**Citation:**

Christopher R. Drahozal & Quentin R. Wittrock, *Franchising, Arbitration, and the Future of the Class Action*, 3 ENTREPRENEURIAL BUS. L.J. 275 (2009).

**Other Sources:**

[http://ssrn.com/abstract=1878004](http://ssrn.com/abstract%3D1878004)

**Key words:**

Arbitration, Dispute Resolution, Contracts, Class Actions, Franchising

**Abstract:**

 In this article, we consider whether arbitration clauses are likely to result in the extinction of the class action. In our view, the answer is no. We reach that conclusion for two main reasons. First, at least some parties that draft standard form contracts prefer class actions to class arbitrations. This preference is illustrated by the growing use of nonseverability provisions, which provide that if the class arbitration waiver is held unenforceable the entire arbitration clause should be stricken. As a result, the recent court decisions invalidating class arbitration waivers will result in the invalidation of arbitration clauses as well, so that the cases will proceed as putative class actions in court. Second, and more fundamentally, arbitration clauses bundle a variety of characteristics - including but not limited to acting as a class action waiver - into a single means of dispute resolution. Not all drafting parties will agree to arbitration, even if they might prefer individual arbitrations to class actions. The empirical evidence is consistent with this view, as the use of pre-dispute arbitration clauses varies widely in consumer, employment, and franchise contracts. So long as not all contracts include arbitration clauses, and we see no evidence suggesting that they will, class actions will not become extinct.