Dispute Resolution in the Digital Age
Wednesdays, 10:00-12:40; Room 112

*NOTE: Special added classes set March 1-3 for simulations (see below)!

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Consumer Outreach: MyConsumertips.info (website and app)
SSRN Author Page:

Introduction:

There was a time when individuals would meet in person to make purchases and negotiate deals. They would discuss the terms, assess the trustworthiness and character of their contracting partners, and conclude the deal with a handshake. The handshake was more than a kind gesture—it helped ensure the enforcement of the deal without need for the rule of law or legal power. Reputations and respect were at stake because individuals worked in the same community and knew each other’s friends and business partners. That handshake was one’s bond—it was a personal “Trustmark” of sorts.

Those days are gone. We do not do deals on a handshake any more. We seem to have lost interest in face-to-face meetings in our digitized society. We text; we Skype; we FaceTime; we send e-mails. We do not connect in person because we conclude contracts in virtual spaces. The physical handshake is dying, especially in business-to-consumer (“B2C”) contexts. “Buying local” may be in vogue for farmers’ markets and limited purchases, but it makes little economic sense for a growing body of consumer commerce. Instead, consumers increasingly turn to the Internet for their buying needs and make any in-person purchases at big box stores where they rarely have any personal connections. This has created the need for a “New Handshake” – using the Internet to empower consumers and inspire companies to remain responsible to their customers regarding their products and services.

Of course, the Internet is not perfect and its growth has not been purely positive for consumers. The Internet empowers companies and consumers by giving companies access to multitudes of customers and connecting consumers with companies they would never otherwise encounter in the physical world. The Internet has become a gateway to an ever-expanding and globalized eMarketplace for consumer goods and services. Nonetheless, the Internet has created disconnections in B2C exchanges by allowing companies to easily hide from responsibility behind the anonymity and depth of the Internet. Customer service representatives operating wholly online do not have to look
their customers in the eye when denying remedies, and feel less beholden to customers that are replaceable by a seemingly bottomless barrel of online shoppers.

That said, companies must pay attention to online consumers. Social media and Internet communications have opened new avenues for consumers to complain. Consumers may email or “chat” online with customer service, post complaints on Facebook or complaint sites like Yelp, file online complaints with the Better Business Bureau, or even submit complaints online to government regulators like the Consumer Financial Protection Bureau (“CFPB”). Indeed, dispute resolution has entered the digital age.

Moreover, these complaints process may now go further. This has led to the development of an entire field of study and practice broadly referred to as “online dispute resolution” (“ODR”). ODR goes beyond online complaints filing sites to allow for online negotiation, mediation, and arbitration processes for resolving disputes of various types. Although ODR has been around for some time, it is now hitting its stride and becoming a necessary staple for legal education and justice policy. It is the new gateway to justice.

ODR may create that “New Handshake” for consumers in B2C exchanges by expanding consumers’ access to remedies in an otherwise “top-down” world of Ecommerce. ODR can be effective and satisfying for low-dollar claims such as those in most B2C contexts because of its efficiencies. ODR systems lower the costs and burdens of pursing purchase complaints so that all consumers, regardless of power and resources, feel comfortable and able to seek assistance. Online complaint systems also create transparency around seller behavior and give voice to common consumers who may then police market fairness and empower others to “vote with their feet.” In this way, ODR has potential to ease power imbalances that have hindered market regulation in B2C commerce.

That said, ODR is not perfect. It has drawbacks as well. Like any justice system, online systems must be carefully constructed and regulated. They also are not free. Someone is paying for their development and upkeep. Neutrals behind these systems also must be properly trained and regulated. Moreover, there are continual concerns with privacy online and Internet security. These are just a small handful of issues to be explored!

Accordingly, this course will explore ODR systems. We will look at the various systems currently used by major companies such as eBay, as well as the rules and treaty developments in global markets. We also will do ODR simulation exercises, led by Colin Rule, who has been a leader in creating ODR systems. As noted above, there will be additional classes set for March 1-3, when Mr. Rule will be our guest at Mizzou!

The class also will include deep consideration of both the potential and drawbacks of ODR systems. Therefore, we also will discuss development of best practices and question policy directions. For starters, consider whether rules regarding alternative dispute resolution (“ADR”) offline could or should apply to ODR? How does technology change the equation? Can ODR be effective when parties are not looking into the eyes of
the other side? How can offline neutrals best translate their skills online? How can technology merge with face-to-face ADR to make it more effective? What ethical challenges does ODR present? Are there contexts in which ODR should be banned?

**Course Objectives:**

Again, we will examine the development of ODR, think through some of the new challenges it poses to neutrals and systems designers, and look at the major providers, administrative agencies, and international organizations currently involved. We will also sample state-of-the-art ODR technologies through a series of simulations, and begin to wrestle with the challenges of providing effective dispute resolution online.

**Guest Instructor:** Elongated and extra classes will be scheduled for March 1-3 when Mr. Rule is at MU Law!

- **March 1:** 10 AM – 2 PM in Room 112 (the courtroom)
  **Possibly lunch or a lecture at 1-2 (TBA)**

- **March 2:** 4 PM – 7:30 PM in Room 332A
  **Required lecture 1 - 2 PM (specific information TBA)**

- **March 3:** 8:00 AM – 11:30 AM in Room 332A

Colin Rule will join me in leading class discussion and simulations during dates and times above, with the elongated class on March 1 and additional classes scheduled on March 2 and 3. Mr. Rule is COO and co-founder of Modria.com, an ODR provider based in Silicon Valley. From 2003 to 2011, he was Director of Online Dispute Resolution for eBay and PayPal. He has worked in the dispute resolution field for more than a decade as a mediator, trainer, and consultant. He is currently Co-Chair of the Advisory Board of the National Center for Technology and Dispute Resolution at UMass-Amherst and a Non-Resident Fellow at the Center for Internet and Society at Stanford Law School.

Mr. Rule co-founded Online Resolution, one of the first online dispute resolution (ODR) providers, in 1999 and served as its CEO (2000) and President. In 2002 Colin co-founded the Online Public Disputes Project (now eDeliberation.com) which applies ODR to multiparty, public disputes. Previously, Mr. Rule was General Manager of Mediate.com, the largest online resource for the dispute resolution field. Mr. Rule also worked for several years with the National Institute for Dispute Resolution (now ACR) in Washington, D.C., and the Consensus Building Institute in Cambridge, Massachusetts.

Mr. Rule has presented and trained throughout Europe and North America for organizations including the Federal Mediation and Conciliation Service, the Department of State, the International Chamber of Commerce, and the CPR Institute for Dispute Resolution. He has also lectured and taught at Pepperdine, UMass-Amherst, Stanford,
MIT, Creighton University, Southern Methodist University, the University of Ottawa, University of Colorado, and Brandeis University.

Mr. Rule is the co-author with me of a forthcoming book, NEW HANDSHAKE: ONLINE DISPUTE RESOLUTION AND THE FUTURE OF CONSUMER PROTECTION (ABA Publishing 2017). He is also the author of Online Dispute Resolution for Business, published by Jossey-Bass in September 2002. He has contributed more than 50 articles to prestigious ADR publications, and currently blogs at Novojustice.com, and serves on the boards of RESOLVE and the Peninsula Conflict Resolution Center. He holds a Master’s degree from Harvard University’s Kennedy School of Government in conflict resolution and technology, a graduate certificate in dispute resolution from UMass-Boston, a B.A. from Haverford College, and he served as a Peace Corps volunteer in Eritrea from 1995-1997.

Course Requirements & Grading: The final grade will be based upon writing assignments and presentations (70%), along with class participation (30%).

Writing assignments and capstone presentations (70%): This includes three reflection papers and the capstone paper as noted herein.

- **Reflection papers (20%)** – Reflection papers are due at the start of each class for which they are assigned. Students must come to class with hard copies of their papers because students will discuss the papers in class. Also, it is important to bring a hard copy to the class for which they are assigned because I will be collecting them in class.

- **Capstone System Design paper and presentation (50%)** – This capstone “system design” paper and presentation thereof will account for 50% of your final grade. A hard copy and an e-copy of your paper are **due by May 1 2017**. Please note that this “design” requires no technical IT knowledge or explanation. Instead, this will be a concept paper that calls on students’ creativity and practical consideration of problem solving for typical consumer complaints.

This paper should be roughly 8-10 pages. You will provide a design for an online dispute resolution system aimed at addressing a particular type of disputes. Pick a type of dispute you are interested in (e.g. cell phone, tax appeals, parking fines, workplace, environmental, commercial, privacy, intellectual property, divorce, etc), and set forth your concept of a design of an ODR process using some sort of technology system (e.g. an app, a website, or other online platform) for assisting the resolution of your chosen type of dispute. Specifically, consider the following:

1. State the type of dispute your system is designed to address and why you believe ODR would be beneficial in this context. Also consider how the disputes are currently handled in the status quo? What are the advantages and disadvantages of the current resolution approach vs. ODR?
2. Describe your envisioned ODR system. Who will use the system (ie: consumers, businesses, government, etc.)? What information will you collect from participants and how? What are the phases and stages of your envisioned ODR
process? What actions will participants need to take as part of the flow? Walk the reader through the resolution flow (you may choose to create a diagram).

3. Consider ethical issues and the fairness of your proposed system. How will moving these cases online change the volume of cases and quality of resolutions in the area? What quality controls will your system employ to ensure due process at some level?

4. What data security measures will you employ and how will you ensure the safety of the system? At the same time, to what extent will data be shared?

5. How will the systems be paid for? What options and ideas have you developed for funding the system creation and maintenance?

6. What are some of the difficulties and drawbacks of your system? You may simply list the remaining questions and concerns your system may present.

**The final classes will be dedicated to your presentation of your system design. You will create powerpoint presentations and have command of the time for your presentations!**

**Class participation and attendance (30%):** I expect students to attend all class meetings and actively participate in class discussions and activities. I will grade participation based on active and thoughtful engagement with the course content. Active participation in simulations will be essential. This will enhance the learning experience for all students in the class.

**Office Hours and Accessibility:** I will hold office hours Wednesdays 3:30-5:00 and I am generally readily available. I am enthusiastic about this developing area, and here to assist your learning!

**Lecture with Colin Rule TBD:** We may want to plan an event with the dispute resolution center and entrepreneurial law center and/or others and will alert you of this event. He will also be happy to talk with you outside of class and continue conversations via email or telephone after he returns to California.

**Assignments:** Below is the schedule of topics and assignments we will cover during the class. Please ask me any questions regarding assignments before they are due so that I can help you prepare for class in accordance with the schedule.

All materials are accessible on TWEN under Course Materials, linked to this syllabus via hyperlinks, or are otherwise accessible via Westlaw or Lexis. There are no materials you must purchase. **This means you must register for this course on TWEN. If you have trouble using the links in the syllabus or otherwise locating the materials by Mr. Rule, please contact Mr. Rule for assistance at CRule@modria.com.** Optional readings are truly optional.
**Laptops:** Please note that you must bring a laptop for class on March 1-3 for the classes in which we do the online simulations. If you do not have a laptop to use, please let me know ASAP so we can seek arrangements.

**Reading Assignments:** These assignments are subject to change, and you should not read too far ahead of the schedule.

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<th>Topic</th>
<th>Reading Assignments</th>
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**Reflection Paper:** Briefly explain in 1-2 pages your experience and knowledge with online remedy systems and what you hope to learn in this course. Also, note your conceptions of ODR based on the readings and consider ODR’s problems and potential.  
  
**Optional:**  
  • Amy J. Schmitz, *Building Trust in Ecommerce Through Online Dispute Resolution*, in RESEARCH HANDBOOK ON ELECTRONIC COMMERCE LAW, (Edward Elgar Publishing 2016) **Book is in the law library.**  

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Reflection Paper: Very briefly list the pros and cons of the UNCITRAL & EU ODR endeavors based on the readings. This need not be fancy – simply list pros and cons in 1 page or less, and be prepared to discuss your thoughts in class. Do you believe that either or both will work? Is global ODR achievable? If so, how?

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<th>3.</th>
<th>eBay, PayPal, Modria, and ODR applications in the Real World</th>
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| • | Ethan Katsh: “ODR: A Look at History – A Few Thoughts about the Present and Some Speculation about the Future”  
http://www.ombuds.org/odrbook/katsh.pdf |
http://www.mediate.com/articles/rule.cfm |
| Reflection Paper: Have you used an ODR system to resolve a dispute? If so, please write no more than one page on your experiences. If not, please write a page stating why you would or would not use ODR to resolve a dispute regarding a consumer purchase? |

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<th>4. Consideration of Ethical Dilemmas in Dispute Systems Design and Implementation</th>
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<td>• “Virtual Virtues: Ethical Considerations for Online Dispute Resolution (ODR) Practice,” with Jo DeMars, Susan Nauss Exon, and Kimberlee K. Kovach, in Dispute Resolution Magazine, Fall 2010.</td>
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<tr>
<td>• James Alfini, Mediator Ethics: A Procedural and Social Justice Critique (on TWEN as Alfini on Mediation Ethics).</td>
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| 5. | Governance of ODR | We will consider how ODR should be regulated. You likely have concerns and questions regarding the governance of ODR. Thus, please read:


**Reflection Paper:** Write a one-two page reflection paper noting the key points or “take-aways” from the reading for today. Also, note how you believe ODR should be regulated, if at all.

| 6. | ODR in the Courts | • Institute for the Advancement of the American Legal System, *A Court Compass for Litigants: Building an App for That* (2016) at http://iaals.du.edu/sites/default/files/documents. You can find this on that site by searching for the document or find it on TWEN.

- HILL Trend Report IV, *ODR and the Courts: The promise of 100% access to Justice?*, from Online Dispute Resolution 2016. (on TWEN)


**Reflection Paper:** State in one page what you envision, if anything, as the best use of ODR in the courts? This would be
a public venture and part of the courts. Be sure to consider how that would differ from privatized systems, and what concerns you may have for use of ODR in the courts.

| 7-10. ODR simulations March 1-3 extra classes and time to equate more than 4 classes. **Mr. Colin Rule will be joining us in these classes! | Online dispute resolution simulations! **Simulations for online mediations and negotiations! Students will actually conduct and participate in online processes, and we will have opportunity to reflect on our experiences during the simulations. This has been tremendously successful with students, and Mr. Rule and I have lead such simulations with students at University of Colorado. Nonetheless, this relies on having two of us lead the processes. Students break into separate rooms, and get a very real sense of how online dispute resolution differs from face-to-face processes. *NO Reflection Papers due for these classes. |

| 11. Online Simulations and Guest Presenters from Peopleclaim.com | Thoroughly review the material on these websites regarding these ODR programs:


- eQuibbly – https://www.equibbly.com

- Smartsettle – https://www.smartsettlecom

- CyberSettle – http://paymd.com

- PeopleClaim.com, an online dispute resolution service that uses peer-to-peer and crowdsourced mechanisms to resolve commercial claims. See also this interview with Mark Deuitch that appeared in the ABA online publication Law Practice Today in 2016. It explores the idea of public input to online dispute resolution, which opens new possibilities for how cases get resolved, including projects like the University Challenge.

- Please also read: Pablo Cortes, Online Dispute Resolution Services: A Selected Number of Case Studies, Computer and Telecom. Law Rev. 172-78 (2014) (on TWEN).
| 12. | Debrief the various simulations and discuss paper plans | **Consider and discuss the simulations:**  
- What did you like?  
- What did you dislike?  
- What surprises or concerns?  

**No reflection papers. Instead you will need to have a “Paper Plan,” or rough outline of your research and what you plan to explore for your capstone/final project. We will be swapping plans to get ideas from classmates and meeting with me to go over your “Paper Plans.” It is imperative that you bring hard copies of your plans to this class!** |
| 13-14 | Final Presentations: You will each have roughly 30 minutes (depending on course enrollment) to present your proposed ODR processes and gather other students’ feedback. This time is yours and you are to take the lead. This allows for more speaking opportunities, and the discussion should assist you in completing your final seminar papers. This also means you may require the other students to prepare short readings, and you should create a powerpoint presentation to lead the class. Again, you are in charge for your time. | **NO Reflection papers due** |