

Dispute System Design
University of Missouri
School of Law
Fall 2015

Instructor: John Lande
Office: 326
Phone: 882-3914
Email: landej@missouri.edu
Office hours: by appointment

Course Goals and Objectives

The course will cover:

(1) empirical research design: how to conduct and use empirical research, especially in designing and evaluating conflict resolution systems

(2) dispute systems design: how to design and implement effective conflict management systems.

These two topics are related as empirical research is often used to assess needs for a dispute system and evaluate the systems.

Course Requirements

1. Timely completion of required readings and assignments.
2. Regular attendance and constructive participation in class discussion. Comments may be about issues in the readings, class discussion, case simulations, or other relevant matters. Asking questions can be a very good form of participation.
3. Timely submission of final project. Detailed instructions will be distributed separately.

A topic statement is due by **September 14**.

The first draft is due by **October 12**.

The final draft is due by **December 7**.

Assignments and Grading

Class Participation	10%
Set of research methods exercises	10%
Final Project: Topic Statement	10%
First Draft	20%
Class Presentation	10%
Final Draft	40%

Students will be graded using the letter scale (e.g., A, B, C) with pluses and minuses. If a student has three or more unexcused absences, the grade may be reduced and, in some cases, the student may fail the course. Submission of assignments significantly past the deadlines may affect the grade.

Policies

Intellectual Pluralism

The Law School community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities (<http://osrr.missouri.edu>). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

Academic Integrity

Academic integrity is fundamental to the activities and principles of the Law School. All members of the Law School community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of its Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

Disabilities

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share, or if you need to make arrangements in case the building must be evacuated, please let Associate Dean Christina Wells or Registrar Denise Boessen know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (disabilitycenter.missouri.edu), S5 Memorial Union, 882-4696, and then notify Dean Henson or Registrar Boessen of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

Requirement of Consent for Redistribution of Recordings of Classes

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member.

However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. In addition, a violation may affect a student's grade.

LinkedIn

I am on the LinkedIn network and occasionally receive requests from students to connect with them on that network. I have adopted a practice of declining all such invitations from students who are currently enrolled in the Law School. After a student graduates or otherwise leaves the Law School, I am happy to consider LinkedIn requests.

Course Materials

The course text is NANCY ROGERS ET AL., *DESIGNING SYSTEMS AND PROCESSES FOR MANAGING DISPUTES* (2013) ("Rogers").

Readings listed below are posted on the course website on TWEN. Additional readings or materials may be placed on reserve in the library, distributed in class, or posted on the website. **As indicated below, many of the readings posted in TWEN are recommended but not required.**

Note that the readings are concentrated in the beginning of the semester and that the amount of reading varies from week to week. Class discussion will inevitably cover some but not all of the material in the readings. If you have questions about the readings, feel free to raise those questions, preferably in class, or with me privately.

As you do the readings, pay attention to the main points and don't worry about understanding all the details. For example, usually you can skip the footnotes.

Class Schedule and Assignments – subject to change

- 8/24** **Introduction to Empirical Research on ADR**
John Lande, Empirical Research on ADR Outline
JOHN LANDE, *LAWYERING WITH PLANNED EARLY NEGOTIATION: HOW YOU CAN GET GOOD RESULTS FOR CLIENTS AND MAKE MONEY*, Chapter 9 and Appendix W.
Skim: John Lande, *An Empirical Analysis of Collaborative Practice*, 49 *FAM. CT. REV.* 257 (2011).
- 8/31** **Dispute System Design Simulation**
Rogers, Chapters 2, 4.
John Lande, *Using Dispute System Design Methods to Promote Good-Faith Participation in Court-Connected Mediation Programs*, 50 *UCLA L.*

REV. 69 (2002). Read the Introduction and Part II (pages 70-77, 108-139).

Recommended: Nancy A. Welsh & David B. Lipsky, “*Moving the Ball Forward in Consumer and Employment Dispute Resolution: What Can Planning, Talking, Listening and Breaking Bread Together Accomplish?*,” DISP. RESOL. MAG., Spring 2013, at 14.

9/7 Labor Day – No Class

9/14 Interviews and Surveys *** Statement of paper topic due
*** Class Photo (participation optional)

John Lande, Interviews and Surveys Outline.
John Lande, Suggestions for Questionnaire Design.
ABA Section of Dispute Resolution Task Force on Improving Mediation Quality, informed consent form, interview protocol, survey. (If you are interested, you can read the full [report](#).)
John Lande, *Doing the Best Mediation You Can*, DISP. RESOL. MAG., Spring-Summer 2008, at 43.

9/21 Sampling and Statistics *** Question evaluation assignment due

John Lande, Sampling and Statistics Outline.
Statistical Tables.
Rogers, pages 345-348
Example of newspaper article reporting on public opinion survey.
Cliff Zukin, What’s the Matter with Polling, N. Y. Times, June 21, 2015.

9/28 Experimentation and Causality

John Lande, Experimentation and Causality Outline.
Rogers, pages 342-345
Donna Stienstra et al., FJC Report to the Judicial Conference Committee on Court Administration and Case Management on the Civil Justice Reform Act Demonstration Programs (1997). Read: pages 215-232.
Recommended: pages 232-253.
Naomi Oreskes, *Playing Dumb on Climate Change*, N. Y. Times, Jan. 3, 2015. Focus on the statistics, not the climate change issues.

10/5 Creating Conflict Management Systems *** Survey assignment due

Rogers, Read: Chapters 3, 5, 6. Problems 5.2, 5.4, 5.5, 5.6a, 5.6b, 5.7, 5.8, 5.12, 5.13, 5.14, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.13. Recommended: Appendix A.
Herbert M. Kritzer, *To Regulate or Not to Regulate, or (Better Still) When to Regulate*, DISP. RESOL. MAG., Spring 2013, at 12.
John Lande, *A Guide for Policymaking That Emphasizes Principles, and Public Needs*, 26 ALTERNATIVES TO HIGH COST LITIG. 197 (2008).

10/12 Conflict Management System Goals ***First draft of final project due
Rogers, Chapters 8, 9. Problems 8.1, 8.3, 8.6, 8.7, 9.1, 9.2. For problem 8.1, assume that the issue is how to prevent and deal with similar types of incidents in the future (instead of dealing with a particular incident that has already occurred).

In addition, we may discuss a situation where you are advising a property owner who is about to undertake a major construction project, including an architect, general contractor, and many subcontractors. It is very common to have multiple disputes in construction projects and sometimes they can delay completion and add to the cost. What would you advise the property owner to make the construction project proceed as effectively and efficiently as possible?

10/19 Implementing and Evaluating Conflict Management Systems
Rogers, Chapters 11, 14; questions 11.1, 11.3 (pages 283-284), exercise 11.1 (page 285), question 14.1 (page 353), exercise 14.1 (page 354).

10/26 Simulation
Rogers, Chapter 15.

11/2 Guest Speaker:
Jill Morris, Director, Mediation and Assessment Program, U.S. District Court, Western District of Missouri
Recommended: Standards for Court-Connected Mediation Programs.
Recommended: John Lande, *How Much Justice Can We Afford?: Defining the Courts' Roles and Deciding the Appropriate Number of Trials, Settlement Signals, and Other Elements Needed to Administer Justice*, 2006 J. DISP. RESOL. 213.

11/9 Student Presentations for Advice About Final Projects

11/16 Student Presentations for Advice About Final Projects

11/23 Thanksgiving Week - No Class

11/30 Student Presentations for Advice About Final Projects

Additional Recommended Readings

Donna Stienstra, Core Issues to Address in Designing a Court-Based Mediation Program.

ADR Task Force, Federal Judicial Center, Guidelines for Ensuring Fair and Effective Court-Annexed ADR: Attributes of a Well-Functioning ADR Program and Ethical Principles for ADR Neutrals (1997).

BEVERLY DRAINE FOWLER ET AL., **PLANNING MEDIATION PROGRAMS: A DESKBOOK FOR COMMON PLEAS JUDGES** (2000).

Julie Macfarlane, *Culture Change? A Tale of Two Cities and Mandatory Court-Connected Mediation*, 2002 J. DISP. RESOL. 241.