

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.