

WAYNE STATE  
UNIVERSITY  
LAW SCHOOL

**MEMORANDUM**

**To:** Students in Alternative Dispute Resolution ("ADR") Course, LEX  
7016  
**From:** Bob Ackerman  
**Re:** Introductory Memorandum and Syllabus  
**Date:** January 8, 2015 (revised February 3, 2015)

This course is a survey of various dispute resolution processes, including primary processes such as negotiation, mediation, and arbitration, and hybrid processes such as med-arb and the mini-trial. It is designed primarily for those who will employ a variety of dispute resolution processes in the course of representing clients; it also serves as an introduction to these processes for those who are interested in serving as neutrals. The course will involve discussion of dispute resolution law, theory and policy, and will expose you to basic skills involved in dispute resolution processes such as negotiation and mediation. By the conclusion of this course, you should have a good grasp of the law, theory and policy choices underlying the use of most dispute resolution processes.

The course exposes you to the skills employed in client counseling, negotiation, mediation, and other processes. However, this is *not* a negotiation and mediation skills training course *per se*, as two credit hours give us insufficient time to fully develop techniques employed in these processes. Those interesting in enhancing their proficiency in these processes are encouraged to enroll in courses such as Negotiation and the Dispute Resolution Practicum. Those interested in representing clients in arbitration, mini-trials, summary jury trials or conventional courtroom trials probably should enroll in one or more trial advocacy courses and/or one of our two arbitration courses.

**Desired Learning Outcomes:** By the conclusion of this course, I hope that students will be able to:

- Understand the dispute resolution process choices available to them and their future clients;
- Be able to counsel clients on these choices and make decisions with their clients as to the processes best suited to resolve their disputes;
- Understand the roles lawyers play as counselors, advocates, and neutrals in various dispute resolution processes;
- Begin to recognize and develop effective techniques employed in various dispute resolution processes;

- Be able to draft dispute resolution contract clauses appropriate to the situation;
- Understand the law and ethics pertaining to dispute resolution processes (not including traditional courtroom litigation, which is covered in the Civil Procedure course).

**Materials.** Materials for this course consist of:

- LEONARD L. RISKIN, JAMES E. WESTBROOK, CHRIS GUTHRIE, RICHARD C. REUBEN, JENNIFER K. ROBBENOLT, AND NANCY A. WELSH, DISPUTE RESOLUTION AND LAWYERS (Abridged 5th ed. 2009) (R&W on the syllabus).
- Supplemental readings distributed by the instructor, usually through TWEN.
- General and confidential information sheets and reporting forms for simulations, to be distributed by the instructor, usually through TWEN.

The syllabus can be found on pages 4 through 6 of this memorandum. While the syllabus may be revised from time to time, I will make a point to post revisions no later than 2:45 pm on the day immediately preceding the relevant class (i.e. Wednesday). Completion of the assigned reading is essential to effective participation in class discussion and simulations, as well as satisfactory performance on the final examination.

**Substance of the course.** As you can see from the syllabus, most of the course is devoted to the three primary dispute resolution processes of negotiation, mediation, and arbitration. Because Wayne Law offers other courses focusing on negotiation, mediation, labor arbitration, and international commercial arbitration, we will spend a disproportionate amount of our time on domestic commercial arbitration, a frequently-employed dispute resolution process. There is actually a great deal of law (much of it on the U.S. Supreme Court level) regarding arbitration, and a growing amount of law on negotiation, mediation, and some of the hybrid processes. The ethical obligations of lawyers and neutrals also play a growing role in these processes. So while we will devote a great deal of our time to hands-on simulations and discussion of these simulations, do not be surprised to find that in some respects, this course resembles a “real law” course. Indeed, the understanding of the legal nuances and ethical ramifications of dispute resolution processes is something that distinguishes lawyers from other dispute resolution professionals and makes us marketable as counselors, advocates, and neutrals.

**Grading.** Your grade will be based on the following components:

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| • Classroom participation:   | 20% |
| • 1 report of a simulation:  | 20% |
| • A report of a “real world” dispute resolution process you have observed: | 20% |
| • Final examination:   | 40% |

These components are described in greater detail below. Grading will be necessarily

subjective and, except for the final examination, non-anonymous. In addition to the above items, you will be required to complete a short biographical information form and a survey on your fellow students' contributions to your learning.

**Classroom participation.** A substantial amount of classroom time will be spent discussing the assigned readings and processing the simulations and other exercises. We may also spend some time addressing pending disputes and dispute resolution systems. Because our classroom simulations are planned in anticipation of everybody being present, conscientious attendance is a must. Please limit your absences to circumstances entirely beyond your control (e.g., religious observance, serious health problems, a death in your immediate family, impassable roads), and notify my secretary, Olive Hyman ([olive.hyman@wayne.edu](mailto:olive.hyman@wayne.edu)) and me in advance, if at all possible, if you will find it necessary to miss class, so that we can make changes and substitutions in any simulations. An attendance policy in accord with the law school's requirements will be posted on TWEN.

At the end of the course, you will be required to participate in a survey to determine which students, in your opinion, have contributed to your learning through helpful feedback, insightful classroom participation and effective participation in simulations. This portion of the survey will influence your class participation grade.

**Reports of simulations.** A major component of the course will be the simulation of dispute resolution processes, mostly inside class, but occasionally outside of class. Students will observe live and videotaped demonstrations of dispute resolution processes, and will have the opportunity to play the roles of disputants, their legal counsel, and neutrals employed to help resolve simulated disputes. You will also be required to complete short reports of your experiences in at least two of the simulations (forms will be provided), which may be subject to discussion in class.

**Report of a "real world" dispute resolution process you have observed.** During the semester, you will be expected to observe a "real world" dispute resolution process of your choosing, and report in writing about your observations, the appropriateness of the process to the dispute, and the desirability of alternative processes. The process may be a conventional trial or courtroom hearing or any of the alternative processes that are the subject of the course. Details about this assignment will follow.

**Final examination.** The final examination has been scheduled for Thursday, May 7, 2015, at 1:30 p.m. It is likely to be a closed-book examination, and will be approximately two hours in length.

**Outside of class.** I encourage you to continue our discussion beyond the classroom. My office is Room 3267, on "faculty row" on the third floor of the Law Building. The best times to find me in this semester are Tuesday mornings and most of the day on Fridays (although Friday mornings are likely to be problematic during February). You can also try to drop in at other times; conversely, there may be occasions on which I am obligated to be elsewhere during posted office

hours. I am also available by appointment.

I have also set up a forum on TWEN through which we can continue our discussions. Unless you request otherwise, you should assume that your inquiries and comments regarding the course, together with my responses, will be posted to the entire class. I hope that TWEN can serve as yet another vehicle to promote discussion, and *not* as a substitute for more personal interaction. I will also use TWEN and e-mail to update and revise the syllabus. So please make sure you have signed onto TWEN for this course, and check the site regularly.

**More generally. . .** The dispute resolution field remains a developing area, with plenty of room for new ideas and innovations, both in teaching and practice. There is great interest in conflict resolution at Wayne State. In addition to courses and other activity in our Law School, the university boasts a Masters Program in Dispute Resolution, a Center for Peace and Conflict Studies, Labor@Wayne, and the Damon J. Keith Center for Civil Rights, based here in the Law School. These groups are presently collaborating on an Urban Public Policy Forum through which we hope to present a conference on campus either this spring or fall. Additionally, there are a number of conflict resolution organizations that welcome your participation on a local, state, and national level. Please let me know about your interests, and we can seek out ways in which you can become involved.

## **Alternative Dispute Resolution Syllabus**

Winter 2015

Prof. Ackerman

1. January 15: **Introduction and overview of dispute resolution and conflict management.**  
Read: R&W pp. 1-41.  
Class: Discussion of Chapter I; 2-part simulation: *The Senate Table* (materials to be provided in class).  
Write: **Biographical information form, due (via TWEN) Mon. January 19 at 5:00 p.m.**
2. January 22: **Interviewing, counseling and the client-attorney relationship.**  
Read: R&W pp. 43-51, 54 (notes)-79, 82 (Counseling)-89, 93 (notes and questions)-97.  
Prepare: *A Fight Over Amy* (R&W p. 97, plus materials on TWEN).  
Class: Discussion of Chapter II and counseling role plays; simulation: *A Fight Over Amy*.
3. January 29: **Negotiation: process, approaches, strategy and tactics.**  
Read: R&W pp. 99-128 (omit Ayres & Brown, notes), 130-140, 142-147, 149-151 (through notes).  
Class: Discussion of Chapter III and the negotiation process.
4. February 5: **Negotiation: law, ethics, and difference.**

Read: R&W pp. 151-154 (through notes), 158 (omit Galanter & Cahill), 159 (notes and questions)-163 (omit Mnookin et al), 165 (note 3)-203.  
Prepare: *The Carton Contract* (R&W p. 203, plus materials on TWEN).  
Class: Discussion of Chapter III, the law and ethics of negotiation and the role of difference; simulation: *The Carton Contract*.  
Write: **Negotiation Report due Mon. February 9 at 5:00 pm** (odd-numbered students).

5. February 12: **Negotiation and Mediation: approaches and process.**  
Read: R&W pp. 209-225, 234-236 (through 1<sup>st</sup> paragraph), 251-260.  
Class: guest lecture and demonstration on negotiating an employment contract with a law firm; discussion of approaches to mediation.
6. February 19: **Mediation: process, ethics, and mediator credentials.**  
Read: R&W pp. 236-248 (omit notes and questions), 261-266, 272-279, 280-295 (through 1<sup>st</sup> paragraph), 302 (Question 6).  
Class: Discussion of Chapter IV and mediation process; mini-simulation(s).
7. February 26: **Mediation: mediator performance; parties, lawyers, and mediation advocacy.**  
Read: R&W pp. 303-307 (omit Wagshal), 313 (notes and questions)-324, omit beginning of Riskin article, then read 327 (importance of subject-matter expertise)-330, 338-345, 350 (good faith participation)- 357.  
Prepare: *Deadlock at the Bowl-A-Rama* (on TWEN).  
Class: Discussion of Chapter IV; simulation: *Deadlock at the Bowl-A-Rama*.  
Write: **Mediation report due Mon. March 2 at 5:00 pm.** (even-numbered students).
8. March 5: **Mediation and Arbitration: confidentiality and self-determination in mediation; introduction to the arbitration process.**  
Read: R&W pp. 357-378; 391-401.  
Class: Discussion of *Deadlock at the Bowl-A-Rama* and confidentiality and self-determination in mediation; introduction to the arbitration process.
9. March 12: **Arbitration: the FAA and pre-emption, arbitrability.**  
Read: R&W pp. 401-432.  
Class: Discussion of law and issues arising in arbitration.
10. March 26: **Arbitration: arbitrability of statutory claims, adhesion, unconscionability, good faith and fair dealing.**  
Read: R&W pp. 432-463.  
Class: Discussion of law and issues arising in arbitration.
11. April 2: **Arbitration: judicial review, international arbitration, ethics.**

Read: R&W pp. 463-493.

Class: Discussion of law and issues arising in arbitration.

Write: **Report of “real world” dispute resolution process due Mon. April 6 at 5:00 pm.**

12. April 9: **Mixed Processes: court-annexed processes, summary jury trial, early neutral evaluation, administrative agencies, collaborative lawyering, online dispute resolution.**

Read: R&W pp. 495-498 (through Table 1), 506 (note 3)-532 through note 4), 539 (note 2)-540, 547-548, 555 (note 1)-568.

Class: Discussion of mixed processes and new applications.

13. April 16: **Process Design and Selection; Looking Ahead.**

Read: R&W pp. 569-584, 605-623, 644-650.

Class: Discussion of process design, selection, and evaluation.