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Matt Adler Shares Arbitration Expertise in Second Edition of his Textbook

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Matt Adler, a Philadelphia- based partner in the Business Litigation practice group, has authored the second edition of his law school textbook, "Arbitration: Cases, Problems, and Practice." We had a chance to talk with Matt about the book, the publishing process, and his teaching experience. Read on to learn more.

Congratulations on publishing the second edition of your textbook! Can you tell us what the book is about?

The book is about the law, and the practice, of arbitration. Those are two different things, especially in developing a book or a course, so I tried to write it to allow a professor adopting it to pick one approach or the other, or (as I teach) both. Much of the book reads as a traditional law school casebook that charts the development of modern arbitration law, which has been fascinating to watch as each term the Supreme Court seems to decide at least one arbitration case. From there, I sprinkled in a lot of practice exercises that reflect my three decades of arbitration practice and that try to put the law set out in the cases to work in the way that we as practitioners use it. For that reason, I organized the book in three overall sections: forming the arbitration agreement, conducting the arbitration, and executing on an arbitration judgment – show me the money!

What are some of the legal and societal changes from the last five years that are covered in the new edition?

I wrote the first edition in 2017 and it was amazing how much had already changed by 2020, so my publisher asked me to accelerate the normal five-year life span of a casebook. A few changes highlighted include the following:

- Class actions in arbitration keep getting harder, and Justice Gorsuch signaled that he didn't merely take over the late Justice Scalia's seat on the Court, but that he was also going to follow Justice Scalia's continued restrictions on the ability to bring collective arbitrations. Justice Gorsuch wrote what will become a famous arbitration decision in a 2018 case called Epic Systems, over, inevitably, a vigorous "RBG dissent." The battle between those two opinions synthesizes everything that's gone on in this hotly contested subject for the last 20 years;

- In the wake of the #MeToo movement, many states banned arbitrations in sexual harassment cases, on the theory that employers should have to "face the public music." But the courts have frequently viewed that as an attack on arbitration that defies the Scalia/Gorsuch view. That battle will only continue to heat up;

- As our society continues to confront racial injustice, arbitration took a similar inward look at the composition of arbitration panels and the role diversity can play in arbitrator selection. This received a huge and public boost by the entertainer Jay-Z's 2018 petition alleging discrimination in the American Arbitration Association's arbitrator rosters;

- The Supreme Court has inexplicably left in chaos the question of whether an arbitration award can be so bad on the merits that it can be appealed – what we in the field call the "manifest disregard" standard – and the chickens came home to roost on this chaos in the New York courts, so the books delve deeply into that; and

- The Russians Are Coming: the new "Prague Rules" in international arbitration by which Eastern European and Russian lawyers advocate for less discovery and more arbitrator control.

Can you tell us more about how Jay-Z's 2018 petition has impacted arbitrations today? How are practitioners addressing arbitrator diversity today?

Jay-Z's case brought the issue of diversity in arbitrations and mediations to the forefront for many inside and outside of legal circles. Arbitrators used to be almost exclusively retired partners at law firms, or professors (especially in international arbitrations). That was not exactly a calling card for diversity. Now, every single arbitration institution is reaching out to broaden its roster of potential arbitrators to include persons of color, women, and younger people. It is great to see. Would it have happened anyway given our society? Likely. Did Jay-Z help? Definitely.

What was it like to write a book? How long did it take? What was the process for acquiring a publisher?

Both the first and the second editions took about two years each, but keep in mind that I have a day gig here at the firm, so it was hardly two years straight – more like two years from six to eight in the morning or 10 to 12 at night and A LOT of weekends. I love to write so it never felt like a chore, and both my family and my colleagues were great about it. The first edition was hard because I had never written a book before. The second edition was in a way harder because my editor asked me to keep the page counts about the same, so deciding what to remove and what to keep was hard. The best part of both books was road testing ideas and practice exercises on my students and on the Troutman Pepper arbitration lawyers. Nobody was shy in offering criticisms! And I took most of their ideas.

Acquiring a publisher was easier than I thought it would be. I was on the faculty of Rutgers University when Carolina Academic Press came to sell the professors their books, and I simply suggested an addition to their catalogue. They laughed and said "sure, go ahead and write it!" So I did.

How long have you been teaching law students? What do you find most rewarding about teaching?

I started teaching at Rutgers University – Camden in 2005, then moved to the University of Virginia Law School in 2015. When my daughter decided to stay at UVA for law school, I figured she deserved a Dad-free campus, so I moved to the George Washington Law School.

There is nothing I could say here about teaching that is not cliché, but it is all true. Giving back is profoundly satisfying. Having my students push me to know the stuff cold is great for my own intellectual development.

Fencing with really smart young people each week is just outright fun. But the single best part is the letters and emails I get from so many of my students, years later, telling me that they just had their first arbitration or won their first arbitration motion, and they used the material from the class. I cannot begin to tell you how that feels.

How has your practice informed the book?

In two main ways: First, when I wrote it, I thought “what’s really important? What do we need to know? What do we USE?” So that formed the main frame and foundation of the book. Second, so many of my cases present extremely unique and novel issues – why else hire a firm like ours? — and my editor kept pushing me to include examples so that professors could have battle-tested hypos for their classes. So I pulled out example after example from the past three decades, changed the names, ran it by my colleagues, and the result is a book with a host of interesting real world problems for the students to try and solve.

How has the firm supported you during this process?

The firm supported me through the publication of both editions of the book. Management and leadership gave me all the time I ever needed and were always encouraging. And as mentioned above, my particular colleagues with whom I have had the honor to practice over these many years were as great on the book as they are in our cases together. I could not imagine writing something like this at a different firm or with different colleagues and I am extremely grateful.

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