

ADR Survey
LAW 7222S 601
Class Syllabus
Spring 2015
Texas A&M University School of Law

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Office Hours: Monday, Tuesday & Thursday 2-3 pm.

Course Overview:

This course will serve as an introduction to the main three tools of Alternative Dispute Resolution: negotiation, mediation, and arbitration. (Negotiation is when two or more parties work together to achieve a mutually acceptable agreement; mediation is when a neutral third party plays the role of mediator in assisting by asking questions and guiding the conversation of two or more parties as they work together to achieve a mutually acceptable agreement; and arbitration is when a neutral third party takes on the role of judge and decides the outcome of a disputed matter after it is presented to him or her in a setting similar to a court trial). Through the use of lecture, simulations, and exercises, students will learn both theoretical and practical aspects of all three tools.

Office Hours and Conferences:

I have an open door policy. If my office door is open, please feel free to come in and talk with me. If my office hours do not work with your schedule and/or if you would like to set up a specific time to meet, please let me know and we will arrange another time to meet.

Learning Objectives:

By the end of the semester you should

1. understand the theories underlying different types of negotiations and mediations and the use of different skills including different styles.
2. be able to distinguish between integrative bargaining and distributive bargaining.
3. be able to distinguish between different types of mediation and analyze when one type might better suit a particular dispute over another type.
4. understand the ethical rules applicable to lawyers when negotiating,

- mediating, or arbitrating a case.
5. be able to recognize barriers to dispute settlement and analyze what options may overcome those barriers.
 6. have a basic understanding of arbitration and when it might be a better form of dispute resolution.
 7. Have a basic understanding of how arbitration, mediation, and negotiation differ from each other, and where their points of similarity.

Course Web Site:

This course will use a course web page through the Texas A&M eCampus system (<http://ecampus.tamu.edu>) (hereinafter eCampus). You will find it listed as “ADR Survey.” The syllabus and other class materials will be posted on this site.

I will regularly send e-mail messages to the e-mail account that you use with Texas A&M (the same account that is on the Howdy system). It is your responsibility to check this account regularly (at least once a week) and to make sure that the account remains functional and to ensure that you have read any messages that I may send to you on that account.

Required Reading:

DISPUTE RESOLUTION AND LAWYERS, FIFTH EDITION, Risken, Westbrook, Guthrie, Reuben, Robbennolt & Welsh [hereinafter, Text].

Attendance and Class Participation:

You are required to attend all classes. The Law School has a mandatory attendance policy. Pursuant to that policy, any student who misses more than **25%** of classes will be withdrawn from the class. Tardy arrivals or early departures may be considered absences.

Because you will function in groups many days, please be sure to notify your group members, in advance, of any expected absences. Please note that arriving late to class and leaving early counts as time that you are absent. Your class participation grade will include attendance. You must notify me in advance if you will be absent on the Negotiation, Mediation, or Arbitration Exercise days (see dates below). You will be assigned to specific roles on those days and any absence will create problems for those you are assigned to do the exercise with. Therefore, I will deduct ten points from your class participation score if you fail to notify me in advance.

Occasionally, I may need to schedule a make-up class during one of the official make-up times. I will announce the make-up class at least one week in advance. Attendance will be taken at make-up classes.

Disability Policy:

Texas A&M School of Law adheres to a disability policy that is in keeping with relevant federal law. The law school will provide reasonable accommodations as determined by the Assistant Dean of Student Affairs, Rosalind Jeffers, in consultation with the University’s disability services. Students must notify Dean Jeffers of any permanent or temporary disabilities and must provide documentation regarding those disabilities prior to the granting of an accommodation. Due to the law school’s policy of testing anonymity, students should not discuss their disabilities with professors. For assistance, students should consult with Dean Jeffers.

Laptop Computers, Cell Phones & Other Electronic Devices:

You will find that this course depends on active participation from everyone. I look forward to strong and active class participation. It is therefore important to keep the distractions of electronic devices to minimum. For this reason, the use of laptop computers, iPads, or any other electronic devices, including any devices that allow you to access the internet, or record, are prohibited in this class. You are also not allowed to use cell phones in this class unless you have asked me before class and I have given permission for you to use your cell phone for that day. I will grant permission only for specific and legitimate reasons. Any electronic device that allows for audio or visual or any other type of recording is prohibited. Electronic recording of this class, in any way, is prohibited. The only exception to these prohibitions will be for those with prior permission from the Assistant Dean of Student Affairs.

Otherwise your cell phones should be turned off or in silent mode during the class. I reserve the right to deduct 5 points from your grade each time I see you use any electronic device, including a cell phone. I will not give you a warning.

GRADING:

Your grade will be based on the total possible points you accumulate. Below are the total possible points in each category.

Class Participation:	70 points
Final Exam	150 points
Total Possible Points:	220 points

EXTRA CREDIT

You may earn up to 15 extra credit points by posting comments on the dispute resolution law professor blog, indisputably.org. I am a contributor to this blog, but you are welcome to submit comments to any of the posts and do not need to limit yourself to the blog entries I have written.

You can earn up to 5 extra credit points for each comment and can earn extra credit points for a maximum of three posted comments. To earn extra credit the comments must be professional, reflect thought, and be clear and well written. The amount of points that you earn for each comment will reflect the quality of that comment (and please note, quality does not mean quantity—short comments can earn the full 5 points).

Please send me an email after you post a comment so I do not miss your contribution and so you get the extra credit points.

CLASS PARTICIPATION:

Your class participation grade will depend on whether you are prepared for each class, actively participate and are professional. Good preparation means that you have read the assigned materials and are ready to do any assigned in-class exercises. Active participation means that in addition to fully participating in all in-class exercises you also regularly make contributions to the classroom discussions and that these contributions reflect reading of the assigned materials and thoughtful analysis. Professionalism includes treating your colleagues with respect and not dominating the discussion.

Much of the in-class work you will do in this class will be in your Study Group which will consist of four persons. You will be required to designate who will be in your Study Group by Class 3. You should sit near each other in the classroom. The colleagues in this group will work together on various in-class exercises.

EXERCISES

During the semester you will be assigned a role, paired with one or more counterparts, given instructions (including confidential information), and asked to prepare and carry out an exercise before or during class. You will either receive the materials in class, have to download the materials from the Web Course site or read specific pages in the text. Please follow the instructions.

Many of the exercises include confidential instructions. **Do not show these confidential instructions to others, unless instructed.** You may choose to discuss or reveal some of their content -- indeed, communicating your interests clearly is essential to effective negotiation or mediation -- but you must not physically show others your actual confidential instruction sheets. This rule largely mirrors reality because, for strategic reasons, in most situations you will not likely reveal all of your underlying interests and available information to your negotiating counterparts.

EXAM:

You will have one final exam at the end of the semester. It will be an open book exam. You can bring your outline, textbook, and supplemental reading to the exam.

Academic Integrity and Policy:

I expect all students to follow the Aggie Honor Code at all times in this class and in any assignments for this class. Under the Aggie Honor Code “An Aggie does not lie, cheat or steal, or tolerate those who do.”

You can see the full statement of the honor code and rules and procedures if it is violated on TAMU Law School Website: <http://aggiehonor.tamu.edu/RulesAndProcedures/>

I will treat any violation of the policy seriously and in a manner that complies with the stated policy.

Professionalism:

As we will discuss throughout this class, good lawyers rely on developing and maintaining a good reputation, including a reputation that you are highly professional. As future lawyers, I expect you to be professional at all times in class and beyond. The demands of professionalism do not end at the classroom or the courthouse door, but extend to how you treat your colleagues, your professors, your eventual clients, and to how you handle your in-person and electronic communications.

“What does it mean to be a professional? The term refers to a group . . . *pursuing a learned art as a common calling in the spirit of public service* – no less a public service because it may incidentally be a means of livelihood. *Pursuit of the learned art in the spirit of public service is the primary purpose.*’ *Dean Roscoe Pound.*”¹

“What is professionalism? ‘Professionalism is conduct consistent with the tenets of the legal profession as demonstrated by a lawyer's civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rule of law, the courts, clients, persons who work within the legal profession, witnesses, and unrepresented parties.’”²

Class Schedule and Reading Assignments:

I. INTRODUCTION:

1. January 13

Required Reading: Text pages 1-26
& the class syllabus

¹ . . . *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*” at 10 (ABA 1986) [*hereinafter In the Spirit*] (*emphasis added*) (*citation omitted*), available at http://www.abanet.org/cpr/professionalism/Stanley_Commission_Report.pdf.

² *Commission on Professionalism, State Bar of New Mexico. Available at:* <http://www.nmbar.org/Attorneys/commissiononprofessionalism.html>

2. January 15

Required Reading: Text pages 26-41

3. January 20

Required Reading: Text pages 64-90

& Complete Listening Skills Test (available on the Web Course). Be sure you have determined your score before class. You will need to turn in your score sheet before class begins.

4. January 22

Required Reading: Text pages 122-143

II. ARBITRATION

5. January 27:

Required Reading: Text pages 561-590

6. January 29

Required Reading: Text pages 590-613 & 618-640

7. February 3

Required Reading: Text pages 640-671 698-708

8. February 5

Arbitration Exercise

- *Please note: Class on Feb. 5 may be cancelled and rescheduled. I will let you know as soon as possible.*

III. NEGOTIATION:

9. February 10

Required Reading: Text pages 145-160

& Complete Thomas-Kilmann Conflict Mode Instrument (available on the Web Course). Be sure you have determined your score before class. You will be required to turn the completed instrument in at the beginning of

class—please make sure you have a copy to avoid point deductions.

10. February 12:

Required Reading: Text pages 160-193

11. February 17:

Required Reading: Text pages 193-218

12. February 19:

Required Reading: Text pages 218-246

13. February 24

Required Reading: Text pages 246-272

14. February 26

Required Reading: Text pages 272-300

15. March 3: Negotiation Exercise

16. March 5: Negotiation Exercise Discussion

III. MEDIATION

17. March 17

Required Reading: Text pages 301-354

18. March 19

Required Reading: Text pages 354-389

19. March 24

Required Reading: Text pages 389-436

20. March 26:

Required Reading: Text pages 436-477

21. March 31:

Required Reading: Text pages 477-512

22. April 2

Required Reading: Text pages: 512-555

23. April 7: Mediation Exercise

24. April 9: Mediation Exercise Discussion

V. MIXED PROCESSES, ADAPTATIONS, AND OTHER INNOVATIONS:

25. April 14:

Required Reading: Text pages: 753-799

- *Please note: Class on April 14 may be cancelled and rescheduled. I will let you know as soon as possible.*

26. April 16:

Required Reading: Text pages 799-832

VI. DESIGNING AND SELECTING DISPUTE RESOLUTION PROCESSES:

27. April 21:

Required Reading: Text pages 885-913

28. April 23:

Required Reading: Text pages 959-987