

Alternative/Appropriate Dispute Resolution

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Syllabus and Course Requirements

This January term course will be an introduction to the many processes currently being used to resolve legal disputes in the United States and elsewhere in the world. The subject is now vast and often comprises many different courses, so this will serve as an introduction-survey course of some of the leading issues at both the skills and policy/jurisprudential levels. I hope this course will spark your interest to pursue more advanced course work in the field.

Although you have learned much of your “law” and legal study through cases of published opinions, most disputes are not resolved by formal court litigation anymore, if they ever were. Less than 2% of all civil cases are resolved by trial in the United States. Most cases are resolved by one of the processes we will study in this course—negotiation, arbitration, mediation, or hybrids of these processes. Increasingly, as disputes are seen as involving more than two disputants (plaintiffs/defendants) and almost always more than one issue between the parties (legal liability, damages), more complex forms of dispute resolution are necessary to resolve or manage these conflicts. Our last session will focus on the complexity of multi-party, multi-issue and international disputes.

The required course book is Menkel-Meadow, Love, Schneider and Sternlight, *Dispute Resolution: Beyond the Adversarial Model*, 2nd ed. 2011 (Wolters Kluwer). If you have never read Roger Fisher, William Ury and Bruce Patton, *Getting to YES: Negotiating Agreement Without Giving In* (Penguin 3rd ed. 2011), I would recommend that as well.

In each of our five classes, meeting Jan. 5-9, 2015, 9:30-12:30 in Room 4700 we will engage in discussion, some lectures, and a role-play simulation of some kind in each class. **Attendance is mandatory** as your participation in these simulations will affect the learning of all other students in addition to yourself. We will take a brief break in the middle of each class.

To get credit for the course you must attend all classes, participate in the simulations, and complete a paper of 10 pages by **March 2, 2015. The paper should be an analysis of one of the simulations you participated in, or another topic of your choice and my approval on the issues involved in the use of one or more of the processes we are studying in the course.** We will discuss the paper requirements further in class.

Below are the course readings—the book should be on reserve, and where I can, I will post the readings to a TWEN page as well, but for those of you interested in the field, I strongly suggest you purchase the text and *Getting to YES*.

Monday, January 5 Introduction to Conflict and Dispute Resolution

Text, Chapter 1 – Entering the Field of Conflict Resolution and the Lawyer as Problem

Solver, pp. 1- 47; *Getting to YES*

Exercise: Neg/Med/Arb

Issues: What is appropriate/alternative dispute resolution?

Types and varieties of conflict

Landscape of disputing methods

Jurisprudential issues—what purpose for each process?

Role of client/ role of system goals in deciding on appropriate processes

Does each process have its own “integrity”?

Homework: Problem 1-1, text p. 9

Tuesday, January 6 Arbitration: Practice and Policy

Text, Chapter 10 pp. 413-482; optional: Menkel-Meadow “Alternative/Appropriate Dispute Resolution in Context” in Handbook of Conflict Resolution, 3rd ed. 2014)

Exercise: Drafting an Arbitration clause

Issues: How is arbitration different from adjudication?

Why do people select arbitration- domestic/ international disputes?

Why has US Supreme Court expressed such a strong preference for approving

“mandatory” pre-dispute contractual assignment to arbitration?

How does US differ from other countries on arbitration use? Why?

Wed. January 7 Negotiation: Models, Practices and Ethics

Text: Chapter 3 and 4, pp.89-185; *Getting to YES*

Exercise: Rock Opera Contract Negotiation

Issues: When are different negotiation models appropriate? Distributive vs. integrative

Bargaining models

The Negotiator's Dilemma –what is the “res” of negotiation?

Choosing Strategies and Tactics; Skills

“Solving problems” or “winning”?

Ethics of Negotiation

Homework: Problem 7-7 p. 295 text

Thursday, Jan. 8 Mediation: Models and Methods

Text: Chapter 7 and 8 pp. 269-351

Exercise: EAZY Garage

Issues: Models of Mediation: Facilitation/Evaluation

Role(s) of Third Party Neutral

Stages of Mediation

Skills- reframing, agenda, negotiation counseling, reality testing

Policy Issues: confidentiality, enforceability, ethics

Friday, Jan. 9 Multi-Party Dispute Resolution

Text: Chapter 13 pp. 581-632; optional, Menkel-Meadow, Introduction, Multi-Party Dispute Resolution, Democracy and Decision Making; Introduction, International Dispute Resolution from *Complex Dispute Resolution* (3 vols, Menkel-Meadow, Ashgate, 2012).

Exercise: Pleasantville

Issues: Management/Facilitation of Multi-Party Disputes

Consent to agreements?

Coalitions

Hold-outs/Vetoes

International dispute resolution

Paper due: March 2, 2015 (10 pages)