

# Summary of Lecture 15

## ADR Cases: Judicial Review of Arbitration Awards



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### Lecture 15 ADR Cases – Kahoot! Course

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

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. This lecture surveys the Federal Arbitration Act's narrow vacatur regime, the Supreme Court's landmark decisions from *Wilko* to *Oxford Health*, and the structural tensions that continue to animate circuit conflict and legislative reform efforts.

### What This Lecture Covers

01

#### The Policy Ecosystem

Four pillars: statutory framework, judicial interpretation, party behavior, and reform advocacy.

03

#### Doctrinal Synthesis

Vacatur grounds, arbitrability frameworks, and the structural commitments underlying the Court's jurisprudence.

02

#### Foundational Case Law

From *Wilko* (1953) to *Oxford Health* (2013) – the essential canon every practitioner must know.

04

#### Practitioner Takeaways

Concrete guidance on drafting, arbitrator selection, circuit awareness, and reform monitoring.

# The FAA Framework & Strategic Drafting

The Federal Arbitration Act of 1925 fundamentally reshaped the legal landscape by reversing centuries of judicial hostility toward arbitration. Congress declared arbitration agreements "valid, irrevocable, and enforceable," placing arbitration on equal footing with other contracts and deliberately limiting vacatur grounds to preserve the finality, speed, and party autonomy that define the system.

## § 10 Vacatur Grounds

- 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

Courts interpret these grounds narrowly—error alone is not grounds for vacatur.

## Judicial Deference as Default

Federal courts consistently approach arbitration awards with extreme deference, refusing to re-examine the merits and asking only whether the award falls within FAA bounds. Following *Hall Street* (2008), circuits remain split on whether "manifest disregard of the law" survives as a gloss on § 10(a)(4).

## Strategic Drafting Imperatives

### 1. Agreement Drafting

After *Hall Street*, contractual expansion of vacatur grounds is unenforceable. Choices around delegation clauses, class waivers, and institutional rules carry major downstream consequences.

### 2. Arbitrator Selection

The most consequential decision parties make, given limited corrective review. Disclosure vetting at appointment is essential to preserve any § 10(a)(2) challenge.

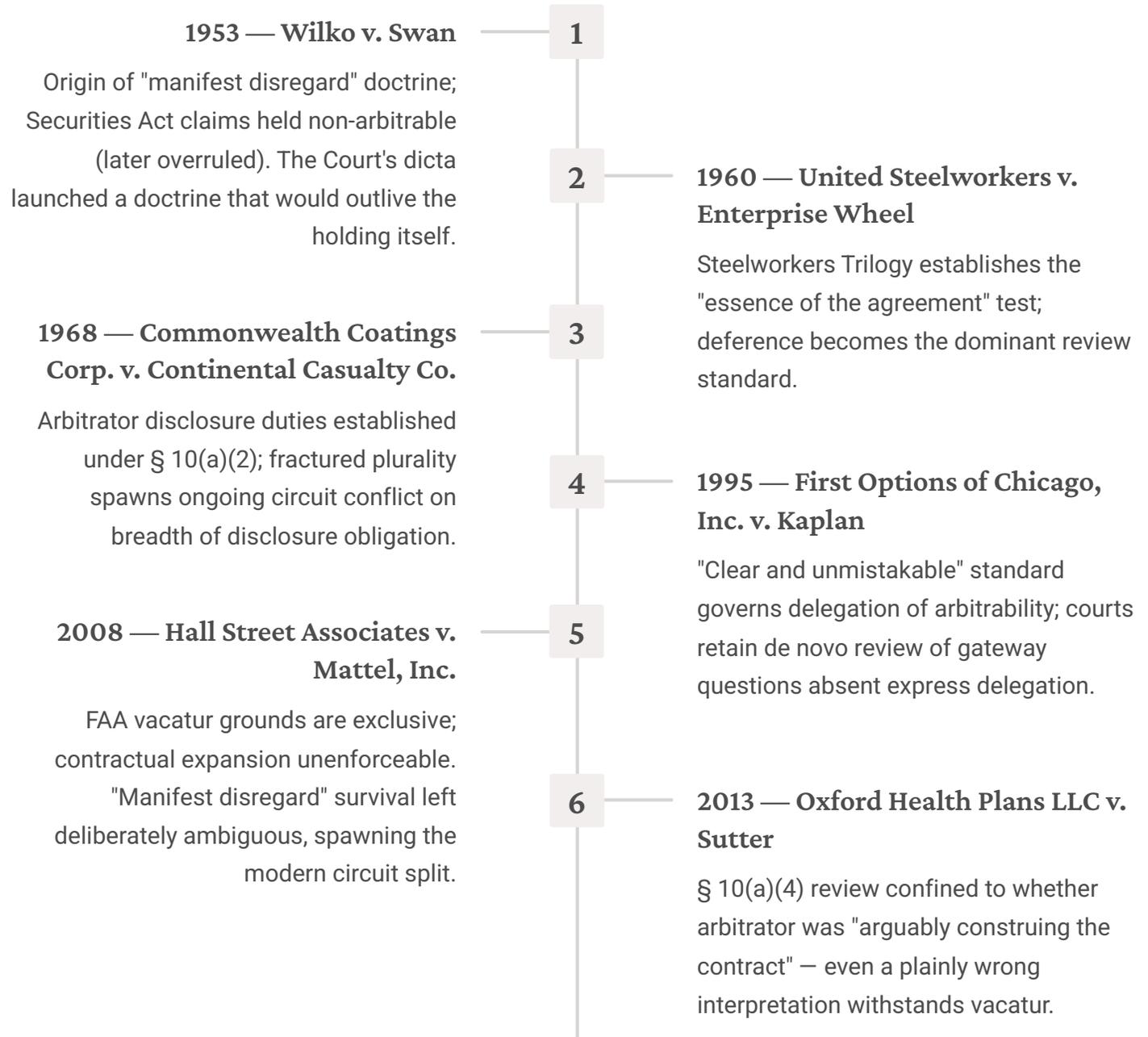
### 3. Structuring Proceedings

Use discovery protocols and reasoned-award requirements to build a robust record, anticipating the award will be the final word.

- **The Manifest Disregard Circuit Split:** After *Hall Street*, the Second and Ninth Circuits retained "manifest disregard" as a gloss on § 10(a)(4). The Fifth and Eleventh Circuits concluded it no longer exists. The Supreme Court has declined to resolve the split.

# Foundational Case Law: A Timeline

A canon of Supreme Court decisions has defined the contours of arbitral review, arbitrability, and arbitrator disclosure. Together they form the constitutional grammar of U.S. arbitration law.



# Landmark Cases in Depth

Three decisions define the outer architecture of judicial review: the origin of manifest disregard, the exclusivity of FAA vacatur grounds, and the near-absolute deference of § 10(a)(4).

## Wilko v. Swan (1953)

1953

**Holding:** Securities Act claims held non-arbitrable (later overruled by *Rodriguez de Quijas*, 1989).

**Legacy:** Dicta introduced "manifest disregard of the law" as a potential vacatur ground – a doctrine that outlived the holding and continues to divide circuits today.

**Key tension:** The Court worried arbitrators might disregard statutory rights; subsequent jurisprudence moved sharply in the opposite direction.

## Hall Street Associates v. Mattel (2008)

2008 – Landmark

**Holding:** The § 10 and § 11 grounds for vacatur and modification are exclusive. Parties cannot contractually expand judicial review.

**Impact:** Eliminated a common drafting strategy; forced parties to rely entirely on the FAA's narrow grounds. Left "manifest disregard" in deliberate ambiguity – neither confirmed nor rejected as a vacatur ground.

**Circuit split:** Second/Ninth retain it; Fifth/Eleventh have abandoned it.

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

2013

**Holding:** Unanimous. Arbitrator's class arbitration award upheld under § 10(a)(4) even though the Court acknowledged the interpretation was likely wrong.

**Standard:** So long as the arbitrator was "arguably construing" the contract, the award stands – regardless of whether the court agrees with the result.

**Significance:** Demonstrates just how narrow § 10(a)(4) truly is. The arbitrator's error, even a significant one, is not a basis for vacatur.

- Oxford Health is the clearest illustration of the Court's commitment to finality over correctness. The question is not whether the arbitrator got it right – it is whether the arbitrator was acting within the scope of the submitted dispute.

# Preemption, Class Waivers & the Pro-Arbitration Framework

Beyond the core vacatur cases, a broader set of Supreme Court decisions has nationalized arbitration enforcement, preempted state protective legislation, and extended the FAA's reach into consumer and employment contexts.



## Southland Corp. v. Keating (1984) — FAA Supremacy

The FAA applies in state courts and preempts state laws that single out arbitration agreements for disfavored treatment. Established the FAA as a mandate binding on state courts — nationalizing arbitration enforcement.



## AT&T Mobility v. Concepcion (2011) — Class Waiver Enforcement

Struck down California's Discover Bank rule, which had treated class arbitration waivers in consumer contracts as unconscionable. Broadened the FAA's preemptive sweep and cemented enforceability of individualized arbitration nationwide.



## Epic Systems Corp. v. Lewis (2018) — Employment Context

Extended Concepcion's logic into employment: employers may condition employment on waiver of collective legal proceedings. Foreclosed a major avenue for employee collective action under the NLRA.



## Moses H. Cone (1983) — The Liberal Federal Policy

Doubts about arbitrability must be resolved in favor of arbitration. Transformed the FAA from a procedural statute into an affirmative policy mandate shaping interpretive choices at every stage.

Collectively, these decisions 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.

# Arbitrability & Vacatur: The Structural Framework

Two interlocking frameworks govern arbitration disputes: who decides whether a dispute must be arbitrated (arbitrability), and on what grounds a court may set aside an award (vacatur). Mastery of both is essential.

## The Arbitrability Framework

Questions of arbitrability are governed by a layered framework distinguishing gateway questions reserved for courts from merits questions delegated to arbitrators. The wrong forum at the threshold stage can be dispositive.

Arbitrability Question	Default Decision-Maker	Standard / Key Authority
Existence of agreement to arbitrate	Courts	De novo; contract formation principles
Validity / unconscionability	Courts	De novo; state contract law (subject to FAA preemption)
Scope of arbitration clause	Courts	Pro-arbitration presumption; Moses H. Cone
Delegation of arbitrability itself	Arbitrator (if clearly delegated)	"Clear and unmistakable" standard; First Options
Class arbitrability	Courts (absent clear delegation)	Lamps Plus, Inc. v. Varela (2019)

## Grounds for Vacatur — § 10

Ground	Standard Applied	Practical Assessment
§ 10(a)(1) Corruption/fraud/undue means	Must be material; not discoverable by due diligence	Reserved for egregious misconduct; high evidentiary burden
§ 10(a)(2) Evident partiality	Significant undisclosed relationship; circuit split on breadth	Depends critically on circuit — Commonwealth Coatings (1968)
§ 10(a)(3) Arbitrator misconduct	Prejudicial refusal to hear material evidence	Arbitrators have wide latitude; rarely successful
§ 10(a)(4) Exceeded powers	"Arguably construing" the contract is sufficient to uphold	Most frequently invoked — and most rarely successful
Manifest disregard (non-statutory)	Knowing, intentional disregard of clear applicable law	Viability depends entirely on circuit post-Hall Street

- ❑ **Strategic Implication:** Parties wishing to delegate arbitrability must do so expressly and unmistakably. Incorporation of institutional rules (AAA, JAMS, ICC) has generally been held sufficient — but only where the delegation is clear from the agreement as a whole.

# Doctrinal Synthesis: Four Organizing Principles

The Supreme Court's arbitration jurisprudence reflects a coherent set of structural commitments. Four organizing principles emerge with particular clarity – and define the architecture practitioners must internalize.

## Finality Is the Point

The FAA's narrow vacatur grounds reflect a deliberate congressional choice to privilege speed and certainty over correctness. From *Enterprise Wheel* to *Oxford Health*, the message is consistent: the arbitrator's construction holds, however good, bad, or ugly.

## Party Autonomy Has Limits

Hall Street makes clear that some structural features – including the scope of judicial review – cannot be altered by contract. Sophisticated parties who believe they have contracted for broader review will find their agreements unenforceable after an adverse award.

## The Pro-Arbitration Presumption Is Durable

From *Moses H. Cone* to *Epic Systems*, the Court has consistently resolved interpretive doubts in favor of arbitration – at every level: scope, delegation, preemption. Reform will likely require Congressional action, not judicial reinterpretation.

## Structural Tensions Remain

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

Collectively, these decisions 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.

# Key Takeaways for Paralegals, Lawyers 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. For practitioners, the lesson of the case law is clear: the window for shaping outcomes closes at the drafting stage, and what cannot be corrected by a court must be prevented by counsel. For policymakers, the trajectory of Supreme Court decisions underscores that meaningful structural reform will require legislative action.



## 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. Precision at the drafting stage is the most reliable risk management tool available.



## 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. Forum selection and seat designation are not merely administrative choices; they are doctrinal choices with substantive consequences.



## 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 to preserve any future § 10(a)(2) challenge based on evident partiality — and to ensure the integrity of the proceeding from its outset.



## Monitor Reform Developments

The statutory and regulatory landscape is not static. The 2022 Ending Forced Arbitration of Sexual Assault Act signals congressional willingness to act through targeted carve-outs from FAA preemption. Practitioners advising on consumer and employment arbitration must track legislative proposals closely — the next carve-out may affect their practice area.