Introduction

Arbitration of disputes between creditors and consumers is increasingly being included in contracts such as credit cards, cell phone services, and loans. While arbitration is certainly less costly than going to litigation, its fairness is called into question. A more complex, but critical question is, “Can consumer arbitration be fair?” considering issues such as arbitration clauses, the Arbitration Fairness Act, the Finality of Arbitration Awards, and ethics. There is a bias in consumer arbitration clauses favoring businesses, and therefore, consumers are unable to access the courts, increasing concerns for bias and transparency in the system. The paper intends to focus on the arbitration clauses first, and the Arbitration Fairness Act and the impact of finality, and ethical issues on arbitration, and come to a reasonable conclusion that arbitration is not a fair system in any means to the consumer.

Can Consumer Arbitration Be Fair?

Drafting the Arbitration Clause

What is an Arbitration Clause?

An arbitration clause in a contract is a requirement for parties to settle disputes through arbitration as opposed to a lawsuit in court. In consumer contracts like credit card agreements and cell phone contract agreements, and loan agreements, arbitration clauses are in them. Because their disputes are typically inexpensive in comparison to a lawsuit, arbitration is a faster, as well as a cheaper, way to settle disputes as compared to a court case, and resolves the dispute with a third party, the arbitrator (Kumar, 2024). There is a regulation in some arbitration clauses that specifies the process for choosing an arbitrator, the specific arbitration rules, and the location for arbitration. For the purpose of reducing court system use, arbitration clauses encourage shortening the dispute resolution process, although they may completely eliminate a consumer's chance to legally sue in a public court. Although arbitration may be quicker and cheaper in a good arbitration clause, there may be fairness concerns, especially when the clause is very lenient toward the corporation, leaving the consumer to sacrifice fairness.

Challenges Related to Drafting the Fair Clause

It is hard to draft just arbitration clauses in consumer contracts since it entails the interests of the two parties involved. Companies will add in clauses that primarily only benefit their own sides, including restrictions that block consumers from going to court, or that arbitration must be done with a company-appointed arbitrator. Obscurity is the most problematic of the pitfalls. Respondents/constants are left puzzled with the vague and ambiguous terms that are supposed to clarify the process that a company will use. Companies may also put in place disproportionate terms, such that they will have the entire control over arbitration, including the choosing of the arbitrators and where the summons is held (DiMatteo, 2021). Moreover, arbitration terms may be vague and contain instructions that frustratingly limit consumers' opportunities to opt out of arbitration, or that demand even higher fees to be paid by consumers, which makes equitable arbitration hard to access. The arbitration process will definitely be less inequitable if the clauses are rational and uncomplicated. These difficulties indicate the importance of having the term be clear and aimed at providing or preserving the rights of the consumers, rather than simply diminishing the rights, and also the terms of the clause must be efficient.

Consumer Arbitration Clause Example

The Citizens Bank Premier Cash Back Plus Credit Card Agreement has a section regarding the arbitration provision impacting how conflict is settled. The user agreement contains the following text: “THIS AGREEMENT CONTAINS AN ARBITRATION

PROVISION INCLUDING A NOTICE REGARDING THE RIGHT TO OPT OUT.” In accordance with the agreement conditions, when a customer activates the Card or makes a payment on the Card, the customer consents to the terms of the agreement, including the arbitration clause (citizensbank.com, 2025). The agreement stipulates that cardholders must resolve certain claims pertaining to the Agreement through arbitration rather than litigation. Furthermore, the provision stipulates that consumers may have the option to opt out of this provision, although that option may be available only for a short time following the opening of the account.

This clause is a perfect example of the arbitration that is incorporated in many agreements from credit card issuers, which ends up waiving a customer's right to go to court unless such a customer makes a conscious and timeous decision to opt out of that clause.

Analysis of Fairness

This arbitration clause raises fairness issues. Although there is an opt-out choice, there is a time constraint on consumers, which could negatively impact their informed decisions. Also, there is no mention of how the arbitrators might be chosen, which opens the possibility of biased arbitrators appointed by the company. Also, there is a chance that there will be costs or complications to consumers that make the arbitration process even more inaccessible, which would leave more inequity in the resolution of the dispute.

Suggested Improvements

This arbitration clause could be more equitable by including more specific details and allowing for a longer time frame to opt out in order for consumers to be able to better evaluate the situation. This clause should require that arbitrators be mutually chosen rather than the company solely having that power. Furthermore, there should be a provision allowing consumers to take their claims to court if they find arbitration to be insufficient or inaccessible. Finally, the clause should guarantee consumers that the costs of arbitrating will be kept to a reasonable minimum in order for the process to be as equitable as possible.

The Arbitration Fairness Act

Overview of the FAIR Act

The Arbitration Fairness Act (FAIR Act) limits the use of forced arbitration clauses in consumer, employment, and civil rights contracts and will be the first step in protecting forced arbitration, in particular, the right to be compelled to arbitrate a dispute the right to arbitrate a dispute voluntarily. Under the FAIR Act, companies can no longer have arbitration clauses imposed on consumers, employees, and other individuals without their consent (consumeradvocates.org, 2025). This includes all mandatory arbitration clauses consumers sign in contracts, such as credit cards, loans, and cell phone agreements. Ultimately, the FAIR Act protects people's legal right to pursue a dispute in court and defends companies from using arbitration to escape accountability and avoid losing. This legislation shifts the balance of arbitration agreements to an unregulated industry and protects consumers' complete access to an unbalanced system of arbitration.

Analyzing the Effectiveness of the FAIR Act

The Arbitration Fairness Act (FAIR Act) aims to address some of the inequities associated with consumer arbitration by removing mandatory arbitration clauses in consumer and employment contracts. Such clauses have been heavily critiqued for denying individuals access to the courts. With the Act stating that arbitration cannot be imposed on consumers and employees, the Act works to restore the ability to file actions and obtain the benefits of an open court system in a more just and equitable manner.

That said, the scope of the FAIR Act is still heavily restrained. The Act only seeks to address consumer and employment contracts, which leave numerous voluntary arbitration clauses and other industries that still prefer to have arbitration in their contracts untouched. Consequently, while the Act does provide some measure of improvement, it does little to remedy the real issue of mandatory arbitration across all sectors (Emerson & Hunt, 2021). Furthermore, there is the additional limitation of the Fair Act, which is the fact that companies might find other means to incorporate arbitration clauses or push arbitration-friendly legislation in other areas. Thus, while the Fair Act has provided numerous benefits to a wide array of stakeholders, it has only remedied a small portion of the problem.

Connection to Fairness in Consumer Arbitration

The FAIR Act mitigates unfairness in consumer arbitration by recasting the parameters of contract out-of-arbitration provisions. By making these provisions legally void, consumers can seek court remedies, making these arbitration agreements more equitable. Forced arbitration is much more favorable to the business because it, in the absence of agreements, gets to appoint all of the arbitrators. By eliminating these provisions, the FAIR Act prevents consumers from biased arbitration, improving the tradeoff to obtain arbitration access through the courts (Gicquello, 2022).

In the other direction, the additional narrow scope of the FAIR Act does result in limitations. THE FAIR Act is intentionally targeted only to mandatory arbitration provisions, so it will not affect other arbitration provisions where agreement is voluntary. In certain lines of business, the Act does not apply where arbitration is customary, such as in certain service agreements. This leaves a gap in the coverage. In addition, businesses may still be able to incorporate arbitration clauses, other protections, or favorable jurisdiction. Overall, it does not remove the key component of the disparity of power that exists for consumers in corporate arbitration, but the FAIR Act represents a movement in the right direction of that imbalance.

The Finality of Arbitration Awards

Finality in Arbitration

Judgment in arbitration is final, which is the finality principle, which means that one can't appeal the judgment that the arbitrator has made. However, one can appeal due to extremely rare instances in which procedural misconduct has occurred, or there is a case of the arbitrator exceeding their authority. The efficiency of arbitration is one of the most significant advantages. Arbitration is faster and gets rid of the multitude of delays associated with the court (Ojiako, 2023). However, the major disadvantage arbitration has is in the case of a consumer dispute. An appeal in arbitration is extremely difficult to obtain due to a multitude of disadvantages that the consumer faces. If the arbitrator made a mistake in the factual background or the law, or there is unfair bias, the consumer will undergo a continuum of injustice, and it is quite likely that the arbitrator is no less than alleged. The absence of the appeal can create a lack of transparency, which means that arbitration can undergo many problematic practices with no oversight and no accountability.

Impact of Finality on Fairness

Awards issued through arbitration in the instances of consumer transactions often raise inequity and fairness concerns in light of the fact that consumers, at times, have very thin monetary pockets and limited access to the arbitration forum. The complete absence of an appeal means that consumers who might face inequity or biased arbitration have no recourse available to them (Ghodoosi & Sharif, 2021). The closed system of arbitration has many drawbacks; for example, if an arbitrator makes an error in the application of the law or ignores excessive portions of the record, the consumer has very little likelihood to preclude, let alone correct, the result. This becomes a staple, and becomes troublesome when the arbitration clause is mandatory, leaving the consumer to have no other alternate means of dispute resolution. In this case, without the ability to contest the reward, consumers face utterly inequitable and extravagant outcomes and have no means to correct this.

In order to safeguard the consumers and maintain the integrity of arbitration, there do need to be exceptions to absolute finality. There should be some grounds on which the arbitration award can be revisited. For instance, there should be an absolute finality exception in the case of the arbitration award being the result of a lack of procedural fairness. Also, if there is an arbitrator bias or misconduct, there should be grounds to review the award. When there is an opportunity to challenge the ruling on the grounds that the arbitrator misapplied the law or that an arbitrator lacked the jurisdiction to make a ruling, there is an assurance that the ruling will be correct and aligned with the law. Fairness is better preserved with a limited scope of appeal in cases where there is serious error. Otherwise, arbitration will become a mechanism to achieve an inequitable result.

Case Study: Payward v. Chechetkin

The California court, in Payward v. Chechetkin, declined to uphold an arbitration award with respect to a cryptocurrency dispute on public policy grounds. The arbitrator's decision was unfavorable to Payward…but the court concluded that the arbitration was badly flawed on an overriding issue of adequacy of process. The case illustrates the limits on the finality of arbitration. Courts have the jurisdiction and the duty to refuse to enforce an award on the grounds that it conflicts with public policy or that it raises serious issues of adequacy of process (Mundi, 2022). The decision raises the stakes on the issue of arbitration and the need to pay attention to the impact of arbitration awards in the wider context of the law and ethics of public policy. In international arbitration, the conflicting systems of law and ethics in public policy create a need to clarify the conflict of public policy. The award demonstrates the reality that arbitration, usually final, has limits and a reason for that to be so, to address the extreme case of public policy, and to address massive arbitral process irregularities.

Ethical and Unethical Practices/Dilemmas in Arbitration

Ethical Principles in Arbitration

There is an expectation of neutrality, impartiality, independence, transparency, and fairness from an arbitrator, and these qualities represent a minimum threshold of expectation from an arbitrator, even as far as the AAA Code of Ethics is concerned. Even as an arbitrator is expected to be independent, impartial, and free from outside influence, external pressures, and any potential conflicts of interest, arbitrators are expected to be free from the external control of the case (Kashyap & Fathima, 2021). In addition, there is a direct correlation to fairness and the opportunity afforded to each side to present their case, and transparency is a requirement from the arbitrators, relative to the outcome and the overall process itself. In the absence of these qualities, the process of arbitration gets sabotaged. In such a case, arbitration is a means of undermining public (or external) control and public trust to a level that court proceedings are seen as a more viable option.

Unethical Practices in Arbitration

There are some unethical practices in consumer arbitration that negatively impact the fairness of the outcomes awarded. This includes arbitrators being biased as a result of companies hand-picking arbitrators who have some financial interests or connections that align with them, thus losing arbitration's objectivity. Factors surrounding arbitration clauses, such as opaque wording, secretive terms, or fees, can lead to consumers being bewildered by the process and thus end up signing unjust agreements (Becher & Benoliel, 2023). Also, the inability of consumers to choose and the situation where consumers are compelled to arbitrate, as opposed to being given the option of litigation, diminishes their ability to receive justice in a preferred forum. This behavior affects the ethical norms of equity and justice, as consumers are put in a weakened position. Consumers, who are oblivious to their rights or lack the ability to contest irrational outcomes, are deprived of a fair chance, and in turn, their trust in the arbitration system, as well as the system's ability to satisfactorily resolve disputes, suffers.

Addressing Unethical Practices

To mitigate the unethical practices of consumer arbitration, equity should be integrated into arbitration agreements as it pertains to information about the arbitration process and a full description of all prices and costs involved, and how to access the procedures to get more information. Companies will have to be neutral and remove their biases from selecting the arbitrator in order to have a system that is fair, and so should be the other side of the arbitration as well. Furthermore, arbitration agreements should give consumers the right to remove themselves from arbitration when they have the option to litigate. These modifications will allow consumers to have their rights and balance the arbitration.

Rewriting the Arbitration Clause

The parties here involved shall submit any and all disputes arising out of or related to this Agreement to Binding Arbitration. The parties shall have 30 days from the execution of this Agreement to opt out of Arbitration via writing. There will be one arbitrator chosen by both parties from a list of independent and neutral candidates, or, in the event that parties cannot agree on one of the candidates or on any of the candidates, a neutral arbitration organization shall appoint one arbitrator. Arbitration will occur in the arbitration forum closest to the consumer, and arbitration expenses will be split evenly unless the consumer cannot afford to pay their portion, in which case the higher expenses will be incurred by the arbitrator. The parties will have a full order of arbitration with full transparency and have the opportunity to present their case. If a party believes the arbitration determination is unconscionable, the consumer will have the right to go to a court of competent jurisdiction, and this arbitration Agreement will not prevent that.

Conclusion

This paper analyzed the fairness of consumers' arbitration, the difficulties of drafting balance clauses, the contribution of the FAIR Act to consumer protection, and the consequences of the finality of arbitration awards. The lack of transparency and the potential for bias that killed the fairness of arbitration in the resolution of disputes were also the subject of research, as it was recognized that the process of arbitration on its own mirrors efficiency to consumers. The FAIR Act has garnered status as one of the most protective pieces of legislation, but its finality limit on arbitration awards and the act itself are fraught with potential injustice. All things considered, it may be said that consumer arbitration may be fair and that consumers are protected to some degree, but it would require a restructuring of clauses, a priori legislation protection, and ethical arbitration. If balance, transparency, and access to appropriate remedies are brought to arbitral processes, it would be efficient and fair to consumers.

References

Becher, S. I., & Benoliel, U. (2023). Dark contracts. *BCL Rev.*, *64*, 55.https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/bclr64&section=5

citizensbank.com. (2025). *Credit Card Agreement | Citizens*. Citizensbank.com. https://www.citizensbank.com/credit-cards/cardholder/card-agreements.aspx

consumeradvocates.org. (2025). *The Arbitration Fairness Act of 2013 Protect Consumers & Employees from Forced Arbitration*. https://www.consumeradvocates.org/wp-content/uploads/2022/01/Arbitration_Fairness_Act.pdf

DiMatteo, L. A. (2021). International Contracting. *Www.torrossa.com*, 1–832. https://www.torrossa.com/gs/resourceProxy?an=5393342&publisher=FZR504

Emerson, R. W., & Hunt, Z. R. (2021). Franchises, Consumers, and Employees: Choice and Arbitration. *Wm. & Mary Bus. L. Rev.*, *13*, 487.https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=4099957

Ghodoosi, F., & Sharif, M. M. (2021). Justice in arbitration: the consumer perspective. *International Journal of Conflict Management*, *32*(4), 626–647. https://doi.org/10.1108/ijcma-10-2019-0203

Gicquello, M. (2022). Biased or Not Biased? Arbitral Decision-Making and Arbitrators' Preferences. *Journal of International Dispute Settlement*, *13*(3), 348-369.https://doi.org/10.1093/jnlids/idac005

Kashyap, S. K., & Fathima, K. M. (2021). Ethical Rules of Conduct in Arbitration. *Issue 6 Int'l JL Mgmt. & Human.*, *4*, 727.https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/ijlmhs14&section=70

Kumar, S. (2024). Arbitration: A Streamlined Alternative to Court Litigation. *LawFoyerInt' t'l J. Doctrinal Legal Rsch.*, *2*, 655.https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/lwfyrinl2&section=97

Mundi, J. (2022). *Payward v. Chechetkin, Partial Final Award, 29 juil. 2022*. Jusmundi.com. https://jusmundi.com/fr/document/decision/en-chechetkin-v-payward-ltd-and-others-award-on-jurisdiction-wednesday-1st-june-2022

Ojiako, U. (2023). A Constitutional Perspective of the Finality Principle in Arbitration. *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, *15*(1). https://doi.org/10.1061/(asce)la.1943-4170.0000579