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# Arbitration and Business Ethics, by Clarence F. Birdseye

Paul L. Sayre

*Indianapolis Bar Association*

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## ARBITRATION AND BUSINESS ETHICS\*

This is a book for the lawyer and the layman. It is a layman's book inasmuch as it is written in non-technical language and undertakes to present the apparent advantages of settling a dispute by arbitration rather than in the common law courts. It is a lawyer's book inasmuch as it reveals to the lawyer that one chief object of the business man is to get a dispute decided

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\**Arbitration and Business Ethics*, by Clarence F. Birdseye. D. Appleton & Co., New York, 1926. pp. xiii, 305. Price \$2.50.

quickly with as little friction as possible, and that he is likely to find neither speed nor technical commercial knowledge in the regularly constituted courts. The lawyer will find no exposition of the rules and principles of common law or statutory arbitration, but it is to be hoped that he will observe some phases of our legal justice that the layman deplures. Mr. Birdseye suggests that in most commercial disputes the layman is concerned about privacy and speed and decisions by men who are experts in determining the facts of commercial disputes, rather than the wearing publicity of a public trial, the delay, expense and uncertainty of our courts as now constituted and the assurance that even if he wins his case he will probably be the loser in alienating his opponent's business, in paying big fees for a long trial in court, and in getting justice only after such a struggle that much of its benefit will have been dissipated.

The author asserts that strict commercial arbitration involves voluntary arbitration among members of a single trade and that such trade organization is rare in modern times. He feels that it is most important, however, since there an *esprit de corps* may be built up and the same machinery which operates the arbitration proceedings can go a long way in preventing a dispute from coming to arbitration at all. Mr. Birdseye is sanguine that if trades in homogenous products would adopt such an arbitration arrangement within their organization there would be very few actual arbitrations since most difficulties would be cared for through conciliations, and the point of direct antagonism would never be reached.

The author has very little use for common law arbitration and he accepts the conclusion of Mr. Justice Hand and Mr. Julius Henry Cohen that the doctrine of the revocability of submission in arbitration contracts hinged upon the agency theory and that there was no reason to hold that the arbitrators were agents of the parties who appointed them; unless it was to make every arbitration abortive and secure just so much more business for the regularly constituted courts. Mr. Birdseye does not explain the ways in which common law arbitration was clearly improved by rules of court and by legislation under William and Mary and Queen Victoria.

The book is readable and entertaining although somewhat repetitious. It does not purport to be a legal treatise with footnote references for its many positive statements. It is certain the book is stimulating alike to layman and lawyer; it points out certain homely truths which lawyers are inclined to slight. For instance, it shows that courts exist for man,

not man for courts, and that, if the public cannot get efficient justice from the courts, it is going to try something else.

Mr. Birdseye brings considerable evidence to prove that many businesses have found commercial arbitration to be an excellent substitute for the regular courts in disposing of commercial disputes. The author does not discuss the merit of making the award in arbitration proceedings subject to review in the courts on questions of law. He does state that arbitration statutes should govern the submission of future disputes as well as disputes then pending. There is no discussion, however, of either point.

The appendices are perhaps the most useful part of the book. They contain a great deal of valuable reference material governing specific forms of arbitration agreements and illustrations of the great service which commercial organizations can render in providing facilities for arbitration among their own members.

The subject of the book is correctly indicated by the title, *Arbitration and Business Ethics*. The author is prompted by a sincere conviction that the more extensive use of arbitration, especially of the voluntary kind in individual trade organizations, will improve the standards of business ethics. He gives a great deal of evidence to show that arbitration machinery in such trades eliminates friction and causes men to live up to both the letter and spirit of their contracts without seeking to take unfair advantage or to win concessions by threatening long and expensive litigation. It seems to the reviewer that he has proved his point and that he has done a real service both to the legal profession and to the commercial world in presenting a method by which some of the needless animosities, unethical conduct and waste may be eliminated from the business world. In addition to furthering the ethical concepts which Mr. Birdseye wishes to advance, it would be a great practical advantage to business men and lawyers if they were familiar with the content of this book.

The book does not purport to be a treatise upon arbitration law itself. The last attempt to write a full consideration of the law of arbitration was made in 1872, when John T. Morse, Jr., published his "The Law of Arbitration and Award."<sup>1</sup> In spite of the fact that our arbitration law is now so rapidly changing, it seems unfortunate that no thorough treatise on this subject has been written in recent years. Of course in England they have a much more extensive use of commercial arbitration than

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<sup>1</sup> Law of Arbitration and Award, by John T. Morse, Jr., Boston, 1872.

in this country and there they have the monumental work of "Russel on Arbitration," of which a tenth edition was published by Alfred A. Hudson in 1919.<sup>2</sup> All ten editions of this exhaustive book have been of great value to the legal profession for many years and the periodic new editions bring it up to date for current use. Is it not time that we have some comprehensive treatment of the subject in America? The permanent importance of arbitration law as a branch of legal procedure cannot be doubted; if an exhaustive book were written now the changes that may occur even in the near future could be covered in later editions or supplements.

PAUL L. SAYRE.

*Indiana University School of Law.*