

**ALTERNATIVE DISPUTE RESOLUTION
SYLLABUS
Fall 2013
Cumberland School of Law
Professor Strickland**

1. EXPLANATION OF THE SYLLABUS.

This syllabus seeks to identify the material that students should prepare for each class. Each arabic number corresponds to approximately one class and contains the assignment for that class. Each assignment includes reading that should be completed prior to the designated class. Some assignments also require preparation for a role play or other participatory exercise to be performed in class or the completion of an exercise outside of class. Ten daily assignments include a short written component and one includes a somewhat longer written assignment, all to be turned-in at the class designated below or announced in class.

Reading assignments are primarily in the textbook for the course, Dispute Resolution and Lawyers, by Leonard L. Riskin et al (4th ed. 2009). This book is referred to in the syllabus by the designation "TB." Other reading assignments will be posted on the course TWEN site, placed on reserve in the law library, or distributed in class.

The assignments may be modified from time to time throughout the semester. Reading assignments, participatory exercises, and written assignments may be added, deleted, or changed. The amount of material covered in a particular class session certainly will vary from the syllabus, depending upon the amount of time needed for completion of participatory exercises and discussion. Changes in the syllabus or assignments will be announced in class, and the assignment for each class will be announced at the end of the previous class. If written assignments are altered or added, the changes will be announced in class as well as by email sent to the class through the course TWEN site (discussed below) and noted on the TWEN site.

2. COURSE TWEN SITE AND TEXT BOOK TWEN SITE

A course website will be available for students to access through Westlaw's TWEN system. It will contain announcements, the syllabus, PowerPoint slides used in class, links to other relevant websites, and other information. Students should check the website regularly for announcements, assignments, and materials. It is imperative that students register for the TWEN site, because I will communicate with the class using the TWEN site email function that uses the email addresses that students enter.

The Riskin textbook also has a website on TWEN that contains additional materials, links to websites, and other information. Instructions for accessing the site appear at page vii of the Riskin text's preface. Students should access this site and explore the material it offers. Material on that site will be assigned from time to time, particularly material relating to role plays and participatory exercises.

3. ATTENDANCE AND CLASS PARTICIPATION.

As the syllabus reflects, this course requires considerable class participation by students not only in discussions but also in a variety of simulations and role play exercises. Class attendance is thus critical. Students are assigned simulation roles prior to the classes in which the simulations are conducted. If a student is absent from a class in which the simulation or exercise is conducted, therefore, the student not only loses the benefit of the exercise but also thwarts her classmates' conduct of the exercise. Consequently, a student who knows ahead of time that she must miss a class must notify the professor of her upcoming absence.

Excessive absences will have a negative impact on a student's grade. In addition to grade reductions required under the generally applicable law school attendance policy, students who miss additional classes beyond the law-school wide maximum of 20% will have their grade reduced further than the one grade increment prescribed by that policy. The amount of the additional reduction will depend on the number of additional absences. Students who miss more than 10 classes will not receive credit for the course absent extraordinary circumstances. A roll will be circulated each class to check attendance. It is the responsibility of each student attending class to make sure he or she signs the roll during that class.

4. WRITTEN ASSIGNMENTS, GROUP PRESENTATIONS, AND GRADING

Grades for the semester will be based on (1) timely completion of ten (or more) short written assignments; (2) a process selection memo; and (3) a final examination. The respective weight of these assignments in calculating grades is discussed below.

A. SHORT WRITTEN ASSIGNMENTS

On ten (and perhaps more) occasions during the semester, students must complete and submit short written assignments. The primary purpose of these assignments is to prompt students to think about designated issues before class and thus to provide a basis for class discussion of those issues. These assignments, therefore, will be graded on the basis of whether the student made a good faith effort on the assignment and turned it in on time. If a student submits these written assignments on time and they reflect thought and a good faith effort, then their author will receive full credit for the assignments. Each of these written assignments will be worth two (2) points, so the ten written assignments will be worth a total of twenty (20) points. As discussed below, these written assignments will make up approximately 20% of a student's grade for the course.

The "Assignments" portion of this syllabus sets forth the topics and general substantive requirements for the written assignments (under the clever designation "WRITTEN ASSIGNMENT"). More detailed information and materials for certain assignments will be provided during the class before the written assignment is due.

Students must turn in the written assignments at the beginning of the class designated below in this syllabus or at such other class or time as the instructor designates. Students should

write their names on these written assignments—not anonymous numbers. Typed written assignments are preferred, but hand-written ones will be accepted. Since the assignments will be used as a basis for class discussion and activities, students should **bring two copies of each written assignment to class**, one to turn in and one to use in class. The written assignments will not be returned to students.

Most of the written assignments relate to simulations and participatory exercises. If a student is absent and does not participate in the simulation or exercise, therefore, the student cannot complete the written assignment and receive credit for it. If a student misses an exercise, misses the class at which the assignment is due, or knows that she must miss an upcoming exercise, however, the student may submit a request to me via email no later than one week after the absence (or prior to the absence if the absence is planned), explaining the reason for the absence and requesting an opportunity to make-up the written exercise. If I excuse the absence, I will give the student a substitute written assignment to replace the one the student missed.

B. PROCESS SELECTION EXERCISE AND MEMO

One written assignment, *The Daily Bugle* process selection exercise described in assignment number 23, will count more than the others and will be graded more carefully. The process selection memo will count ten (10) points and will make up approximately 10% of a student's grade. It will be graded on the basis of the thoughtfulness and validity of the student's analysis.

C. FINAL EXAMINATION

The final examination will contain one or more essay questions in which students are asked to advise a client about dispute resolution options for a particular case; evaluate a proposal from opposing counsel about a particular dispute resolution option; analyze the potential advantages and disadvantages of a given resolution process in a particular setting; or compare and contrast two or more processes and discuss their advantages and disadvantages. The examination may also contain other essay questions as well as objective questions about various dispute resolution processes and related legal issues. Additional information about the examination will be provided in class. As discussed below, the final examination will make up approximately 70% of the final grade for the course.

D. CALCULATION OF FINAL GRADES FOR THE COURSE

Grades for the course will be based on (i) the short written assignments, (ii) the process selection memo, and (iii) the final examination. The precise weight of those elements may change some during the semester, depending on the number of short written assignments assigned. If the number of written assignments remains as currently planned and set forth in this syllabus, the weight of the two elements in the final course grade will be:

| | |
|---------------------------|-----|
| Short Written Assignments | 20% |
| Process Selection Memo | 10% |
| Final Examination: | 70% |

If the weight of the elements in the final grade changes during the semester, the change will be announced in class and noted on the course website.

The short written assignments submitted during the semester will *not* be graded anonymously. The process selection memo and the final examination will be graded anonymously. After assigning a raw numerical score to each anonymous exam paper and process selection memo, I will obtain the names for each raw score and then incorporate points from the short written assignments. I then will assign letter grades for the course on the basis of the combined numerical scores.

5. MISCELLANEOUS INFORMATION

I will be available after class to answer questions and continue discussion as needed. Students are also welcome to stop by or call my office at anytime. Contact information for my secretary and me are as follows:

Professor Henry C. Strickland
Room 216
Phone: 726-2890
E-mail: hcstrick@samford.edu

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NOTICE OF ADA POLICY: Samford University complies with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. Students with disabilities who seek accommodations must make their request through Samford University's Director of Disability Resources, Anne Sherman. Disability Resources is located on the Samford University campus in Birmingham, AL, home of the Cumberland School of Law. The Director of Disability Resources may be reached by calling 205-726-4078/2980, or by email at arsherma@samford.edu. A faculty member will grant reasonable accommodations only upon notification from Disability Resources, or Pam Nelson, Director of Student Services and ADA Compliance for the Cumberland School of Law.

In order to provide exam accommodation, the Cumberland School of Law must receive a letter from Disability Resources no later than thirty days prior to the end of classes. Because the process of evaluating and documenting a student's need for accommodations can be time consuming, students are encouraged to contact Disability Resources early in the semester in order to ensure the completion of all necessary paperwork by the deadline. Accommodations received after the deadline will be processed for the following semester.

ASSIGNMENTS

I. DISPUTE RESOLUTION, LITIGATION, AND LAWYERS

1. The Nature of Conflict & Disputes

Reading: Textbook (TB) pages 1-13

Introduction to the ADR

Reading: Textbook (TB) pages 13-21

Litigation & ADR

Class: Discuss course requirements; reading; and the strengths & weaknesses of litigation.

2. The ADR Movement & Institutionalization

Reading: TB 35-41 & 49-56

Class: Discuss reading.

Simulation: Conduct *The Burning Sailboat* Adjudication/Mediation Exercise.

3. The Settlement Debate

Reading: TB 21-35

Choosing a Process

Reading: TB 56, 59-64

Lawyers and Dispute Resolution

Reading: TB 64-68, 69-74, 80-84

WRITTEN

ASSIGNMENT: One-page reflection paper about *The Burning Sailboat* exercise, comparing the dynamics, advantages, and/or disadvantages of the adjudicatory and consensual processes as applied to this dispute.

Class: Discuss reading.

II. THE ATTORNEY-CLIENT RELATIONSHIP: INTERVIEWING AND COUNSELING

4. The Attorney-Client Relationship

Reading: 85-90n.1

Interviewing

Reading: TB 105-115, 140-49 & 150-53

Class: Discuss reading.

Distribute: Material for *Let the Buyer Beware* exercise.

5. Interviewing & Counseling

Reading: TB 115-20, 123-25, 128-32 & 156-66

WRITTEN

ASSIGNMENT : One-page memo stating what you think the *Let the Buyer Beware* interview should accomplish and how you plan to conduct it.

Class: Simulation: Selected students will be called on to conduct *Let the Buyer Beware* interviewing and counseling exercise in class.

Discuss simulation and reading.

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III. NEGOTIATION

6. Introduction to Negotiation, Negotiator Style, & the Negotiation Process

Reading: TB 168-77

Approaches to Negotiation: Adversarial and Problem-Solving

Reading: TB 178-86

Class: Simulation: Conduct and *Pizza Exchange* Exercise
Discuss reading and simulation.

7. Adversarial Negotiation Strategy & Tactics

Reading: TB 186-91 & 197-200

WRITTEN

ASSIGNMENT: One to two page reflection paper about the *Pizza Exchange* exercise, discussing (i) whether the exchanges increased your value and the value of your negotiation partners, (ii) the negotiation strategies you used, and (iii) the impact of the strategies on the value you achieved.

Class: Demonstration: Watch *The Carton Contract* negotiation video.

Discuss reading and video.

8. Problem-Solving Negotiation Strategy and Tactics

Reading: TB 206-18, 220-25 & 226-29

Class: Demonstration: Watch remainder of *The Carton Contract* video.

Discuss reading and video.

Distribute: Materials for *The Bowling Ball Manufacturer* negotiation simulation, to be conducted by all students BEFORE next class.

9. Negotiation Strategies & Negotiation Ethics

Reading: TB 229-35, 253-58 & 266-74

WRITTEN

ASSIGNMENT: One to two page reflection paper on *The Bowling Ball Manufacturer* negotiation exercise describing the negotiation strategies and techniques you used, whether they were successful, and what you would do differently in the negotiation if you were doing it over.

Class: Discuss reading.

Simulation: Conduct and discuss *Peppulor Pricing* exercise (or other Prisoner's Dilemma variation)

10. Dispute Settlement Negotiation

Reading: TB 235-253

WRITTEN

ASSIGNMENT: One to two page reflection paper on *The Peppulor Pricing* exercise, discussing the wisdom of your group's pricing decisions, different pricing approaches you recommend in hindsight, and the dynamics of trying to prompt cooperation.

Class: Discuss negotiation simulation and reading.

Distribute: Materials for dispute settlement negotiation simulation do be determined.

11. The Negotiator's Dilemma: Choosing a Strategy

Reading: Mnookin, *Why Negotiations Fail* (11 page excerpt on course TWEN site)

WRITTEN

ASSIGNMENT: One to two page reflection paper on the dispute settlement negotiation describing the negotiation strategies and techniques you used, whether they were successful, and what you would do differently in the negotiation if you were doing it over.

Class: Discuss reading and negotiation simulation.

IV. MEDIATION

12. Introduction to Mediation

Approaches to Mediation

Reading: TB 309-38

Class: Discuss reading and video.

Demonstration: Watch the *Red Devil Dog* mediation video demonstration (38 minutes) & discuss in relation to the “Riskin grid.”

13. Approaches to Mediation (continued)

Reading: TB 338-45 & 361-63

Mediator Ethics

Reading: TB 385-95

WRITTEN

ASSIGNMENT:

One to two page paper that characterizes the approach of the mediator in the *Red Devil Dog* video using Riskin’s “Grid for Understanding Mediators’ Orientations & Strategies” (described at TB 311-23).

Class: Discuss reading & characterization of the *Red Devil Dog* mediator.

Demonstration: Watch and discuss *Prosando v. Hightech* mediation simulation video (38 minutes).

Distribute: Confidential information for *The Corporate Divorce* mediation simulation.

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14. The Mediation Process I: Agreeing to Mediation and Understanding the Problems

Reading: TB 362-72; Information for *The Corporate Divorce* mediation simulation.

The Mediation Process II: Generating Options & Reaching Agreement

Reading: TB 372-74

WRITTEN

ASSIGNMENT: One to two page memorandum analyzing where the mediator in the *Prosando v. Hightech* mediation falls on Riskin's grid.

Class: Discuss (i) reading and (ii) interests from the mediation simulation.

Simulation: Conduct tasks 1 & 2 ((i) opening statement and (ii) understanding the problem and interests) of *The Corporate Divorce* mediation simulation (complete these tasks outside of class if necessary).

15. The Mediators and the Law

Reading: TB 402-08

Assignment: Complete mediation tasks three (generating options) and four (reaching agreement) for *Corporate Divorce* mediation simulation begun in the prior class;

Class: Discuss mediation simulation and reading.

WRITTEN

ASSIGNMENT: One-page reflection paper describing what you learned by participating in *The Corporate Divorce* simulation and listing (list the participants in your group and their roles).

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16. Riskin's New Grid

Reading: TB 458-69

Confidentiality in Mediation

Reading: TB 482-93

Class: Discuss reading.

Demonstration: Watch and discuss the *Last Dance* mediation video simulation.

17. Mediation Advocacy

Reading: TB 429-40, 444-51 & 472

Issues with Mediation: Fairness & Self Determination

Reading: TB 511-12

WRITTEN
ASSIGNMENT: One to two page memorandum evaluating the approach and performance of the mediator in the *Last Dance* mediation simulation.

Class: Discuss reading. Possible guest speaker.

V. ARBITRATION

18. The Practice & Procedures of Private Arbitration

Reading: TB 553-63

Deciding Whether to Use Arbitration

Reading: TB 708-12

Class: Discuss reading & perhaps watch arbitration video.

VI. MIXED PROCESSES, ADAPTATIONS & OTHER INNOVATIONS

19. Introduction to Court-Annexed ADR

Reading: TB 735-42

Court-Annexed Mediation

Reading: TB 751-56 & 765-66
Ala. Code § 6-6-20 (on reserve)

Court-Annexed Mixed Processes

Reading: TB 774-83

Class: Discuss reading.

20. Private Mixed Processes & Recent Innovations

Reading: TB 820-30

Class: Discuss reading.

Demonstration: Watch mini-trial video.

21. Recent Innovations

Reading: TB 837-56

Class: Discuss reading & possible guest speaker.

VII. DESIGNING AND SELECTING DISPUTE RESOLUTION PROCESSES

22. Overview of Process Selection & Design

Reading: TB 857-71

Choosing a Dispute Resolution Process

Reading: TB 923, 930-44

Class: Discuss reading.

23. Process Selection Exercise

Reading: TB 948-49

Assignment: *Simulation:* Playing the role of Dr. Roark's attorney (in *The Daily Bugle* exercise at TB 948-49), meet with your assigned client (Dr. Roark, as played by an assigned 1L), interview him/her, and help him/her to decide how best to pursue resolution of his/her dispute.

PROCESS SELECTION
WRITTEN ASSIGNMENT

Two to four page (typed) memo describing how you conducted the interview in *The Daily Bugle* exercise and stating what process(es) would be most advantageous for Dr. Roark in resolving his dispute and why.

Class: Discuss reading and *The Daily Bugle* exercise.

Selected student(s) may be asked to repeat *The Daily Bugle* interviewing/selection simulation in class with a new client.

VIII. THE LEGAL FRAMEWORK FOR ARBITRATION

24. Arbitration Law: Federal Arbitration Act & Federal Preemption

Reading: TB 563-64
Federal Arb. Act TB 1003-08
Southland TB 565-73
Doctor's Assoc. TB 573-77
Drahozal Article TB 577-81

Class: Discuss reading.

25. Arbitration Law: Separability & Arbitrability

Reading: TB 581-82
Prima Paint TB 582-89
First Options TB 590-95
Howsam TB 595-600

Class: Discuss reading.

26. Arbitration Law: Arbitration of Statutory Claims

Reading: TB 600-01
Wilko TB 601-02
Gilmer TB 602-13
Green Tree/Randoph TB 619-27

Class: Discuss reading.

27. Arbitration Law: Unconscionability & Adhesion

Reading: TB 627-28
Hooters (4th Cir.) TB 628-35
Gateway (7th Cir.) TB 635-38
Broemmer (Ariz.) TB 638-47

Class: Discuss reading.

28. Arbitration Law: Judicial Enforcement and Review Arbitration Awards

Reading: TB 648
Ala. Code § 6-6-13 Course TWEN site
UAA §§11-14 Skim TB 1011-13
TB 653n.2-658
Sobel (US 648) 648-53

Class: Discuss reading.