

# When an Arbitration Clause Sounds Permissive But Is Not: Does 'May' Really Mean 'Must'?

**Narges Kakalia** of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo asks and then answers some pointed questions about arbitration in an article on the firm's **ADR Advice website**.

"Is an arbitration clause mandatory or permissive when it provides that either party to the contract *may* elect to submit a dispute to binding arbitration? What if the contract also provides that the right to arbitrate is not exclusive of any other rights that a party has to pursue legal action in an appropriate forum? Such an arbitration clause certainly sounds permissive. But courts have invested a lot of ink addressing the question, and (spoiler alert!) they have more or less consistently come to the conclusion that such a clause makes arbitration mandatory if any party chooses it," she writes.

She explains that many litigants and their lawyers misinterpret the real meaning of the word "may" in this context.

**Read the article.**