BOOK REVIEW:
U.S. SUPREME COURT PRECEDENTS ON ARBITRATION: SHAPING AMERICAN ARBITRATION LAW AND PRACTICE

Reviewed by Samuel Chestna

I. INTRODUCTION

Although individuals, business entities, and sovereign states are increasingly turning to arbitration as a flexible and effective means of resolving disputes, the parties often rely on federal and state courts to uphold arbitration agreements, procure evidence, and enforce arbitral awards, both in the domestic and international contexts. As such, the efficacy of arbitration as a means of alternative dispute resolution depends, at least in part, on the willingness of courts to recognize the authority of private or quasi-private bodies to impose legally binding rulings on those voluntarily submitting themselves to arbitration. In the United States, parties seeking enforcement (or non-enforcement) of an arbitration agreement typically seek relief initially from either federal or state courts. However, due to the complex and unsettled nature of the legal issues at the heart of many disputes submitted to arbitration, lower courts often diverge in their approach to relevant issues, which may in turn lead to forum shopping by parties seeking a judicial ruling that enforces or circumscribes an arbitral determination. As such, it is imperative for practitioners to keep abreast of the decisions issued by the United States Supreme Court relative to the field of arbitration, which may provide guideposts in the wake of the uncertainty among the lower courts.

U.S. Supreme Court Precedents on Arbitration[1] provides a comprehensive and insightful analysis of the United States Supreme Court's jurisprudence impacting the field of arbitration and details the evolution of the Court's approach to key issues, including the enforceability of arbitration agreements and arbitration awards, the level of deference granted to the legal determinations made by an arbitrator, and the

[1] U.S. Supreme Court Precedents on Arbitration (Kabir Duggal, et al., eds., 2025).

use of federal district courts to procure evidence for use in international disputes, among others. The book contains thirty-six chapters, each contributed by different authors. It opens with a detailed and informative historical and theoretical framework for analyzing the Supreme Court's approach to the relevant issues, which is followed by individual chapters, arranged in chronological order, analyzing the Supreme Court's key rulings and their impact on the field of arbitration. Each chapter also provides a discussion of both the issues resolved by the Court's decision and those which remain undecided. The reader is left with a comprehensive understanding of the Supreme Court's historical approach and an awareness of the multifaceted effects of the Court's rulings. Although the Court has arguably adopted a generally pro-arbitration approach in the sense that the Court has provided for broad judicial recognition of arbitration agreements and arbitral awards, the Court's rulings often have second and third order effects which, although expanding the scope of arbitration on the one hand, provides for necessary judicial oversight on the other.

II. THE BOOK

The first three chapters provide a conceptual lens for the analysis of individual cases presented throughout the remainder of the book. The opening chapter, contributed by Professor George Bermann, presents a thought-provoking question which helps to frame the chapters that follow: Is the Supreme Court generally "pro-arbitration" in its approach? Implicit in this question is a second one: what does it mean to be pro-arbitration?[2] Professor Bermann identifies key aspects of the Court's jurisprudence which have served to expand the efficacy of arbitration as a means of alternative dispute resolution. For example, the principle of separability, pursuant to which a legal challenge to the enforceability of a contract does not necessarily implicate the validity of an arbitration provision contained therein. The Court's

[2] Professor Bermann has explicitly raised this very question elsewhere. *See* George A. Bermann, *What Does it Mean to be Pro-Arbitration?*, 34 ARB. INT'L 341 (2018).

enforcement of the separability principle is arguably a clear-cut example of the Court taking a pro-arbitration stance in the sense that the effect of the Court's rulings has been to expand the authority of arbitrators to issue binding judgments without necessitating direct judicial review. However, as Professor Bermann illustrates, some rulings issued by the Court have enhanced the availability of arbitration while simultaneously imposing judicial constraints on the process. Professor Bermann highlights the Supreme Court's decision in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc. et al.*[3] That decision was, in a sense, highly "pro-arbitration" in that the Court permitted parties to submit federal antitrust disputes to arbitration. At the same time, the *Mitsubishi* Court provided for judicial review of the arbitrator's award to ensure that the arbitrator "took cognizance" of the applicable law.[4] Professor Bermann convincingly argues that the limits the Supreme Court has placed on arbitrator's freedom to issue legally binding rulings independent of judicial review is not indicative of a retreat from a "pro-arbitration" stance, but instead reflects a careful balancing of various considerations at play due to the often complex and multifaceted nature of arbitration.

Chapter 2 provides helpful context surrounding the historical developments influencing the Court's decisions relative to the field of arbitration. The authors explain that arbitration as a means of dispute resolution has existed in the United States (albeit in limited form) since before the nation's founding. Before the passage of the Federal Arbitration Act (FAA) in 1925, both state and federal courts typically declined to enforce contractual agreements to arbitrate if one party objected to arbitration. Where all parties consented to arbitration, courts generally demonstrated willingness to enforce arbitration awards, while also holding that awards obtained due to fraud or manifest mistake of law were unenforceable. Still, lower court rulings relative to arbitration agreements and arbitral awards were far

[3] 473 U.S. 614 (1985).

[4] *Id.* at 638.

from uniform prior to the FAA. When Congress passed the FAA, it specifically required the enforcement of arbitration agreements while also providing clear criteria for the invalidation of arbitral awards, incorporating aspects of pre-1925 case law. The FAA, as interpreted by the Supreme Court, mandated a "liberal federal policy favoring arbitration agreements,"[5] which has influenced the Court's adoption of the generally "pro-arbitration" approach identified in Chapter 1.

Chapter 3, entitled *The Importance of the U.S. Supreme Court in Shaping U.S. Arbitration Law & Practice*, builds on the themes of the prior chapters, providing additional historical and political context for the Court's evolving approach to the field of arbitration. Specifically, the authors highlight that the Court's expansive interpretation of the Commerce Clause during the New Deal era led to an equally expansive interpretation of the scope of federal law and regulation, including the FAA. As such, the FAA's "pro-arbitration" framework was applied to an increasing number of legal issues relating to arbitration. The expanded applicability of federal law in this area has also led to a greater volume of Supreme Court rulings on issues affecting the availability and scope of arbitral proceedings.

Chapters 4 through 36 present a detailed summary and analysis of individual Supreme Court cases which have impacted the field of arbitration, with each chapter providing a thoughtful overview of both the issues addressed by the Court and those that remain unaddressed, as well as the impact of the decision as a whole. The chapters are arranged in chronological order, dating from the Court's 1967 decision in *Prima Paint Corporation v. Flood & Conklin Mfg. Company* (expanding the scope of arbitration by affirming the Separability Principle, pursuant to which an arbitration provision in a contract will be enforced even where other parts of the contract are invalid)[6] through its 2024 decision in *Coinbase, Inc. v. Suski et al.* (holding that where parties have entered multiple contracts which conflict as to which body—a court or

[5] Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983).

[6] 388 U.S. 395 (1967).

an arbitration panel—possesses the authority to determine the threshold question or arbitrability, that question must be decided by a court).[7] Although not arranged by subject area, the book develops several clear themes in the evolution of the Court's jurisprudence. For example, Chapters 6 through 8 address the Court's increasing willingness to permit arbitration of disputes traditionally reserved solely for judicial resolution. In *Scherk v. Alberto-Culver Co.*,[8] addressed in Chapter 6, the Court held, for the first time, that securities claims in the international context were subject to arbitration. In Chapter 7, the book analyzes the *Mitsubishi* decision, mentioned above, in which the Court applied similar reasoning to hold that antitrust claims asserted pursuant to an international agreement were arbitrable.[9] Chapter 8 addresses the Court's decision in *Shearson/Am. Exp., Inc. v. McMahon*,[10] in which the Court held that claims under the Securities Act of 1934 and the Racketeer Influenced and Corrupt Organizations Act (RICO) were both subject to arbitration.

A second development in the Court's jurisprudence explored throughout the book is a series of more recent decisions which have expanded—albeit not without limits—the freedom of parties and arbitrators to engage in class proceedings. Chapter 23 analyzes the Court's decision in *AT&T Mobility LLC v. Concepcion*,[11] establishing that Section 2 of the FAA preempts state law regarding the unconscionability of a waiver of class-action arbitration contained within a consumer contract. Chapter 24 addresses *Oxford Health Plans LLC v. Sutter*,[12] which held that because the Court must grant a high level of deference to an arbitrator's determinations, the Court may not vacate an arbitral award on the basis that the arbitrator wrongly permitted class arbitration where class proceedings were not explicitly authorized by the arbitration

[7] 602 U.S. __ (2024).

[8] 417 U.S. 506 (1974).

[9] Mitsubishi, 473 U.S. at 638-40.

[10] 482 U.S. 220 (1987).

[11] 563 U.S. 333 (2011).

[12] 569 U.S. 564 (2014).

agreement. Chapter 25 summarizes *American Express Co. v. Italian Colors Restaurant*,[13] which upheld a contractual provision mandating individual rather than class arbitration on the basis of freedom of contract. Chapter 27 discusses *Lamps Plus, Inc. v. Varela*,[14] in which the Court imposed some limits on class action arbitrations by holding that class proceedings are not permitted where the arbitration agreement is ambiguous.

Another topic addressed throughout the book is the Courts' interpretation of 28 U.S.C. § 1782, which provides a mechanism for U.S. courts to assist foreign or international tribunals in procuring evidence. This statute is the primary focus of Chapters 16 and 31. Chapter 16 analyzes the Court's decision in *Intel Corp. v. Advanced Micro Devices, Inc.*,[15] holding that Section 1782 is broad in scope both as to which persons or entities may seek discovery and what types of proceedings qualify for evidentiary assistance from U.S. courts. Specifically, the Court held that a complainant seeking an investigation by the European Commission fit the definition of an "interested person" permitted to seek discovery via Section 1782, and the European Commission, as a quasi-judicial body, constituted a "foreign or international tribunal" entitled to such discovery. Chapter 31 addresses *ZF Automotive, Inc. v. Luxshare, Ltd.* and *AlixPartners, LLP v. Fund for Protection of Investors' Rights in Foreign States*,[16] in which the Court held that tribunals not imbued with governmental authority are not permitted to obtain evidentiary assistance from U.S. courts via Section 1782. Thus, as set forth in those chapters, the Court's efforts to clarify the application of Section 1782 have led to more questions than answers. Although the Court has held that Section 1782 only provides for U.S. judicial assistance where the foreign or international tribunal is imbued with sovereign or international

[13] 570 U.S. 228 (2013).

[14] 587 U.S. 176 (2019).

[15] 542 U.S. 241 (2004).

[16] 596 U.S. 619 (2022) (both cases were decided together).

authority, it is an open question as to what extent arbitral tribunals constituted pursuant to certain investment arbitration rules, such as the International Centre for Settlement of Investment Disputes (ICSID), can take advantage of Section 1782 discovery. Overall, the book provides a clear picture of how the Court's treatment of these issues has evolved, and how they continue to do so.

III. CONCLUSION

In sum, *U.S. Supreme Court Precedents on Arbitration* provides an accessible yet thorough guide to the Supreme Court's approach to arbitration as a means of alternative dispute resolution. The book presents the Court's jurisprudence as being arguably pro-arbitration, while also complicating this narrative by highlighting the aspects of the Court's approach which have led to the imposition of judicial restraints on arbitrability. By presenting a historical view of the Court's decisions, the book provides the reader with a deep understanding of the Court's evolution and equips both practitioners and outsiders to the field of arbitration to consider what issues remain outstanding and how they might be resolved.

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