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 **TEXAS Law**  
The University of Texas at Austin  
School of Law

# **MASS ARBITRATION AND CLASS ACTIONS**

*Surf's Up! The Rising Tide of Mass Arbitrations*

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## **Overview**

- What is Mass Arbitration
- How We Got Here
- Recent Cases & Disputes
- California CP Arbitration Rule
- Companies “Strike Back”
- Ethical Issues and Considerations
- Calls to Curb Mass Arbitration
- Rule & Procedure Changes
- Reducing the Impact of Mass Arbitration

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## Mass Arbitration: What is it?

- **AAA:** Defined as arbitrations with **25** or more similar demands for arbitration, filed against one or more parties, with representation consistent or coordinated across all cases.
- **JAMS:** Defined as **75** or more similar demands for arbitration (or such other amount agreed to by the parties), filed against the same party or related parties, by individual claimants represented by the same law firm or firms acting in coordination.

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## How We Got Here

### Federal Arbitration Act (“FAA”) 9 U.S.C.A § 2

“A written provision in any...contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction...shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of contract or as otherwise provided in Chapter 4.”

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## How We Got Here

### Advantages of Arbitration

- Curtailment of Class Actions
- Cheaper and Quicker
- Non-Public
- Lack of Precedent
- Final, Binding, Limited Appeal Options

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## How We Got Here

### Criticisms of Arbitration

- Curtailment of Class Actions
- Unconscionability
- Cost/Benefit Concerns
- Secrecy, Lack of Precedential Value
- Perceived Bias
- Final, Binding, Limited Appeal Options

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37<sup>th</sup> Annual Technology Law Conference session  
"Consumer Mass Arbitration and Class Actions"