

THE SHADOW EFFECT OF THE RULES OF EVIDENCE ON ADR

- ▶ It has been widely recognized that the formal rules of evidence, e.g., Federal Rules of Evidence, casts a shadow over various alternative dispute resolution (“ADR”) events.
- ▶ However, such a popular and important concept is oversimplified in theory. This project aims to fill in this gap by developing a theoretical framework to analyze the shadow effect of the rules of evidence on ADR.
- ▶ My central claim is that the impact of the rules of evidence on ADR is real, but not in the same way the Conventional Theory describes the shadow of law.

This research project further explores three questions:

- 1. how to better describe such an impact?**
- 2. how to measure such an impact in different types of ADR?**
- 3. how to optimally cope with such an impact?**

DIFFERENT SHADOW EFFECTS OF FRE ON DIFFERENT TYPES OF ADR		
Negotiation/Mediation	Arbitration	International Arbitration
<p>The FRE and trial have “gravity” impact on negotiation and mediation. In N/M, disputants know that if they do not resolve their case, they will end up in a trial where the rules of evidence do apply.</p>	<p>Since arbitration awards are usually binding, disputants don’t need to worry about a follow-up trial. However, arbitration is an adjudicatory rather than consensual process, with “quasi-judicial” features. In that sense, the FRE has a “framework” impact on arbitrators and arbitral participants in assessment of evidence.</p>	<p>In international arbitrations when the parties come from different legal traditions, there is special need for evidentiary guidance. As the most sophisticated, successful and tested system of evidence rules, the FRE functions as an influential model code in the field of international arbitration.</p>

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