

Alternative Dispute Resolution Fall 2013

Professor Dwight Golann

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To talk: Office hours are Mondays and Tuesdays 3:00 to 4:30, or see me in class or email to set up a mutually convenient time.

The required texts are:

- Folberg et al., *Resolving Disputes* (2nd Ed., Aspen)
- Shell, *Bargaining for Advantage* (2nd Ed., Penguin Paperback)
- *Handouts* (posted on Blackboard)

Course Goals, Methodology, Responsibilities and Grading

Goals

This course is intended to help you

- Gain an understanding of:
 - The major causes of legal disputes
 - Methods to resolve them more effectively than through the courts
- Gain skills in:
 - Diagnosing the causes of legal conflicts
 - Negotiating for clients
 - Advocating in mediation and arbitration
 - Working with dispute resolution systems

Methodology

This course teaches skills that will make you more effective in assisting clients. It's important to learn the theory and structure of a skill, but even more important is to practice it. We'll do this through roleplaying every week. To roleplay effectively you need to do three things:

- *Prepare*. Roles require preparation.
- *Appear*. If you don't appear for an exercise, you and your partner will both lose.
- *Play your role*. Once in role, stay in it. *Be* your character. The instructions are often short, so you are free to fill in facts as long as they are consistent with the instructions.

Attendance

I hope you will attend every class, but unexpected events may cause you to miss one. If so give me email notice the week before if possible so I can find your partner a substitute. If you miss more than two classes it will impair your grade, and may lead to your not receiving credit for the course.

There will be a special extended class on **Friday, November 8, from 9 to 1 pm** to allow us to do a roleplay of a complex legal dispute. In compensation, two other classes will be cancelled. **If you cannot come to the November 8 special class, do not take this course.**

Grading

It is difficult to grade a skills course, but necessary. Grading will be based:

- 2/3 on a two-hour final examination. Sample exam questions/answers will be put on Blackboard.
- 1/3 on (1) a paper you'll write at the end of the Negotiation unit, due on October 10, and (2) an advocacy letter you'll write during the Mediation unit, due on November 8.
- Exceptional class participation can add a half-grade.

Negotiation paper

Keep notes on what you learn about yourself in bargaining (but *not* a blow-by-blow account of what happens in each exercise). On October 10, I'll ask you to hand in a 3-5 page single-spaced paper that discusses the question "What have I learned or confirmed about myself as a negotiator that I didn't know when I began this course?" This is intended to be a reflective paper based on your experience and reading in the course; you are not expected to do independent research. Examples will be posted on Blackboard.

Letter

I will ask you to write an advocacy letter in connection with a mediation exercise. It will be due before the November 9 special class. I will provide more information about this later.

Syllabus

Part I: Negotiation

Sept 3 Assignment:

- Shell, Chapters 1 and 2: Introduction and Goals
- Prepare to negotiate *Win as Much as You Can* in class
In class: Negotiation and debrief

Sept 5 Assignment:

- Shell, Chapters 3 and 4: Standards and Relationships
- Prepare to negotiate *Settle for More or Less* in class
In class: Negotiation and debrief

Sept 10 Assignment:

- Shell, Chapter 5: Interests
- Negotiate *Sally Soprano* outside of class
In class: Debrief and video analysis

Sept 12 Assignment:

- Shell, Chapter 6: Leverage

- Handout: Multi-Issue Negotiation (on Blackboard)
 - Prepare to negotiate *Independent Immunities*
In class: Negotiation and debrief
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Sept 17 Assignment:

- Shell, Chapters 7 and 8: Preparation and Exchanging Information
- Prepare to negotiate *Jones v. Cutting Edge*
- Complete Appendix B in the Shell book for *Jones*
In class: Preparation in groups; meet with partner; start negotiation

Sept 19 Assignment:

- Shell, Chapter 9: Opening
 - Handout: Bargaining in Teams
In class: Complete *Jones* negotiation in class; debrief
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Sept 24 Assignment:

- Shell Chapter 11: Ethics
- Prepare to negotiate *Cubit*
In class: Negotiation and debrief

Sept 26 Assignment:

- Shell, Chapters 10 and 12: Closing and Styles
 - Take diagnostic test of negotiation style in Shell Appendix A
In class: Review and discuss bargaining styles
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Oct 1 Assignment:

- Read Dealing with Difficult Adversaries (Blackboard)
- Review facts of *Discount Marketplace* and prepare to negotiate *Orlen v. Bryson*

Oct 3 Assignment

- Read the Folberg textbook (“Text”), 39-57
- Prepare to counsel the client in *Hapless Harvest*

Part II: Mediation

Oct 8 Assignment:

- Read the Text, 249-69: Introduction to Mediation (Chapter 9)
- Prepare to discuss Questions/Notes # 3, 4, 6, 7, 9, 10
- *Before class*, arbitrate the *Computec* case. Do so in no more than 10-15 minutes total.
 - *Each advocate has 5 minutes* to make an argument. No participant should do any

outside research. The arbitrator may ask questions if s/he wishes.

- *The arbitrator will make a confidential decision*, write down the outcome but not your reasoning, and give it to Professor Golann at the start of class.
- Arbitrators: *Do not disclose your decision to the litigants*

Oct 10 Assignment:

- Read Text, 269-97: Styles and Commercial Techniques (Chapter 9)
- Prepare Questions 16, 19, 20, 28 and Problem 1 on 294
- _____

Oct 15 No class – Monday schedule

Oct 17 Assignment:

- Read Text, 299-314: Process Skills (Chapter 10)
 - Prepare to mediate *Black Lab-Red Roses*
 - Prepare Questions 1, 2, 3
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Oct 22 Assignment:

- Read Text, 314-28: Emotional/Psychological Forces (Chapter 10)
- Review Text, 55-57
- Prepare exercise to be assigned
- Prepare Questions 9, 10

Oct 24 Assignment:

- Read Text, 328-40 Merits Issues (Chapter 10)
 - Prepare Questions 18, 19
 - Prepare to give an evaluation in exercise to be assigned
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Oct 29 Assignment:

- Read 407-11, 415-29, 464-74: Specific Subject Areas, Fairness Issues (Chapters 13-14)
- Prepare Questions
 - Chapter 13: 1, 4, 10, 13
 - Chapter 14: 19, 21, 27, 28

Oct 31 Assignment:

- Read pages 475-87, 489-90, 497-98, 516-30 Confidentiality and Ethics (Chapter 15)
 - Prepare
 - Problems 1(a), 2(a), 4(a), 5, 9, 11, 16, 20
 - Questions 1, 2, 4, 8, 12, 15
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Nov 5 Assignment:

- Read Handout: Representation in Mediation (Chapter 11)
- Prepare Questions 2, 4, 6, 11, 17, 20

- Prepare to select mediator and pre-mediation exercise in *Fine Fix*

In class: Select mediator and conduct pre-mediation exercise

Nov 7 Assignment:

- Read Handout: Representation in Mediation (Chapter 12)
- Prepare Questions 1, 2, 4 and Problem 1
- Prepare to mediate case to be assigned

In class: Begin mediation of case

Special Class Fri Nov 8 9:00 am – 1:00 pm Assignment:

- Prepare memo assignment

In class: Complete mediation and debrief

Part III: Arbitration

Note: Different sets of rules may apply in arbitration. Regardless of the instructions in the text, *assume for all problems that the AAA Commercial Rules apply* (on Blackboard).

If a question has subparts, students on the right facing the blackboard please prepare odd numbered questions (1, a, etc.) and on left prepare even numbered questions (2, b)

Nov 12 Assignment:

- Read Folberg text (“Text”) 537-559 (Chapter 16)
- Prepare to answer Problem 1, including the Suitability Screen on 544. Respond from perspective of your client (People sitting on the right face the board will represent MDM, people on the left will represent Fandom)
- Prepare to discuss Problem 2 and questions 552(7,8), 554(10), 557(13)

Nov 14 Assignment:

- Obtain a DVD and review your video. Isolate 5 to 15 minutes of excerpts to discuss

In class: meet in groups to discuss video

Nov 19 Assignment:

- Read 561-63, 566-67, 578-602 (Chapter 17)
- Prepare Questions 2, 9, 10, 11, 12, 19, 20, 21, 22
- Prepare Problems 2 (576), 3(581) and 4A (582)

Nov 21 No class, due to special class

Nov 26 No class, due to special class

Thanksgiving No class

Dec 2 Assignment:

- Read 611-18, 624-26, 646-47, 659-64, 675-81, 691-93 (Chapters 18-19)
- Prepare Chapter 18, Questions 23, 36, 38
- Find an arbitration clause to which you have agreed (cell phone, credit card)
- Review the law firm arbitration clause on Blackboard

Dec 4 Assignment:

- Read 735-41, 745-54, 762-67, 769-73 (Chapters 20-22)
- Prepare Notes/Questions
 - Chapter 20: 1, 2, 3
 - Chapter 21: 1, 2, 5, 15, and Problem on 767
 - Chapter 22: 1