This course addresses dispute identification, management and resolution using methods other than litigation. The major units of the course are: the landscape of dispute resolution; negotiation; mediation; arbitration; hybrid dispute resolution processes; and conflict anticipation and management through contract drafting, systems design and other techniques. Emphasis will be on commercial dispute resolution, though domestic, employment and consumer applications will also be addressed. The focus will be on conflicts arising in the United States; international, cross-cultural and cross-border issues will be addressed only briefly.

Although the course will be of value to aspiring advocates, mediators and arbitrators, the aim of the course is to enable attorneys to counsel commercial clients on the most effective and appropriate ways to anticipate, manage and resolve commercial disputes by means other than litigation. The needs of the client will always be paramount. The core object of the course is to prepare the student to add value to the client through sophisticated counseling and skilful negotiation, drafting and other related skills. ADR processes will be examined from the perspective of arbitrators and mediators only insofar as such study will enhance skills in representing clients in ADR proceedings.

Active student participation, including classroom discussions, role plays and critiques, will be expected of each member of the class.

I can be contacted as follows:

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Required Text:

Class Assignments

Class 1. 1-13-14  **Introduction and Course Overview**

Text pp. 1 – 37 (Chapters 1 & 2)

Landscape of Disputes
Social and Legal Development of ADR
Client-Centered Approaches to Dispute Management
Introduction to Negotiation: Taking Control of Your Own Problems

Class 2. 1-27-14  **Negotiation, Part I: Psychology and Styles**

Text pp. 39 – 93 (Chapters 3 & 4)

Subjectivity
Notions of Fairness
The Limits of Rationality
Principles of Negotiation: Theory and Style

Class 3. 2-10-14  **Negotiation, Part II: The Dance**

Text pp. 95 – 173 (Chapter 5)

The Stages of Negotiation
Tools for Principled Negotiation
Selected Problems

Class 4. 2-17-14  **Negotiation, Part III: Impasse, Culture, Race, Ethics**

NOTE: 7:30 – 10:00

Text pp. 173 – 246 (Chapter 6, 7, 8)

Shadow Negotiation
Culture: Respect Without Stereotype
Disclosure, Deception, and Rule 4.1
Conflicts of Interest
Obligations of Client Control
Coercion, Duress and Unconscionability
Legal Significance of the Negotiation Process

Class 5. 2-24-14  **Mediation, Part I: Overview, Cognitive Barriers, Client Representation**
Text pp. 249 – 375 (Chapters 9, 10 & 11)

NOTE: 7:30 – 10:00

Introduction to the Process
Illustrations: the MIT and Microsoft Cases
Mediation from the Mediator’s Perspective
Causes of Negotiation Impasse and Mediation’s Value
Salient Mediation Skills
Managing the Threat of Impasse
Representing Clients in Mediation

Class 6.  3-3-14  Mediation, Part II: Representing Clients, Applications

Text pp. 377 - 443 (Chapter 12 - 13)

Joint Meetings
Ex Parte Sessions (Caucuses)
Techniques for Breaking Impasse
Family Disputes
Employment Disputes
Public Policy and Consensus-Building
Intellectual Property Disputes
Criminal Procedures and Restorative Justice
Deal Mediation
Online Mediation
Disputes in Religious and Spiritual Communities

Class 7.  3-17-14  Mediation, Part III: Policy, Ethics

Text pp. 445 – 533 (Chapters 14 & 15)

Court-Connected Mediation
The Downside of Private Dispute Resolution
Dangers of Mediation: Concerns of Policy and Justice
Mediation Ethics; Mediation and the Law
Mediation Regulation
Mid-Course Review

Class 8.  3-24-14  Arbitration Part I: Overview of the Process

Text: 537 – 609 (Chapters 16 & 17)

History of Arbitration
Arbitration and Litigation Compared
Illustration of Applications of Arbitration
Agreements, Procedures, Awards
Med-Arb

Class 9. 3-31-14  Arbitration, Part II: The Law

Text pp. 611–17, Amaprop Limited v. Indiabulls Financial Services Ltd.,
620-30, AT&T Mobility v. Concepcion., 653-56, 659-64, 675-90 (Chapter 18)

The Federal Arbitration Act
State Arbitration Statutes
Selected Principles of Arbitration Jurisprudence

Class 10. 4-7-14  Arbitration, Part III: Fairness and Legislation

Text pp. 695-704, 717-31 (Chapter 19)

Examples of Extending Arbitration Beyond Contract
Notions of Substantive and Procedural Fairness, and Their Utility
Due Process Protocols
Current Legislative Initiatives

Class 11. 4-21-14  Arbitration, Part IV: Miscellaneous Topics

Stolt-Neilson v. Animal Feeds; BCM Blog Post on Sutter v. Oxford; Rent-a-Center v. Jackson; BCM Blog Post on Cornell Survey; Abstract of Stipanowich Article

Class Actions
Severability and Arbitrability
Trends in Use of Arbitration
Guest Speakers TBA

Class 12. 4-25-14  Managing Conflict and Adding Client Value

Text pp. 735-62, 766-68, 775-81, 784-90 (Chapters 20, 21 & 22)

Varieties of Customized Dispute Resolution Processes
Systems Design
The Lawyer as an Evolving Professional

Class 13. 4-28-14  Miscellaneous Topics
Course Review
Non-Legal Conflict Anticipation and Avoidance
Conflict Transformation
Conflict Anticipation and Management