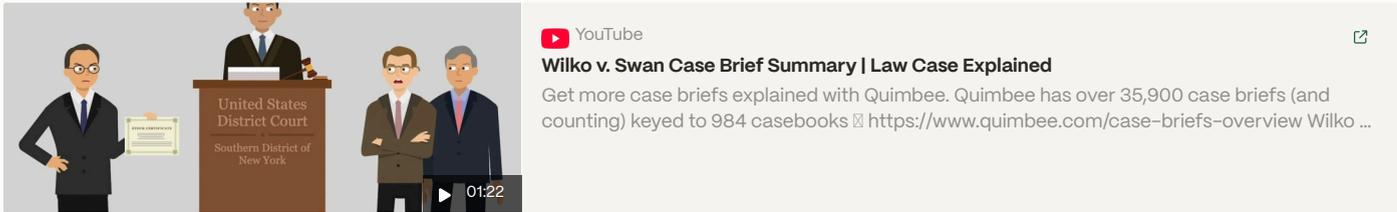
The Supreme Court's first significant engagement with the intersection of arbitration and federal statutory rights — and the origin of the "manifest disregard" doctrine that would shape decades of litigation.

### The Holding

The Court held that claims under the Securities Act of 1933 could not be compelled to arbitration because investors' statutory protections were non-waivable. Arbitration was deemed an inadequate substitute for judicial enforcement of those rights.

### The Lasting Legacy: Manifest Disregard

In dicta, Justice Reed wrote that courts could vacate an award if arbitrators acted in "manifest disregard" of the law. This passing remark launched a doctrine. Courts subsequently treated it as a non-statutory basis for vacatur — despite its uncertain textual footing in the FAA. *Wilko* itself was overruled by *Rodriguez de Quijas* (1989), but "manifest disregard" outlived it.



The image shows a YouTube video player interface. On the left is a video thumbnail with a grey background. It features a judge in a black robe standing behind a wooden podium. The podium has the text "United States District Court Southern District of New York" on it. To the left of the podium, a man in a dark suit and glasses holds a yellow document. To the right, two men in suits stand with their arms crossed. A play button icon and the text "01:22" are overlaid on the bottom right of the thumbnail. To the right of the thumbnail, the text "YouTube" is displayed with a red play button icon. Below that is the video title "Wilko v. Swan Case Brief Summary | Law Case Explained" in bold. Underneath the title is a description: "Get more case briefs explained with Quimbee. Quimbee has over 35,900 case briefs (and counting) keyed to 984 casebooks [link] https://www.quimbee.com/case-briefs-overview Wilko ...". A share icon is located to the right of the description.

1960

# *United Steelworkers v. Enterprise Wheel & Car Corp. (1960)*

One of the "Steelworkers Trilogy," this decision established the foundational standard for reviewing labor arbitration awards — a standard whose influence extended far beyond collective bargaining agreements into commercial arbitration.

1

## The Dispute

A labor arbitrator awarded reinstatement and back pay to discharged employees, but the award extended beyond the contract's expiration date. The employer challenged, arguing the arbitrator exceeded his authority.

2

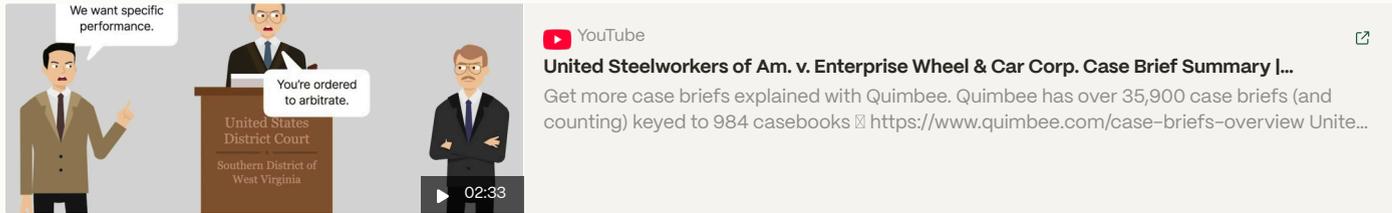
## The "Essence" Test

Justice Douglas held that courts must enforce an award as long as it "draws its essence from the collective bargaining agreement." An arbitrator's interpretation need not be correct — it need only derive from the contract, however loosely.

3

## Commercial Migration

Courts subsequently imported the "essence of the agreement" test into commercial arbitration review under § 10(a)(4) of the FAA, dramatically constraining grounds for vacatur and cementing judicial deference as the dominant posture.



The image shows a YouTube video player interface. On the left is a video thumbnail with three cartoon characters. The first character on the left says, "We want specific performance." The second character, standing at a podium labeled "United States District Court Southern District of West Virginia", says, "You're ordered to arbitrate." The third character on the right has his arms crossed. Below the thumbnail is a play button icon and the text "02:33". To the right of the thumbnail, the text reads "YouTube" with a red play button icon, followed by the video title "United Steelworkers of Am. v. Enterprise Wheel & Car Corp. Case Brief Summary |..." and a share icon. Below the title is a description: "Get more case briefs explained with Quimbee. Quimbee has over 35,900 case briefs (and counting) keyed to 984 casebooks [https://www.quimbee.com/case-briefs-overview Unite...".

1968

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

The leading Supreme Court case on arbitrator disclosure and evident partiality – and one that continues to generate circuit conflict more than fifty years after its decision.

## The Facts and Holding

A "neutral" arbitrator failed to disclose that he had a prior business relationship with one of the parties – generating over \$12,000 in consulting fees. The Supreme Court vacated the award under § 10(a)(2), holding that even neutral arbitrators must disclose any dealings that might create an impression of possible bias.

## Why It Remains Contested

The fractured decision – a plurality opinion by Justice Black joined only in part by others – left the breadth of the disclosure duty unclear. Does it require disclosure of any past relationship, or only those substantial enough to suggest actual bias? Circuits continue to disagree, producing inconsistent results for parties and arbitrators nationwide.

1968 – CIRCUIT CONFLICT

# The *Commonwealth Coatings* Aftermath: Disclosure Standards in Conflict

The fractured plurality in *Commonwealth Coatings* left lower courts without clear guidance, spawning a durable circuit split on what arbitrators must disclose and when silence constitutes evident partiality.

## Broad Disclosure Camp

Some circuits — following Justice Black's plurality — require disclosure of any relationship that might create even an appearance of bias, regardless of its materiality or the party's actual knowledge. Failure to disclose is itself grounds for vacatur.

## Narrow Disclosure Camp

Other circuits require a more substantial showing: the undisclosed relationship must be significant enough that a reasonable person would conclude it creates a genuine impression of possible partiality. Minor or remote connections do not trigger the duty.

## Practical Impact

This split creates geography-dependent results. The same undisclosed arbitrator relationship may justify vacatur in one circuit and be entirely irrelevant in another — a serious problem for parties in multi-district disputes or with seats near circuit boundaries.

1995

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

A pivotal structural decision establishing that who decides arbitrability – the court or the arbitrator – turns on whether the parties "clearly and unmistakably" agreed to delegate that threshold question to the arbitrator.



## The Default Rule: Courts Decide

When parties have not clearly delegated arbitrability to the arbitrator, courts determine whether a dispute is arbitrable – and they do so *de novo*, without deference to any arbitral ruling on the question. Silence or ambiguity in the agreement cuts against delegation.



## The Exception: Clear Delegation

Parties can reverse this default by expressly delegating arbitrability questions to the arbitrator. The agreement must be clear and unmistakable. Many institutional rules (e.g., AAA, JAMS) have been held sufficient to constitute such delegation when incorporated by reference.



## Why the Standard Matters

The *de novo* standard for arbitrability is a critical exception to the FAA's general deference regime. A court that disagrees with an arbitrator's jurisdictional ruling may substitute its own judgment – creating significant strategic stakes at the gateway stage of any arbitration.



YouTube

### First Options of Chicago, Inc. v. Kaplan Case Brief Summary | Law Case Explained

Get more case briefs explained with Quimbee. Quimbee has over 16,300 case briefs (and counting) keyed to 223 casebooks <https://www.quimbee.com/case-briefs-overview> First...



2008 – LANDMARK

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

Perhaps the most consequential FAA decision of the modern era. The Supreme Court held that the statutory grounds for vacatur and modification under the FAA are *exclusive* – parties cannot contractually expand them.

### The Contract at Issue

The parties' arbitration agreement provided that a court could vacate the award for legal error – a much broader standard than the FAA's enumerated grounds. The Court rejected this provision as unenforceable, finding it inconsistent with the FAA's text and structure.

### The Manifest Disregard Problem

Justice Souter's majority opinion raised but did not definitively resolve whether "manifest disregard" survived *Hall Street*. The ambiguity was deliberate – the Court described it as possibly a "shorthand" for § 10(a)(4), preserving the debate. Circuits have split sharply in response, with some retaining the doctrine and others abolishing it.

**Arbitration Agreement**

Hall Street Associates, LLC, & Mattel, Inc.

The court can vacate, modify, or correct any arbitration order if the findings of fact aren't supported by substantial evidence or if the conclusions of law are erroneous.

▶ 01:48

YouTube

**Hall Street Associates v. Mattel, Inc. Case Brief Summary | Law Case Explained**



Get more case briefs explained with Quimbee. Quimbee has over 16,300 case briefs (and counting) keyed to 223 casebooks <https://www.quimbee.com/case-briefs-overview> Hall...

# The Manifest Disregard Doctrine: Before and After *Hall Street*

Few doctrinal questions in arbitration law are as contested — or as practically significant — as the post-*Hall Street* fate of "manifest disregard of the law."

## *Pre-Hall Street: Widespread Acceptance*

Most circuits recognized "manifest disregard" as a non-statutory ground for vacatur rooted in *Wilko's* dicta. Courts vacated awards where arbitrators knew the governing law, understood it applied, and consciously chose to ignore it. A demanding standard — but a real one.

## *Post-Hall Street: Fractured Landscape*

After 2008, circuits diverged sharply. The Second and Ninth Circuits retained the doctrine, recharacterizing it as a gloss on § 10(a)(4). The Fifth and Eleventh Circuits concluded it no longer exists as an independent vacatur ground. The Supreme Court has declined to resolve the split.

- ❑ Practitioners must assess the law of the relevant circuit before relying on — or arguing against — manifest disregard as a basis for vacatur or confirmation.

2013

## *Oxford Health Plans LLC v. Sutter* (2013)

A unanimous decision that dramatically illustrated just how narrow the scope of review under § 10(a)(4) truly is – even when the arbitrator's reasoning appears plainly wrong to the reviewing court.

1

### The Issue

The arbitrator interpreted a standard arbitration clause to authorize class arbitration – a reading most commentators and the dissenting justices found textually unsupportable. Oxford Health sought vacatur, arguing the arbitrator exceeded his powers.

2

### The Holding

The Court unanimously upheld the award. Because the parties had asked the arbitrator to construe the contract, and the arbitrator did so – however wrongly – the award was not subject to vacatur under § 10(a)(4). The question was not correctness, but whether the arbitrator was "arguably construing the contract."

3

### The Kagan Rule

Justice Kagan's opinion articulated the governing standard with precision: "the arbitrator's construction holds, however good, bad, or ugly." This formulation has become a touchstone for courts evaluating § 10(a)(4) challenges – and a sobering reminder of how little room courts have to intervene.



YouTube

### Oxford Health Plans LLC v. Sutter (2013) Overview | LSData Case Brief Video Sum...

This case was about a dispute between a pediatrician and a health insurance company. The insurance company wanted the dispute to be resolved through arbitration based on their...



# Other Foundational Cases: The Essential Canon

Beyond the cases examined above, a broader set of Supreme Court decisions has shaped the architecture of U.S. arbitration law — from the enforceability of agreements to the preemption of state law.

01

---

## *Southland Corp. v. Keating* (1984)

Held the FAA applies in state courts and preempts state laws that single out arbitration for disfavored treatment. Established federal supremacy in arbitration enforcement — a foundational preemption ruling still cited in nearly every major arbitration case.

03

---

## *Epic Systems Corp. v. Lewis* (2018)

Extended *Concepcion's* logic to the employment context. Employers may enforce individual arbitration agreements that bar collective actions under the NLRA. Resolved a three-way circuit split and foreclosed a major avenue for employee collective action.

02

---

## *AT&T Mobility LLC v. Concepcion* (2011)

FAA preempts state law rules that effectively prohibit class arbitration waivers. California's *Discover Bank* rule was invalidated. Enormously consequential for consumer arbitration — effectively enshrining class waivers in consumer contracts nationwide.

04

---

## *Moses H. Cone Memorial Hospital v. Mercury Construction* (1983)

Articulated the "liberal federal policy favoring arbitration" and held that any doubts about the scope of an arbitration clause should be resolved in favor of arbitration. Cemented the pro-arbitration presumption that governs contract interpretation to this day.

# Southland Corp. v. Keating

This case is foundational in establishing the supremacy of the Federal Arbitration Act (FAA) over state law. The Supreme Court held that the FAA applies not only in federal courts but also in state courts, which significantly broadened its reach.

The key issue was whether California could apply its own law to invalidate arbitration agreements in franchise contracts. The Court rejected this, ruling that state laws that single out arbitration agreements for disfavored treatment are preempted by the FAA.

- ❏ This decision effectively nationalized arbitration policy, ensuring uniform enforcement across jurisdictions. Its long-term impact is profound. It prevents states from undermining arbitration through protective legislation, even in areas like consumer or franchise law. Today, Southland is routinely cited as the doctrinal basis for FAA preemption and remains central to nearly all arbitration enforcement disputes.



YouTube

### Southland Corp. v. Keating Case Brief Summary | Law Case Explained

Get more case briefs explained with Quimbee. Quimbee has over 36,900 case briefs (and counting) keyed to 984 casebooks <https://www.quimbee.com/case-briefs-overview...>



# AT&T Mobility LLC v. Concepcion

## The Court's Holding

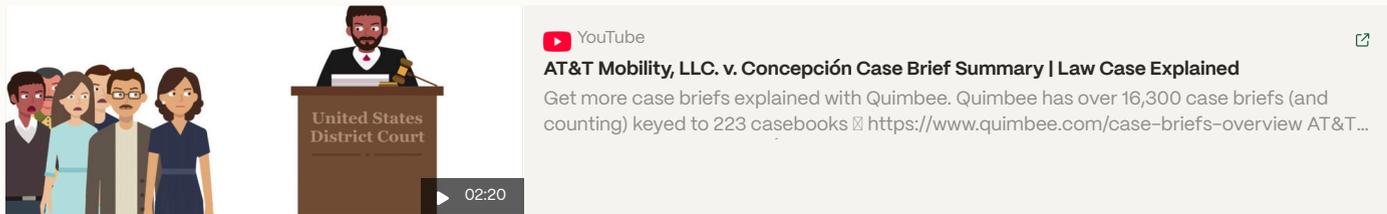
The Court held that state rules that interfere with the fundamental attributes of arbitration, such as its efficiency, informality, and bilateral nature, are preempted by the FAA. Class arbitration, the Court reasoned, is inconsistent with these attributes.

In this case, the Court significantly strengthened the FAA's preemptive force by striking down California's "Discover Bank rule," which had deemed many class action waivers in consumer arbitration agreements unconscionable.

## Practical Effect & Legacy

The practical effect was dramatic. Businesses gained the ability to enforce arbitration clauses that include class action waivers, effectively eliminating many consumer class actions.

This case reshaped consumer dispute resolution in the United States by channeling large volumes of claims into individualized arbitration, often reducing the economic feasibility of pursuing small-value claims. It also marked a turning point in the Court's increasingly strong pro-arbitration stance.



The image shows a YouTube video player interface. On the left is a video thumbnail featuring a group of five diverse people standing in a line, and a judge in a black robe sitting at a wooden podium. The podium has the text "United States District Court" on it. A play button icon and the duration "02:20" are visible at the bottom left of the thumbnail. To the right of the thumbnail, the YouTube logo and the word "YouTube" are displayed. Below that is the video title "AT&T Mobility, LLC. v. Concepción Case Brief Summary | Law Case Explained" in bold. Underneath the title is a description: "Get more case briefs explained with Quimbee. Quimbee has over 16,300 case briefs (and counting) keyed to 223 casebooks". A link is provided: "https://www.quimbee.com/case-briefs-overview AT&T...". A share icon is located at the top right of the video information area.

YouTube

**AT&T Mobility, LLC. v. Concepción Case Brief Summary | Law Case Explained**

Get more case briefs explained with Quimbee. Quimbee has over 16,300 case briefs (and counting) keyed to 223 casebooks <https://www.quimbee.com/case-briefs-overview> AT&T...

02:20

## CASE LAW

# Epic Systems Corp. v. Lewis

This decision extended the reasoning of *Concepcion* into the employment context. The central question was whether arbitration agreements requiring individualized proceedings violated employees' rights under the National Labor Relations Act (NLRA), which protects collective activity.

## The Court's Ruling

The Court held that such arbitration agreements are enforceable under the FAA and do not conflict with the NLRA. In doing so, it resolved a significant circuit split and confirmed that employers can require employees to waive participation in class or collective actions as a condition of employment.

## Substantial Implications

This case effectively foreclosed one of the last major avenues for collective legal action by employees, particularly in wage and hour disputes. It reinforces the dominance of arbitration as the primary dispute resolution mechanism in employment relationships and underscores the Court's prioritization of contractual freedom and arbitration policy over collective labor protections.



YouTube

### **Epic Sys. Corp. v. Lewis (2018) Overview | LSData Case Brief Video Summary**

Ernst & Young, LLP required its employees to sign individual arbitration agreements as a condition of employment. Stephen Morris, one of Ernst & Young's employees, sued his...



01:30

# Moses H. Cone Memorial Hospital v. Mercury Construction Corp.

This case is one of the most influential in articulating the modern pro-arbitration doctrine. The Court emphasized that the FAA reflects a "**liberal federal policy favoring arbitration**," a phrase that has become a cornerstone of arbitration jurisprudence.

## The Dispute & Holding

The dispute involved parallel state and federal proceedings, raising questions about whether the federal court should defer to the state case. The Court held that federal courts should enforce arbitration agreements even in the presence of concurrent state litigation, reinforcing the primacy of arbitration.

## The Interpretive Presumption

Importantly, the Court established a strong interpretive presumption. Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. This presumption continues to guide courts in interpreting arbitration clauses broadly.

## The Case's Legacy

The case's legacy lies in its doctrinal framing. It does not just apply the FAA. It shapes how courts think about arbitration. It transforms arbitration from a contractual mechanism into a policy-driven system that courts are expected to actively support and expand.

# Synthesis Across the Cases

Taken together, these cases illustrate a clear trajectory in U.S. arbitration law:



Expansion of FAA Authority  
Through **Southland**



Strengthening of Preemption and Enforcement  
Through **Concepcion**



Extension into Employment Relationships  
Through **Epic Systems**

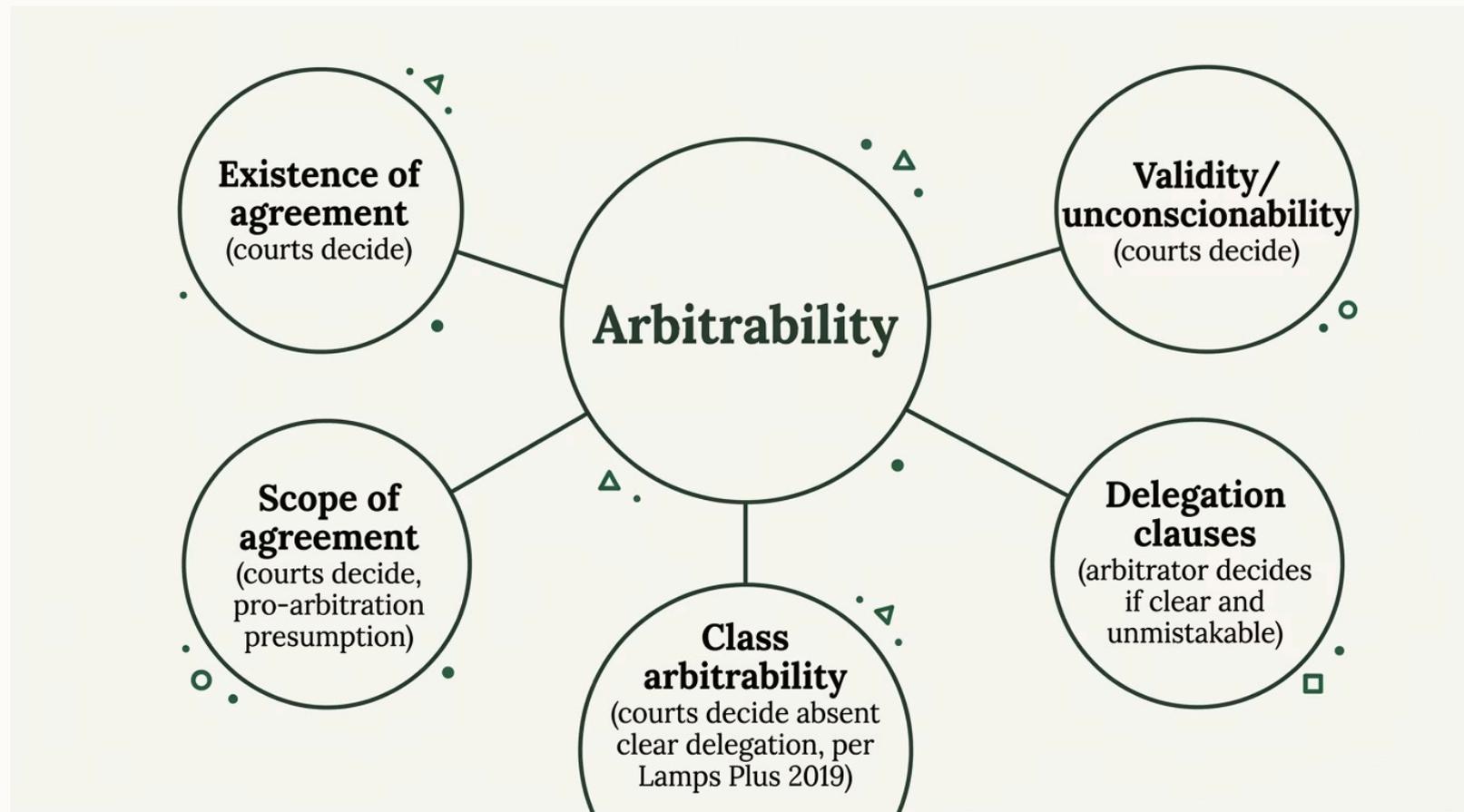


Creation of a Pro-Arbitration Interpretive Framework  
Through **Moses H. Cone**

- Collectively, they demonstrate how arbitration has evolved from a procedural alternative into a **dominant and policy-protected dispute resolution system**, with limited space for state intervention or collective legal action.

# The Arbitrability Framework: A Structural Map

Questions of arbitrability — whether a dispute must be arbitrated — are governed by a layered framework that distinguishes between gateway questions for courts and merits questions for arbitrators.



Understanding which decision-maker resolves each gateway question is essential to arbitration strategy — the wrong forum at the threshold stage can be dispositive.

# Grounds for Vacatur: A Comparative Framework

Practitioners must understand not only the statutory grounds for vacatur but also how courts have interpreted and applied each ground – and where the doctrine remains contested.

Ground (§ 10(a))	Standard Applied	Key Cases / Notes
Corruption, fraud, or undue means (§ 10(a)(1))	Must be material; not discoverable by due diligence before award	Rarely invoked successfully; high evidentiary burden
Evident partiality (§ 10(a)(2))	Significant undisclosed relationship; circuit split on breadth	<i>Commonwealth Coatings</i> (1968); ongoing conflict
Arbitrator misconduct (§ 10(a)(3))	Prejudicial refusal to hear material evidence	Courts rarely vacate; broad arbitral discretion over procedure
Exceeded powers (§ 10(a)(4))	"Arguably construing" the contract is sufficient to uphold	<i>Enterprise Wheel</i> (1960); <i>Oxford Health</i> (2013)
Manifest disregard (non-statutory)	Knowing, intentional disregard of clear, applicable law	Post- <i>Hall Street</i> circuit split; survival disputed

# Synthesis: What the Case Law Tells Us

Taken together, the Supreme Court's arbitration jurisprudence reflects a coherent – if sometimes contested – set of structural commitments.

## → Finality Is the Point

The FAA's narrow vacatur grounds are not an oversight – they reflect a deliberate congressional choice to privilege speed and certainty over correctness. Courts reinforce this through deferential review standards.

## → The Pro-Arbitration Presumption Is Durable

From *Moses H. Cone* to *Epic Systems*, the Court has consistently resolved interpretive doubts in favor of arbitration. Reform, if it comes, will likely require Congressional action – not judicial reinterpretation.

## → Party Autonomy Has Limits

While parties have broad freedom to structure their arbitrations, *Hall Street* makes clear that some structural features – including the scope of judicial review – cannot be altered by contract. The FAA framework is mandatory in this respect.

## → Structural Tensions Remain

The circuit split on manifest disregard, the fractured disclosure standard from *Commonwealth Coatings*, and ongoing legislative pressure ensure that U.S. arbitration law remains a dynamic, contested field requiring continuous monitoring.

# Key Takeaways for Practitioners and Policymakers

The doctrine of judicial review of arbitration awards sits at the intersection of contract law, federal statute, and constitutional values. Navigating it requires fluency in both the black-letter framework and its contested edges.



## Draft Carefully

After *Hall Street*, contractual review expansions are unenforceable. Drafting arbitration clauses requires attention to delegation, scope, seat, and institutional rules – these choices cannot be easily corrected post-award.



## Know Your Circuit

On manifest disregard and evident partiality, the applicable law depends on where you are. Practitioners must assess circuit precedent at the outset – not after a disappointing award is issued.



## Arbitrator Selection Is Critical

Given how little corrective review is available, the quality, expertise, and impartiality of the arbitrator are the most consequential variables a party can influence. Disclosure vetting at appointment is essential.



## Monitor Reform Developments

The statutory and regulatory landscape is not static. The 2022 sexual assault carve-out signals congressional willingness to act. Practitioners advising on consumer and employment arbitration must track legislative proposals closely.