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Bennett explains arbitration fundamentals, without the legalese

Arbitration: Essential Concepts. Steven C. Bennett. ALM Publishing, a division of American Lawyer Media, Inc., 2002. 209 pages. \$32.95. (Available at www.lawcatalog.com.)

At the outset of the book, Steven Bennett expresses “fervent hope that this book will be of use to lawyers, law students and business people interested in learning the fundamentals of arbitration law.” The book therefore focuses on fundamental, or basic, arbitration concepts and norms. It does not purport to provide in-depth discussion and analysis of arbitration law, but instead serves as a shelf reference or primer that promises to achieve Bennett’s goal.

Arbitration means different things to different people, and the concept is difficult, if not impossible, to encapsulate in a clear and concise manner. This difficulty is due, in part, to the popular tendency to lump a variety of private dispute resolution processes under the “arbitration” label, perhaps in an effort to reap the perceived benefits of courts’ seemingly pro-arbitration agenda. Encapsulation also is complicated by the tremendous expansion of arbitration’s use and application in contexts beyond labor and traditional business relationships, including employment, consumer, securities and court-sponsored dispute resolution programs. Indeed, “most lawyers, and many business people, sooner or later will encounter arbitration.” This book should ease anxieties about those encounters.

The book’s first two chapters lay the groundwork for further exploration of arbitration concepts. The introductory chapter places arbitration within the realm of Alternative Dispute Resolution (ADR), another problematic label, and generally summarizes background, characteristics and attributes of the arbitration process. The next chapter parses the distinct statutory scheme applicable to commercial arbitration, namely the Federal Arbitration Act (FAA) and the Uniform Arbitration Act (UAA), as well as the Revised Uniform Arbitration Act (RUAA) that state legislatures are currently considering for adoption.

The third chapter turns to provisos and procedures parties often incorporate in their arbitration agreements. Specifically, the chapter discusses the American Arbitration Association (AAA) Commercial Arbitration Rules. The book’s focus on the AAA rules perhaps underemphasizes rules promulgated by other arbitration providers, but its fairly detailed depiction of the AAA’s standard provisions offers readers a useful picture of how typical providers commonly conduct arbitrations through their offices.

Chapter four tackles the heart of arbitration law, and attempts the perhaps impossible feat of summarizing arbitration’s “fundamental legal concepts” in fewer than 14

short pages. The chapter appropriately begins by emphasizing the contractual core of arbitration, and then briefly explains sub-issues flowing from this cornerstone of arbitration law. The price of such neat coverage of these messy concepts, however, is perhaps oversimplification of issues such as preemption, contractual inarbitrability, and arbitrability of statutory, or public, rights. Nonetheless, the price is discounted by repeated warnings of the continually evolving law in these and other areas.

Chapters five, six and seven serve as a “how to” manual. Bennett concisely highlights elementary issues to consider when constructing an arbitration clause, guides the reader through a typical arbitration proceeding, and maps the road to confirming or challenging an arbitration award. Along the way, he peppers the discussion with practical advice and examples. He provides a nice snapshot of the arbitration process, deferring for later discussion fairness concerns regarding arguably abusive arbitration practices, and efficiency issues raised by “judicialization” of procedures.

The next two chapters serve Bennett’s goal of providing practitioners and business people with a comprehensive introduction to the arbitration field. Because the field of arbitration has become vast and varied, commentators tend to dedicate discussion solely to one area, such as labor or international arbitration. Bennett’s discussion is largely geared toward domestic business-to-business arbitration. However, Bennett also gives readers a flavor of distinct and emerging arbitration niches by digesting legal and cross-cultural issues unique to international arbitration, as well as distinctive elements of labor, employment, consumer and securities arbitrations.

The book’s final chapter appropriately summarizes the “often poorly defined,” and perhaps undervalued, standards of ethics and professional responsibility applicable to arbitration. Indeed, the chapter is a refreshing reminder of these important provisos.

Bennett, as both a practitioner and teacher, skillfully explains arbitration concepts in a straightforward manner, unfettered by legalese. The book distinguishes itself from treatises and casebooks focused on particular areas of arbitration, such as labor and international, by providing a concise launching pad for anyone seeking a basic “lay of the arbitration land.” It is not only a resource for attorneys without significant arbitration experience, but also a nutshell that practitioners could lend to clients contemplating adoption of an arbitration program, or that students could reference to gain context for an in-depth study of arbitration law. A drawback of the book’s quick coverage, however, is that it oversimplifies or foregoes analysis of some issues. Nonetheless, Bennett delivers on his promise to introduce arbitration, and does so in a clear and elegant manner.

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