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Uniform Arbitration Act Update - Foreword, The

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THE UNIFORM ARBITRATION ACT UPDATE FOREWORD

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Dispute Resolution mechanisms other than litigation are today imbedded in our legal system. Courts, lawyers, and academics all utilize and study the many alternative methods that can be used to solve individuals' legal problems. Arbitration has become the primary means in determining disputes in commercial, labor, employment, consumer, and international disputes.

Because of its pre-emptive effect, the Federal Arbitration Act ("FAA") controls most arbitral matters involving interstate commerce. However, parties often provide in their arbitration agreements that state law will apply in determining disputes arising out of their contractual agreement, and courts decide hundreds of cases each year on the basis of state arbitration law. Because some forty-eight jurisdictions have based their statutes in some form upon the Uniform Arbitration Act ("UAA"), it is of primary importance in these cases.

Both the UAA and the FAA are short statutes that establish the basic procedure for the arbitration process. They are also old statutes, with the UAA promulgated in 1955, and the FAA enacted in 1927. Thus case law interpreting arbitration statutes has been the primary means for modernizing and developing arbitration law. This makes the annual UAA update by the *Journal of Dispute Resolution* that tracks new case law under the UAA on a section-by-section basis of significant importance to those in the field. This issue continues the *Journal of Dispute Resolution*'s tradition of quality in updating important developments under the UAA.

This issue of recent developments contains a number of noteworthy cases. For instance, the case *Sullivan v. Sears Authorized Termite and Pest Control, Inc.*, deals with the interesting issue of whether tort claims, unrelated to a performance contract, are within an arbitration clause's coverage in the context of where a spider bit the plaintiff. The authors also explore the separability doctrine, both majority and minority views, in *Burden v. Check Into Cash of Kentucky* and *Marks v. Bean.*

Adhesion contracts have been a source of much litigation and scholarly criticism of mandatory arbitration. The update explores this important issue in *Conseco Finance Servicing Corp. v. Wilder* and the *Philyaw case.* One of arbitration's touted benefits is the elimination of formal discovery. In *CPK/Kupper Parker Communications, Inc. v. HGL/L. Gail Hart*, the court grapples with the important issue of whether arbitrators or courts are the primary decision makers in determining whether a party is entitled to take discovery depositions.

The standard for review of arbitrator awards remains a hotly litigated topic. *Pelc v. Petoskey*, *Hough v. State Farm Insurance,* and *Hart v. McChristian* are examples of the limited review even when arbitral awards are challenged for errors of law or of fact.

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The student project covers these and many other cases decided under the UAA. All attorneys handling cases under the UAA, scholars writing on issues relating to the Act, and judges determining cases involving the statute should consider this comprehensive and high quality case analysis.