C. Extension to Arbitrators: The Arbitral Immunity Doctrine

Based on a presumed analogy between public judges and private arbitrators, courts have broadly extended absolute judicial immunity to private arbitrators and provider institutions. This extension of judicial immunity is largely based on the notion that the role of an arbitrator is, under Butz, "functionally equivalent" to the role of a judge, with a corresponding need to protect the integrity and finality of the arbitration and decision-making process from reprisals by dissatisfied parties. The rationale is that arbitrators are required to exercise independent judgment and therefore need to be free from the threat of liability for their decisions. Immunity has also been justified as socially useful and as a recruitment tool, since shielding arbitrators from suit encourages individuals to volunteer as arbiters. Without such immunity, few would be willing to serve as arbitrators. Notably absent, however, is mention of the disparity in procedural safeguards as present in the public justice system and lacking in private arbitration.


157 See, e.g., Lundgren v. Freeman, 307 F.2d 104, 117 (9th Cir. 1962) (“If their decisions can thereafter be questioned in suits brought against them by either party...their decisions will be governed more by the fear of such suits than by their own unfettered judgment as to the merits of the matter they must decide.”)

158 See Arthur A. Chaykin, The Liabilities and Immunities of Mediators: A Hostile Environment for Model Legislation, 2 Ohio St. J. on Disp. Resol. 47, 77 (1986) (“The granting of an immunity is a matter of public policy that balances the social utility of the immunity against the social loss of being unable to attack the immune defendant.”); see also Tamari v. Conrad, 552 F.2d 778, 781 (7th Cir. 1977) (“[I]ndividuals...cannot be expected to volunteer to arbitrate disputes if they can be caught up in [a lawsuit].”).

159 See generally Chaykin, supra note 158. No empirical study confirms the assumption that either arbitrators or arbitration provider institutions would refuse to participate in arbitration without immunity. Cf. New England Cleaning Servs., 199 F.3d at 546 (“Failure to extend immunity to the AAA in these circumstances could discourage it from sponsoring future arbitrations.”) This concern seemingly also applies to many other skilled and noble professionals, such as doctors and lawyers, who nonetheless are not immune from liability by law or contract.

Referring Principles:

XIII.2.7 - Immunity of arbitrator