

# Detailed Table of Contents

---

	<i>Main Volume</i>	<i>Supple- ment</i>
BOARD OF EDITORS .....	v	v
FOREWORD .....	xi	—
INTRODUCTION .....	xiii	—
ACKNOWLEDGMENTS .....	xxi	—
PREFACE .....	—	xi
SUMMARY TABLE OF CONTENTS .....	xxvii	xiii

## Part I Overview: ADR in the Employment Context

CHAPTER 1	EVOLUTION OF THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN RESOLVING EMPLOYMENT DISPUTES.....	3	1-1
I.	Introduction .....	4	1-2
A.	Alternative Dispute Resolution .....	4	—
B.	Arbitration .....	5	1-2
II.	Origins of Arbitration .....	6	—
A.	Ancient Uses of Arbitration .....	6	—
B.	Arbitration in England .....	7	—
C.	Arbitration in the American Colonies and the United States Before Enactment of the Federal Arbitration Act .....	9	—
III.	The Federal Arbitration Act .....	11	1-2
A.	History of the Federal Arbitration Act .....	11	—
B.	Employment Exemption .....	13	—

	<i>Main Volume</i>	<i>Supple- ment</i>
C. Enactment of the Federal Arbitration Act .....	14	1-2
IV. Labor Arbitration .....	19	—
A. Introduction .....	19	—
B. History of Labor Arbitration .....	20	—
V. Employment Arbitration .....	23	1-3
A. Introduction .....	23	—
B. Employment Arbitration and the Federal Arbitration Act .....	24	1-3
C. Differences Between Labor Arbitration and Commercial Arbitration .....	29	—
VI. Fairness of Employment Arbitration .....	33	1-4
A. Introduction .....	33	1-4
B. Employers as Repeat Players .....	35	—
C. Economic Considerations .....	37	—
D. Due Process .....	40	—
VII. Conclusion .....	42	—
 CHAPTER 2    INTERNAL RESOLUTION OF EMPLOYMENT DISPUTES.....	 45	 2-1
I. Introduction: Toward an Internal Approach to Resolving Internal Disputes .....	46	2-2
II. The Rise of Alternative Dispute Resolution: The Existing Framework .....	49	2-4
A. External Environmental Pressures .....	50	2-4
1. Litigation Avoidance .....	50	2-4
2. Labor Movement Decline and Union Avoidance .....	51	2-4
3. Market Competition .....	52	2-5
B. Internal Organizational Pressures .....	53	2-5
C. Conflict Management and an Organization's Strategic Orientation .....	54	2-6
III. The Internal Dispute Resolution Landscape: Mapping Organizational Use of New Practices and Systems .....	56	2-7

	<i>Main Volume</i>	<i>Supple- ment</i>
A. Distinguishing Between Interest- and Rights-Based Dispute Resolution Options .....	56	2-7
B. Mediation .....	57	—
C. Arbitration .....	62	—
D. The Ombudsman .....	65	—
E. Conflict Management Systems .....	68	2-8
IV. The Pros and Cons of Internal Dispute Resolution Systems .....	75	2-8
A. Criticisms of Internal Workplace Dispute Resolution Systems .....	77	2-9
B. Defending the Potential of Internal Workplace Dispute Resolution Systems .....	80	2-11
V. Conclusion .....	84	—
 CHAPTER 3    MEDIATION IN THE EMPLOYMENT CONTEXT.....	 87	 3-1
I. Introduction .....	89	3-3
II. Mediation Overview .....	90	3-3
A. Voluntary Alternative to Litigation .....	90	3-3
B. Situations That Are Especially Well Suited for Mediation .....	91	—
C. The Mediator’s Role .....	92	—
D. Timing of Mediation .....	92	3-4
III. The Mediation Process in an Employment Dispute .....	94	3-5
A. Selecting a Mediator .....	94	3-5
B. Costs and Fees .....	95	3-5
C. Preparing for Mediation .....	96	3-6
D. Managing the Process .....	97	—
E. The Mediation Statement .....	98	3-6
F. The Role of Experts .....	99	—
G. Attendees .....	100	3-6
H. The Physical Setting and Logistics .....	102	3-7
I. Advocacy .....	104	—
J. Joint Sessions Versus Caucuses .....	104	3-7
K. Settlement Strategies .....	106	3-8

	<i>Main Volume</i>	<i>Supple- ment</i>
L. Potential Benefits of a “Failed” Mediation .....	107	3-9
IV. Common Employment-Related Settlement Terms Reached During Mediation .....	109	3-10
A. Releases of Liability .....	109	3-10
B. Back Pay .....	111	3-10
C. Front Pay .....	112	3-10
D. Emotional Distress (Pain and Suffering) .....	113	3-11
E. Punitive Damages .....	113	3-11
F. Severance Pay/Salary Continuation ....	114	—
G. Annuities/Structured Settlement .....	114	3-11
H. Bonuses and Commissions .....	114	—
I. Stock Options and the Granting of Equity .....	115	—
J. Health, Dental, and Disability Insurance .....	115	—
K. Business Expenses .....	115	—
L. Outplacement Services .....	115	—
M. Consulting Arrangements .....	116	—
N. Attorneys’ Fees .....	116	3-12
O. Tax Issues With Monetary Payments .....	117	3-12
P. Instatement and Reinstatement of Employment .....	118	3-12
Q. No-Rehire Provisions .....	118	—
R. Nondisparagement and Confidentiality Clauses .....	119	3-12
S. Letters of Reference .....	120	—
T. Nonretaliation Provisions .....	120	—
U. Noncompetition and Other Restrictive Covenants .....	120	3-13
V. Court-Ordered and Agency Mediation .....	121	—
A. U.S. District Court Programs .....	121	—
B. U.S. Circuit Court Programs .....	122	—
C. U.S. Equal Employment Opportunity Commission .....	123	—
D. State Administrative Agencies .....	124	—
VI. Mediation in Multi-Party Litigation .....	124	3-13

	<i>Main Volume</i>	<i>Supple- ment</i>
A. Multiple Plaintiffs or Defendants .....	124	3-13
B. Class and Collective Actions .....	126	—
VII. Confidentiality—Federal, State, and Contractual Protections Against the Disclosure of Mediation-Related Communications .....	127	—
VIII. Enforcing a Settlement Reached During Mediation .....	128	3-13
IX. Conclusion [New Section] .....	—	3-14
 CHAPTER 4 ALTERNATIVE DISPUTE RESOLUTION PROVIDERS AND THE RESOLUTION OF EMPLOYMENT DISPUTES.....		
	133	4-1
I. Introduction .....	135	4-3
A. A Brief History of ADR Administration .....	135	4-3
B. The American Arbitration Association .....	137	4-3
C. FINRA and Securities Arbitration and Mediation .....	138	4-3
D. JAMS .....	138	—
II. Comparing the Providers: Resources for Employment ADR .....	139	4-4
A. The Roster: Composition, Qualifications, Training, and Ongoing Evaluation of Arbitrators and Mediators .....	140	4-4
1. Arbitration .....	140	—
2. Mediation .....	140	4-4
3. AAA .....	141	4-4
4. FINRA .....	143	4-5
5. JAMS .....	145	4-6
B. Fees: Arbitrator, Mediator, and Administrative .....	147	4-6
1. AAA .....	147	4-6
2. FINRA .....	149	4-6
3. JAMS .....	150	—
C. Case Management .....	151	4-7

	<i>Main Volume</i>	<i>Supple- ment</i>
1. AAA .....	151	4-7
2. FINRA .....	152	4-8
3. JAMS .....	152	4-8
D. Facilities .....	153	4-8
1. AAA .....	153	4-8
2. FINRA .....	153	4-8
3. JAMS .....	153	—
III. A Guide for Counsel: Ways to Maximize Results When Selecting and Working With an ADR Provider .....	154	4-9
A. Selecting an ADR Provider .....	154	4-9
1. Draft Appropriate Dispute Resolution Clauses .....	154	4-9
2. Base Selection on Current Realities .....	155	—
3. Understand the Differences Among Providers .....	155	—
4. Understand the Selected Provider's Rules .....	155	—
5. Obtain Accurate Information About Providers' Actual Costs .....	156	—
6. Legal and Regulatory Requirements .....	156	4-9
B. Working With an ADR Provider .....	157	4-10
C. Modifying the ADR Provider's Rules .....	158	4-10
1. Arbitrator Selection .....	159	—
2. Pleadings .....	159	—
3. Motion Practice .....	160	4-10
4. Scope of Discovery .....	161	—
5. Confidentiality .....	161	—
6. Prescribed Deadlines .....	161	—
7. Sanctions .....	162	—
8. Due Process Concerns .....	162	—
D. Selecting the Arbitrator .....	163	—
E. Role of the ADR Provider During and After Arbitration .....	164	4-11
1. Communications Between the Party and the Neutral .....	164	—
2. Discovery .....	164	4-11

	<i>Main Volume</i>	<i>Supple- ment</i>
3. The Timing and Form of the Arbitration Award .....	165	—
4. Post-Award .....	165	4-11
F. Diversity of the Employment Panel .....	166	4-12
IV. Conclusion .....	166	—

Part II  
Employment Arbitration

CHAPTER 5	JURISDICTIONAL AND OTHER THRESHOLD ISSUES .....	169	5-1
I.	Introduction .....	170	5-2
II.	Federal and State Arbitration Laws .....	171	5-3
A.	The FAA: Its Coverage and Its Exclusions .....	172	5-3
B.	The FAA's Preemptive Effect Over State Law .....	178	5-4
C.	Applicability of State Arbitration Statutes .....	183	—
D.	The Vindication of Rights Doctrine .....	184	5-6
III.	Arbitrability and Other Gateway Issues ...	188	5-7
A.	Distinction Between Arbitrability and Related Gateway Issues .....	189	5-7
B.	Scope of Agreement to Arbitrate .....	192	5-7
C.	Classwide Arbitration .....	194	5-8
D.	Waiver and Default .....	198	5-9
IV.	The Existence of an Agreement to Arbitrate .....	200	5-10
A.	Offer and Acceptance .....	201	5-10
B.	Consideration .....	205	5-11
C.	Summary Trials for Determination of Factual Issues Over Arbitrability ...	207	5-11
V.	Unconscionability .....	208	5-11
A.	Procedural Unconscionability .....	209	—
B.	Substantive Unconscionability .....	211	5-11
VI.	Third Parties Involved in the Dispute .....	215	5-12
A.	Equitable Estoppel .....	216	5-12
B.	Agency .....	220	5-12
C.	Third-Party Beneficiary .....	221	—

	<i>Main Volume</i>	<i>Supple- ment</i>
VII. Intersection With Collectively Bargained Rights .....	223	5-12
VIII. Conclusion [New Section] .....	—	5-14
 CHAPTER 6 CLASS AND COLLECTIVE ACTIONS.....	 229	 6-1
I. Introduction .....	231	6-4
II. Enforceable Class Action Arbitration Provisions .....	232	6-4
A. General Principles of Enforceability ...	232	6-4
1. Enforceability of Class Action Waivers .....	233	6-4
2. Challenges to the Enforceability of Class Action Waivers .....	234	6-5
B. FAA and Class Actions: U.S. Supreme Court Cases .....	238	6-7
1. <i>Southland Corp. v. Keating</i> .....	239	6-7
2. <i>Gilmer v. Interstate/Johnson Lane Corp.</i> .....	239	6-7
3. <i>Green Tree Financial Corp. v. Bazzle</i> .....	240	6-7
4. <i>Stolt-Nielsen S.A. v. AnimalFeeds International Corp.</i> .....	241	—
5. <i>AT&amp;T Mobility LLC v. Concepcion</i> .....	242	6-7
6. <i>CompuCredit Corp. v. Greenwood</i> ...	244	6-8
7. <i>American Express Co. v. Italian Colors Restaurant</i> .....	245	6-8
8. <i>Oxford Health Plans LLC v. Sutter</i> .....	246	6-8
9. <i>DIRECTV v. Imburgia</i> [New Section] .....	—	6-8
C. Application of Supreme Court Precedent .....	246	6-9
1. Arbitration of Federal Statutory Rights .....	247	6-9
a. Title VII Claims and <i>Concepcion</i> .....	247	6-9
b. FLSA Collective Actions and <i>Concepcion</i> .....	248	6-10



	<i>Main Volume</i>	<i>Supple- ment</i>
c. The National Labor Relations Act and <i>Concepcion</i> .....	249	6-11
2. State Private Attorney General Actions [Renumbered Section (Formerly 3.)] .....	257	6-17
D. When Is an Agreement “Silent” as to Class Arbitration and Who Decides? .....	258	6-17
1. When Is an Agreement “Silent” as to Class Arbitration? .....	258	—
2. Who Decides Whether the Parties Agreed to Class Arbitration? .....	259	6-18
E. Practical Considerations in Enforcing a Class Action Arbitration Provision [New Section] .....	—	6-19
III. Management of Class Actions in Arbitration .....	262	6-21
A. What Rules Govern? .....	262	—
B. Phase One: Should the Matter Proceed in Arbitration? .....	263	6-21
C. Phase Two: Class Certification .....	263	6-21
1. Differences Between Class Actions and Collective Actions .....	263	—
2. Communications With Potential Class Members (Pre- and Post-Certification) .....	265	—
3. Discovery .....	267	6-21
a. Scope: What Discovery Will Be Permitted? .....	267	—
b. Written Discovery and Depositions .....	267	6-21
c. Certification Versus Merits Discovery and Bifurcation .....	269	—
d. Discovery Disputes .....	270	6-21
4. Class Certification .....	270	6-22
a. Certifying the Class .....	270	6-22
b. Class Determination Award .....	272	6-23
c. Notice .....	273	6-23
D. Phase Three: Final Award or Class Settlement .....	273	6-23

	<i>Main Volume</i>	<i>Supple- ment</i>
1. Final Award .....	273	6-23
2. Settlement, Voluntary Dismissal, or Compromise .....	274	6-24
E. Key Distinctions Between the AAA and JAMS Class Arbitration Rules .....	274	6-24
F. FINRA Arbitration .....	275	—
IV. Comparison to Litigated Class Actions .....	277	6-24
A. Pre-Hearing Procedure .....	277	6-24
1. Ability to Select Arbitrator and Define Scope of Authority .....	278	6-24
2. Pre-Hearing Conference and Submissions .....	279	6-24
3. Dispositive Motions .....	279	—
B. Hearing Procedures .....	280	6-25
1. Structure of the Hearing .....	280	6-25
2. Procedural and Evidentiary Rules .....	281	6-25
3. Decision .....	282	6-26
C. Scope of Judicial Review .....	282	6-26
D. Appellate Arbitration .....	283	6-27
V. Conclusion .....	284	—
 CHAPTER 7   ETHICAL ISSUES IN ARBITRATION.....	 287	 7-1
I. Introduction .....	288	—
II. Sources of Ethical Rules .....	289	7-2
A. Arbitration Organization Rules .....	289	—
B. Rules Derived From Statutes .....	290	7-2
C. The Arbitration Agreement .....	292	7-2
III. Procedures for Raising Ethical Issues .....	293	—
IV. Standards for Ethical Conduct by the Arbitrator .....	294	7-2
A. Neutrality .....	294	7-2
B. Disclosure .....	297	7-3
1. What Must Be Disclosed .....	297	7-3
2. Vacatur Based on Failure to Disclose .....	299	7-3
3. The Arbitrator's Duty to Investigate .....	302	—
4. The Continuing Duty to Disclose .....	303	—

	<i>Main Volume</i>	<i>Supple- ment</i>
C. Conducting the Arbitration .....	305	7-4
D. Confidentiality .....	308	—
E. Non-Neutral Arbitrators .....	309	—
CHAPTER 7A ETHICAL ISSUES FOR MEDIATORS [NEW CHAPTER] .....	—	7A-1
I. Introduction .....	—	7A-1
II. Sources of Ethical Rules .....	—	7A-3
III. Standards for Ethical Conduct by the Mediator .....	—	7A-6
A. Self-Determination .....	—	7A-7
B. Impartiality .....	—	7A-9
C. Conflicts of Interest .....	—	7A-10
D. Confidentiality .....	—	7A-12
E. Competence and Promoting a Quality Process .....	—	7A-14
F. Advertising and Fees .....	—	7A-16
IV. Mediator Decertification and Liability .....	—	7A-17
V. Conclusion .....	—	7A-19
CHAPTER 8 PRE-HEARING STAGE: PROCESS ISSUES .....	313	8-1
I. Introduction .....	314	—
II. Arbitrator Selection .....	315	8-2
A. Methods of Appointment .....	315	8-2
B. Basis for Selection .....	316	8-3
1. Essential Qualities .....	316	8-3
2. Fitting the Arbitrator to the Case ...	318	8-4
3. Track Record .....	318	8-4
4. Appointment Process .....	320	—
5. Arbitrator's Terms of Engagement .....	320	8-4
a. Economic Terms .....	320	—
b. Who Pays? .....	321	8-4
c. Fee Deposits .....	321	8-4
d. Cancellation Policies .....	322	8-5
III. Case Management .....	322	8-5
A. Pre-Hearing Conference .....	323	8-5
1. Identification of Parties and Their Representatives .....	324	—

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Counsels' Responsibilities .....	325	—
3. Bifurcation: Advantages and Disadvantages .....	325	8-6
4. Specification of Claims .....	326	8-6
5. Discovery .....	326	8-6
6. Dispositive Motions .....	328	8-7
7. Hearing Dates .....	329	8-8
B. Preparing for the Hearing .....	329	8-8
1. Pre-Hearing Exchange of Exhibits and Witness Lists, and Submission of Stipulations .....	329	—
2. Hearing Arrangements .....	330	8-8
3. Substantive Issues .....	332	8-8
a. Applicable Law .....	332	8-8
b. Tripartite Arbitration, Chair and Wing Arbitrators .....	332	—
c. Form of Award .....	332	—
d. Confidentiality .....	333	—
e. Interim Relief and Interlocutory Orders .....	333	—
f. Competency of Counsel .....	334	8-8
g. Interplay of Mediation .....	334	8-8
h. Monitoring During Pre-Hearing Period .....	334	—
IV. Procedural and Evidentiary Rules .....	335	8-9
V. Conclusion .....	336	—
 CHAPTER 9 PRE-HEARING STAGE: PRACTICE ISSUES (AAA, FINRA, AND JAMS RULES) .....		
I. Introduction .....	337	9-1
II. Discovery in Arbitration .....	338	—
A. Party-Related Discovery .....	338	9-2
1. Party-Related Discovery .....	339	9-2
1. Document Requests and Interrogatories .....	340	9-3
a. AAA .....	340	9-3
b. FINRA .....	341	9-3
c. JAMS .....	343	9-4
2. E-Discovery in Arbitration .....	343	9-4

	<i>Main Volume</i>	<i>Supple- ment</i>
3. Depositions of Witnesses .....	345	—
a. AAA .....	345	—
b. FINRA .....	345	—
c. JAMS .....	346	—
4. Expert Discovery .....	346	—
5. Confidentiality of Discovery .....	347	—
6. Exchange of Witness Lists and Exhibits .....	349	9-4
B. Third-Party Discovery .....	350	9-5
1. Subpoenas Generally .....	350	9-5
2. AAA .....	352	9-6
3. FINRA .....	352	—
4. JAMS .....	353	—
III. Motion Practice .....	354	9-6
A. Motions to Compel Discovery .....	356	9-8
1. AAA .....	357	—
2. FINRA .....	357	9-8
3. JAMS .....	358	—
B. Motions for Sanctions .....	358	9-8
1. AAA .....	358	9-8
2. FINRA .....	359	—
3. JAMS .....	359	—
C. Motions Concerning the Unauthorized Practice of Law .....	360	9-9
D. Pre-Hearing Dispositive Motions .....	361	9-9
1. AAA .....	362	—
2. FINRA .....	362	9-10
3. JAMS .....	364	9-10
IV. Conclusion [New Section] .....	—	9-10
CHAPTER 10 HEARING STAGE .....	365	10-1
I. Introduction .....	367	10-3
A. Nature of the Employment Arbitration Hearing .....	367	10-3
B. Shaping the Arbitration Hearing Prior to the Hearing .....	368	—
II. Preliminary Matters .....	369	10-4
A. Hearing-Related Motions and Materials .....	369	10-4

	<i>Main Volume</i>	<i>Supple- ment</i>
1. Pre-Hearing Briefs .....	369	—
2. Witness Lists .....	370	—
3. Expert Witnesses .....	371	10-4
4. Exhibits and Exhibit Lists .....	371	10-4
5. Stipulated Facts .....	373	—
6. Motions in Limine .....	373	10-5
B. Transcripts .....	374	—
C. Subpoenas .....	375	10-5
1. Issuance .....	375	10-5
2. Independent Authority .....	375	—
3. Enforcement .....	376	10-6
4. Practical Concerns .....	377	—
III. Conduct of the Arbitration Hearing .....	378	10-6
A. Opening Statements .....	378	—
B. Testimony .....	379	10-6
1. Order and Number of a Party's Witnesses .....	379	10-6
2. Direct Examination .....	379	—
3. Cross-Examination .....	380	—
4. Arbitrator's Participation in Eliciting Testimony .....	380	10-6
C. Aids for the Arbitrator .....	381	10-7
D. Attendance, Confidentiality, and Sequestration of Witnesses .....	381	—
E. Alternatives to Live Testimony .....	382	—
F. Issues Raised by Pro Se Claimants ....	383	—
G. Evidentiary Issues .....	383	—
1. Rules of Evidence Not Strictly Observed .....	383	—
2. Arbitrators' Tendency to Broadly Admit Evidence .....	384	—
3. Consequences of Arbitrators' Exclusion of Evidence .....	385	—
4. Burdens of Proof .....	386	—
5. Evidentiary Issues in Play in Employment Arbitration: "Me Too" Evidence .....	387	—
6. Bifurcation of Hearings .....	388	—
H. Expert Witnesses .....	389	10-7
I. Sanctions .....	389	—

	<i>Main Volume</i>	<i>Supple- ment</i>
J. Winding Down the Arbitration .....	391	10-7
1. Closing Arguments and Briefs .....	391	10-7
2. Form of the Award .....	392	—
3. Final Logistical Points .....	393	—
IV. Conclusion .....	393	10-7
 CHAPTER 11 REMEDIES .....	 395	 11-1
I. Introduction .....	396	11-2
II. Scope of Arbitrator’s Remedial Authority .....	396	11-2
A. Contractual Context .....	396	11-3
B. Statutory Context .....	398	11-3
C. Can Statutory Remedies Be Limited or Expanded? .....	398	11-3
III. Sources of Remedial Authority of Employment Arbitrators .....	401	11-5
IV. Types of Damages and Relief Awarded ....	404	11-8
A. Declaratory Judgment .....	404	11-9
B. Back Pay and Front Pay .....	405	11-10
C. Compensatory and Emotional Distress Damages .....	407	11-11
D. Liquidated Damages .....	408	11-13
E. Punitive Damages .....	409	11-14
F. General Equitable Relief and Specific Relief .....	412	11-15
G. Attorneys’ Fees .....	416	11-21
H. Interest: Pre- and Post-Judgment .....	418	11-23
I. Arbitration Costs .....	419	11-23
J. Sanctions .....	420	11-24
K. Miscellaneous Issues .....	421	11-26
V. Challenges to Arbitrator’s Remedial Authority and Awards .....	422	11-27
A. Challenges to the Arbitration Provision Itself .....	422	11-27
B. Challenges Post-Award .....	424	11-30
1. Exceeding Authority Under Arbitration Agreement or Dispute Submitted .....	425	11-30
2. Public Policy .....	426	11-31

	<i>Main Volume</i>	<i>Supple- ment</i>
3. Unconscionability .....	427	11-33
4. Manifest Disregard of the Law .....	428	11-33
VI. Conclusion .....	429	11-33
CHAPTER 12 THE AWARD.....	431	12-1
I. Introduction .....	432	—
II. Final and Binding .....	432	12-2
A. Finality .....	432	12-2
B. The Doctrine of <i>Functus Officio</i> .....	437	12-2
C. Exceptions to the Doctrine of <i>Functus Officio</i> .....	439	—
D. Reservation of Jurisdiction .....	442	12-3
E. Precedential Value of Award [New Section] .....	—	12-3
III. Scope of the Arbitrator's Authority .....	443	12-4
IV. Grant of Relief .....	444	12-4
A. Broad Discretion .....	444	12-4
B. Interest .....	445	—
C. Attorneys' Fees .....	445	12-4
D. Costs .....	449	—
E. Punitive Damages and Sanctions .....	450	—
V. Majority or Unanimity, and Dissent .....	451	—
VI. In Writing and Signed by the Arbitrators .....	452	12-5
VII. Time Limits for Rendering the Award .....	453	12-5
VIII. Service of the Award .....	458	12-6
IX. Partial Final, Interim, and Consent Awards .....	458	12-6
A. Partial Final Awards .....	459	12-6
B. Interim Awards .....	463	12-7
C. Consent Awards and Awards by Confession .....	466	—
X. Forms of Award .....	467	12-8
A. Standard Award .....	468	12-8
B. Reasoned Award .....	469	12-8
C. Findings of Fact and Conclusions of Law .....	471	12-9
XI. Conclusion .....	471	—



	<i>Main Volume</i>	<i>Supple- ment</i>
CHAPTER 13 ARBITRATION: POST-HEARING		
STAGE .....	473	13-1
I. Introduction and Overview of the FAA ....	474	—
II. Vacating an Award .....	476	13-2
A. Procedural Requirements to Obtain Review of an Arbitration Award .....	477	13-3
1. Subject Matter Jurisdiction .....	477	13-3
2. Statute of Limitations .....	478	13-4
3. Venue .....	481	13-5
B. Statutory Standards for Vacating an Award Under FAA Section 10 .....	481	13-5
1. Section 10(a)(1)—Corruption, Fraud, or Undue Means .....	482	13-6
2. Section 10(a)(2)—Evident Partiality .....	484	13-7
3. Section 10(a)(3)—Misconduct .....	492	13-11
4. Section 10(a)(4)—Exceeded Powers, or Lack of Finality .....	496	13-13
C. Nonstatutory Standards for Vacating an Award Under the FAA ....	501	13-15
1. Manifest Disregard of the Law .....	501	13-15
a. Is the Manifest Disregard Standard Still a Viable Basis for Appeal? .....	502	13-15
b. What Does “Manifest Disregard of the Law” Mean? ...	507	13-17
c. How Is “Manifest Disregard of the Law” Applied? .....	510	13-18
2. Public Policy .....	515	13-20
3. Other Standards of Review .....	523	13-22
D. Contractual Efforts to Alter the Standard of Review .....	525	13-22
E. Potential Sanctions for Frivolous Vacatur Motions .....	530	13-25
III. Confirmation of Award .....	533	13-27
A. Procedural Requirements .....	533	13-27
1. Subject Matter Jurisdiction and Venue .....	533	—

	<i>Main Volume</i>	<i>Supple- ment</i>
2. Statute of Limitations .....	533	13-27
B. Standard of Review .....	534	13-27
IV. Correction or Modification of an Award ...	536	13-27
A. Procedural Requirements .....	536	—
B. Standards of Review to Correct or Modify an Award Under FAA		
Section 11 .....	537	13-27
1. Evident Material Miscalculation ...	538	—
2. Matter Not Submitted .....	539	—
3. Imperfect Award .....	541	—
V. Conclusion [New Section] .....	—	13-27

### Part III

#### Special ADR Issues in the Employment Context

CHAPTER 14 GLOBAL DISPUTE RESOLUTION: ARBITRATION AND MEDIATION OF INTERNATIONAL EMPLOYMENT DISPUTES.....	545	14-1
CHAPTER 15 EMPIRICAL EVIDENCE ON CRITICAL ISSUES GENERALLY IN EMPLOYMENT ADR AND UNDER FINRA IN PARTICULAR .....	571	15-1
I. Introduction .....	572	—
II. Research Into Conflict Management at Fortune 1000 Companies .....	573	—
A. Broad Conflict Resolution Policies of Companies .....	574	—
B. Reasons for Using ADR .....	575	—
C. Usage of Mediation and Arbitration ...	576	—
D. Explaining the Decline in Arbitration Usage .....	578	—
III. Scholarship Regarding Employment Arbitration in the Securities Industry .....	579	15-2
A. Background of FINRA's Arbitration Program .....	581	15-2

	<i>Main Volume</i>	<i>Supple- ment</i>
B. Findings From Empirical Investigations Into FINRA Awards .....	583	—
C. Is There Evidence of a Repeat-Player Effect Within the FINRA System? .....	585	15-3
D. What Are the Effects of FINRA's Changing Some of Its Procedural Rules? .....	590	15-8
E. How Do Discrimination Charges Compare With Other Allegations? .....	592	15-9
F. Does the Gender of the Parties Involved in Arbitration Make a Difference? .....	594	—
G. What Can Be Concluded From the FINRA Studies? .....	597	15-9
IV. Conclusion .....	599	15-10
APPENDIX 1 GLOSSARY OF EMPLOYMENT ARBITRATION TERMS .....	603	—
APPENDIX 2 SURVEY OF STATE ARBITRATION STATUTES .....	619	—
APPENDIX 3 STATE MEDIATION PRIVILEGE STATUTES AND MEDIATION PRIVILEGE RULES OF SELECTED FEDERAL DISTRICT COURTS AND COURTS OF APPEALS: A SUMMARY .....	627	AP3-1
APPENDIX 4 ADR PROVIDERS .....	653	—
TABLE OF CASES .....	663	TC-1
INDEX .....	697	—