

Odean Volker and Helen Conybeare Williams for Law360: An Arbitrator's Application Of Law - England Vs. US

By Odean L. Volker | January 9, 2017

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The policy considerations reflected in the English Arbitration Act of 1996 (the “Arbitration Act”)[1] and the U.S. Federal Arbitration Act (FAA)[2] demonstrate a shared view favoring arbitration.[3] However, on the question of judicial review of an arbitrator’s conclusions of law, the two jurisdictions have significantly different approaches.

England and Wales

Unlike its U.S. counterpart, the Arbitration Act, at Section 69, expressly allows for an appeal on a question of law.[4] The provision applies only to arbitrations seated in England and Wales (or Northern Ireland)[5] and questions of the law of England and Wales (or for a court in Northern Ireland, the law of Northern Ireland).[6] Section 69 is not a mandatory provision, and may be excluded by the parties[7], and will be deemed excluded if the parties have dispensed with a reasoned award,[8] or waived by agreeing to arbitration rules that expressly exclude the right to appeal a point of law.[9] ...

United States

Compared to the narrow and defined contours of Section 69, the U.S. approach to judicial review of an arbitrator’s application of law is unclear. The confusion originates with the U.S. Supreme Court’s interpretation of *Wilko v. Swan*[22] in *Hall Street Associates LLC v. Mattel Inc.*[23] Prior to *Hall Street*, U.S. federal courts generally agreed that *Wilko* allowed courts to review an award for manifest disregard for the law. *Hall Street* cast doubt over manifest disregard, holding that *Wilko* “expressly rejects ... general review for an arbitrator’s legal errors.”[24] The court explained that “it would stretch basic interpretive principles to expand the stated grounds [of FAA Sections 10 and 11] to the point of evidentiary and legal review generally.”[25] Ultimately, *Hall Street* ruled that “the grounds for vacatur and modification provided by §§ 10 and 11 of the FAA are exclusive” and rejected the parties’ attempt to expand judicial review to include legal error.[26]

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