

Alternate Dispute Resolution
Spring 2015
Jon Hyman
(revised to show some changes made during the semester)

Contact information:

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Class meeting times:

The class is scheduled for three days each week (Monday, Tuesday, and Wednesday), but we will not always meet on all three days. During some weeks we will devote one of the class times to role-play exercises in ADR methods, or similar activities. Please check the schedule as it is posted during the semester to know which days we will be meeting each week, and please make sure you are available all three days.

Office hours: Wednesdays, 12:45 – 2:00 pm (I'm often available to meet on an unscheduled basis. Please let me know if you wish to meet at a different time.)

My goals for the course:

By the end of the course, I would like you to have a basic working knowledge of the various non-court modes of resolving disputes and reaching agreements, particularly negotiation, mediation, and arbitration. This should include an ability to discuss the major characteristics and the comparative strengths and weaknesses of each. Working knowledge should also include the development of some basic skills in how to carry out each of these methods. I don't expect you to leave the course as master negotiators, mediators, or arbitrators, but I would like you to have enough sense of your own skills to begin to become proficient at resolving disputes – a task that will stay with you throughout your professional career. Finally, the use of ADR methods raises important questions about the functioning of our system of justice; you should leave the course aware of some of the key questions, so that you will be able to contribute to the improvement of the justice system, both for your clients and for the system as a whole.

The methods of the course:

Much of our class time will consist of discussion of the readings. But you will also participate in a series of exercises that simulate various methods of dispute resolution. The simulations will give you an opportunity to begin to develop your skills (or improve them, since you use many of these skills already, even if you are not fully aware of them.) They will also give us experience and information with which we can understand the readings better.

From time to time I will give you ungraded quizzes, usually just as we begin a topic. The purpose

is to help you assess what you already know and some things you should be seeking to learn as we work through the material.

Your accountability:

You are required to participate in the role-play exercises, coach or mediate the settlement of a case by the students in the Civil Procedure classes, and make a group presentation to our class on a documentary about dispute resolution in action. Some role-play exercises will be scheduled during class time. Some you may have to schedule on your own. If you miss these activities, I will assign make-up work and may reduce your grade. If you miss too many of them, you will be required to withdraw from the course. I do not grade the outcomes of the role-play exercises (such as whether someone reached a negotiated agreement, or the terms of the agreement). Nor do I grade the skill with which you carry out the exercises, or the degree to which you improve.

Your grade will be based on two papers during the semester. One paper will be a short (500 word) reflection paper on your preparation for your work with the Civil Procedure students and will count for 10 percent of the final grade. The final paper will comprise 90 percent of the final grade. It will consist of one or more dispute resolution problems or situations that you will be asked to analyze and plan for, using the material in our book and class discussions. No outside reading or research will be required.

Reading

Required Texts:

CARRIE MENKEL-MEADOW ET AL., DISPUTE RESOLUTION: BEYOND THE ADVERSARY MODEL, (Aspen 2d Ed 2010)

Recommended works:

ROGER FISHER, WILLIAM URY AND BRUCE PATTON, GETTING TO YES (Rev. 2011)

MICHAEL L. MOFFITT & ANDREA KUPFER SCHNEIDER, EXAMPLES & EXPLANATIONS: DISPUTE RESOLUTION (3d ed. 2014)

MICHAEL MOFFITT & ROBERT BORDONE, EDS., THE HANDBOOK OF DISPUTE RESOLUTION (JOSSEY-BASS 2005)

ROBERT MNOOKIN, SCOTT R. PEPPET & ANDREW S. TULUMELLO, BEYOND WINNING (Harvard University Press - paperback ed - 2004)

JACQUELINE M. NOLAN-HALEY, ALTERNATIVE DISPUTE RESOLUTION (3d Ed, West Nutshell 2013)

LEIGH L. THOMPSON, THE TRUTH ABOUT NEGOTIATIONS (Pearson 2d ed. 2013 ISBN-13: 978-0133353440)

Class Schedule

Note: This schedule is subject to modification.

Week 1

Mon. Jan. 12

Introduction to the theory and variety of dispute resolution processes

Reading: MENKEL-MEADOW, LOVE, SCHNEIDER & STERNLIGHT - 2D ED.- "MLSS")
Ch. 1 (pp. 1 - 47)

Assignment: Find examples of two recent or ongoing conflicts or disputes in the media (including on-line media) and consider them in light of the criteria discussed in MLSS, paying particular attention to Problems 1-1 and 1-3 in MLSS. We will discuss the conflicts and disputes in class. More generally, make sure you have thought about, and are ready to discuss, the problems 1-1 through 1-5 in Chapter 1.

Tues. Jan. 13 No Class

Wed. Jan. 14

Continued discussion of Ch. 1, including Problems 1-5 through 1-7

Week 2

Tues. Jan. 20

Concepts and models of negotiation

Reading: MLSS Ch. 3 pp. 87-125 [Note that we skip over Ch. 2 at this point and return to it later.]

(Page assignments always include reviewing and being prepared to discuss the problems set out in the book)

Wed. Jan. 21

Negotiation role-play exercise 1

Preference forms due for video reviews or teaching ADR to Civil Procedure classes, later in the semester.

Week 3

Mon. Jan. 26

Negotiation skills and practice
Reading: MLSS Ch. 4 pp. 127-185

Tues. Jan. 27

Negotiation role-play exercise 2

Wed. Jan. 28

Continued discussion of Ch. 4

Week 4

Mon. Feb. 2

The law and ethics of negotiation
Reading: MLSS Ch. 5 pp. 187-221.

Tues. Feb. 3

Ch. 5 (cont.)

Wed. Feb. 4

Discussion of Negotiation 3, which is to be completed on your own prior to class.

Week 5

Mon. Feb. 9

Class presentations about negotiation by Teams 1 and 2
The lawyer as problem solver
Reading: MLSS Ch. 2 pp. 49 - 86

Tues. Feb. 10

Exercises in questioning, interviewing and counseling

Wed. Feb. 11

Continued discussion of Ch. 2

to be continued . . .