**Université PARIS - PANTHÉON - ASSAS** **U.E.C. 1**

**Droit - Economie - Sciences Sociales**

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**Année d'étude :**  MAGISTERE JA1

**Discipline :**  Droit anglais magistère 1è année Juriste d'Affaires

(Unités d’Enseignements Complémentaires 1)

**Titulaire(s) du cours :** Mme Juliette Ringeisen-Biardeaud et Mme Claire Wrobel

**Durée de l’épreuve :** 1h30

**Document(s) autorisé(s) :** Aucun

*Ce sujet comporte 2 pages. Avant de composer, veuillez vérifier que votre sujet est complet.*

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1. **ESSAY QUESTION**

*Comment this paragraph from Jim Harper (a senior lawyer whose main area of interest concerns adapting law and policy to the information age), extracted from a speech entitled ‘Remember the Common Law’ given at the Cato Institute, on March 11, 2016:*

“Part of the genius of the common law is its mix of adaptability and consistency. When new circumstances arise, common-law courts, urged on and educated by the parties to disputes, adapt existing rules in ways that they believe produce the most just and fair outcomes. They look for comparable cases in their own and other jurisdictions to learn what adaptation of existing law will produce the best results.”

1. **TRANSLATION**

*Translate the two passages* ***in bold characters*** *in the text below:*

SUPREME COURT OF THE UNITED STATES

Syllabus

MORGAN v. SUNDANCE, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 21–328. Argued March 21, 2022—Decided May 23, 2022

Petitioner Robyn Morgan worked as an hourly employee at a Taco Bell franchise owned by respondent Sundance. When applying for the job, Morgan signed an agreement to arbitrate any employment dispute. Despite that agreement, Morgan filed a nationwide collective action asserting that Sundance had violated federal law regarding overtime payment. **Sundance initially defended against the lawsuit as if no arbitration agreement existed, filing a motion to dismiss (which the District Court denied) and engaging in mediation (which was unsuccessful). Then—nearly eight months after Morgan filed the lawsuit— Sundance moved to stay the litigation and compel arbitration under the Federal Arbitration Act (FAA). Morgan opposed, arguing that Sundance had waived its right to arbitrate by litigating for so long.**

The courts below applied Eighth Circuit precedent, under which a party waives its right to arbitration if it knew of the right; “acted inconsistently with that right”; and “prejudiced the other party by its inconsistent actions.” The prejudice requirement is not a feature of federal waiver law generally. The Eighth Circuit adopted that requirement because of the “federal policy favoring arbitration.” Other courts have rejected such a requirement. This Court granted certiorari to resolve the split over whether federal courts may adopt an arbitration-specific waiver rule demanding a showing of prejudice.

Held: The Eighth Circuit erred in conditioning a waiver of the right to arbitrate on a showing of prejudice. Federal courts have generally resolved cases like this one as a matter of federal law, using the terminology of waiver. The parties dispute whether that framework is correct. **Assuming without deciding that it is, federal courts may not create arbitration-specific variants of federal procedural rules, like those concerning waiver, based on the FAA’s “policy favoring arbitration.” That policy “is merely an acknowledgment of the FAA’s commitment to overrule the judiciary’s longstanding refusal to enforce agreements to arbitrate and to place such agreements upon the same footing as other contracts.”** Accordingly, a court must hold a party to its arbitration contract just as the court would to any other kind. But a court may not devise novel rules to favor arbitration over litigation. The federal policy is about treating arbitration contracts like all others, not about fostering arbitration.