

ALTERNATIVE DISPUTE RESOLUTION SURVEY COURSE
Professor Maureen Weston

“The obligation of our profession is, or long has thought to be, to serve as healers of human conflict.”
Justice Warren Burger, Annual Report on the State of the Judiciary (Jan. 24, 1982).

I. COURSE DESCRIPTION

This course is study of various alternative (to litigation) dispute resolution processes, including client interviewing and counseling, negotiation, mediation, collaborative law, arbitration, as well as other ADR processes such as med-arb, online dispute resolution, summary jury trials, and restorative justice processes. The purpose of this course is to help students understand the nature, advantages, and limitations of various alternative methods of preventing and resolving disputes so that, as lawyers or other professionals, you can help clients and other individuals and institutions select - and take part in - the most efficient, just, and humane methods of preventing, managing, and resolving disputes. The course generally takes the perspective of a practicing lawyer, but also will include client, judicial, and societal perspectives. We will address issues of professional responsibility as well as how lawyers - and clients - participate in dispute resolution processes. The classes will include discussions based on various assigned readings, role-play exercises and simulations, demonstrations, and interaction with lawyers and professionals experienced in dispute resolution.

II. ATTENDANCE POLICY

Classes meet only once a week. Because much of the learning takes place in simulations and class discussions, I expect you to attend all classes and to participate fully in class activities. I reserve the right to lower grades or to drop students from the course for poor attendance or participation.

The attendance policy is as follows: a student may not miss more than two scheduled classes during the semester. Thereafter, your grade may be lowered; any more than two absences may result in dismissal from the course. If a student is unable to attend class for whatever reason, please notify the professor at least four hours in advance of the scheduled class period. Notice may be given in person, by phone, e-mail, or a note to my office. If notice is not given, and the student fails to attend, the student’s grade may be lowered, particularly if you are assigned a demonstration role for that day. While this attendance policy may seem harsh, the nature of this class, which includes numerous simulations where students are assigned to groups and demonstration roles, requires that the professor knows who will be in class on any given day.

III. COURSE REQUIREMENTS

Required Text and Materials:

Kristen M. Blankley & Maureen A. Weston, **UNDERSTANDING ALTERNATIVE
DISPUTE RESOLUTION** (Carolina Academic Press 2017)

Other supplemental readings and role-play exercises, as distributed in class.

Class Format: We will begin our study of the various ADR methods through class discussions based on the assigned readings. After exploring the particular ADR process, students will engage in various role-play exercises and demonstrations. For example, at times

you will be a negotiator, mediator, arbitrator, or an individual seeking conflict resolution using the various alternative dispute resolution techniques.

Journals/Reflection Papers: Throughout the course, students are to prepare a journal entry reflecting upon a particular role-play experience or other issues related to class. Topics might include matters such as how you or your classmates prepared for or conducted a particular simulation, your reactions to a class activity, or what you think about one of the issues raised in class. For example, in critiquing a role-play experience, you may describe techniques used, what was effective or not effective about the process or strategy used. Recollections are usually strongest if they are recorded as the events occur, and it is best to prepare your journal entry within 24 hours of your experience. Typically, the journal should consist of one single-spaced typed page for each class session. A recommended format consists of three paragraphs: (1) describing the topic/issue/or skill described in the lecture and reading assignment; (2) discussing the public policy or stylistic debate involving the subject presented in that class; and (3) describing your views or intended approaches towards the subject presented in that class. If two distinct subjects are presented in a class session, you are free to select about which to write. Unless requested otherwise, the Journal for the previous class will be due at the beginning of the next week's class session. I'll have a folder in the classroom where you may place your assignments.

IV. GRADING. This class is subject to the standard grade curve set by the Law School. Grading in this course will be based on:

Class Participation/Exercises*	15%
Journals/Other Written Assignments	15%
Take-Home Open Book Essay Final Exam	70%

Due Date: _____

***Class Participation*” is based on a variety of activities, including active and meaningful participation in class discussions and other activities, completion of role-play exercises assigned in class, and of other written assignments as announced. I will frequently assign students to present or lead discussion on assigned readings and topics. Your class participation will be considered as a plus or minus factor in your final course grade. For example, I reserve the right to add up to three points to your final grade in recognition of outstanding attendance and classroom participation or to subtract up to three points for extremely poor attendance and/or classroom participation.

** *Classroom Non-Participation/Websurfing, etc.*” As lawyers-in-training, you need to be conscious now of the importance of civility, showing respect to others as well as yourself, and to paying attention. The myth of multi-tasking is just that. Our classroom and learning experience is optimized where we all participate actively using our communication skills of listening, attending, speaking, and interacting. Student use of computers in class for purposes unrelated to the course causes a significant distraction and disrupts the opportunities for full class participation. You may use your laptop computer during class to take notes or for class-related purposes only. Use of a computer during class, including emails, instant messaging, searching the Internet, playing games, viewing YouTube, movies, etc., is prohibited.

V. CONTACT INFORMATION

Please feel free to drop by my office, call, or e-mail me if you have any questions. My official office hours are Monday and Wednesdays 1:30 to 3:00 pm. My campus phone number is []; cell is []. Email: _____.

Alternative Dispute Resolution
Class Schedule and Syllabus¹

Casebook
Readings

Week #1 **Introduction to Understanding Alternative Dispute Resolution** **Chapter 1**

1. Consider the nature and sources of conflict; of disputes; the parties involved; the role of the lawyers and any other third parties involved. How can disputes arise?
2. How can disputes be resolved? What is ADR? Why ADR as opposed to litigation?
3. What does an advocate need to consider in understanding ADR? In advising a client and in selecting an appropriate ADR process?
4. Identify two examples of how ADR can apply to a particular legal dispute.
5. Think about a conflict that you have experienced or that you have read or heard about reported in a newspaper or magazine. How might the disputants or possibly attorneys) have avoided such a conflict in advance? Do you think the conflict you identified has positive or negative aspects, or both? What are they?
5. What are the methods for preventing and resolving disputes?
 - * *The Dispute Resolution Continuum*
 - * **Exercise:** *Adjudication/Consensual Processes*
6. Write down three or four concrete skills that you would like to learn. Why are these important things for you to know?

Handout: *Client Interviewing Exercise - Confidential Info for Next Week*

Week #2 **Interviewing & Counseling Clients** **Chapter 2**

Discuss

1. What are various models of the attorney-client relationship?
2. What is the purpose of the Client Interview?
3. Describe the basic steps and tasks of the Client Interview process.
4. What obstacles might an attorney encounter in this process?
5. Explain the Lawyer's Role in Counseling the Client.
6. What are the ethical considerations in the client I&C process?

Exercise: Client Interview.

For Next Week

Journal #1. If you acted as an Attorney in an I&C exercise, draft either (A) a letter to your client summarizing the interview and outlining your advice and proposed course of action; or (B) a letter to the opposing party following the course of action indicated in your interview; or (C) a confidential file memo summarizing the interview and explaining the purpose certain questions were asked, or why a particular tone or attitude was used. If you

¹This syllabus is a general guide for the course. Depending upon the various interests of the class members and other opportunities for guest speakers, discussions on timely topics, and other practical ADR experiences, this schedule can and *most likely* will be modified.

were not an attorney in either I&C exercise, your journal entry should be a critique of the interview session.

Week #3

Negotiation

Chapter 3

1. What are the typical stages of a Negotiation Process?
2. What is the “Distributive” Approach to Negotiation? Benefits? Drawbacks?
* Describe strategies and tactics
3. What is the Problem-Solving/Integrative Approach to bargaining?
 - Explain strategies/tactics under a problem-solving approach
4. What are the various individual negotiator styles? Why can that matter?
5. Critique the Two Approaches: pros/cons; when to use
6. How can (and does) psychology influence negotiation?
7. Roles of Gender, Race, Culture, Religion, Language
8. Ethical Issues in Negotiation?
9. Using the Negotiation Planning Template
Exercise: Negotiate

Week #4

The Mediation Process

Chapter 4

1. What is Mediation? Benefits & Drawbacks?
2. When to use mediation?
3. Identify the stages and tasks of the mediation process
4. What is the role of the mediator?
5. What communication techniques are important in the mediation process?
6. *The Grid*: Identify and critique the various styles of mediator roles and orientations.
What is the Facilitative v. Evaluative Debate?
7. Video Demonstration
8. Mediation Exercise: Mediate the Arbitrated Dispute

Journal Assignment: Draft a Mediator’s Opening Statement

Week #5

Mediation -- Legal Issues

Chapter 5

1. What is the scope of confidentiality and privilege in mediation?
Uniform Mediation Act, State Acts, Caselaw
2. How is mediation regulated? Should or should not?
3. Are or should there be public policy limits to mediation confidentiality?
4. How can mediated agreements be challenged? Impact on confidentiality?
5. Should Mediators be Regulated?
 - Quality Control and Ethical Issues in Mediation?
 - Mediator qualifications, standards, liability, immunity
 - Mediation “Law” – state, federal, local programs and rules
6. Should “Good Faith Participation” Be Required (and sanctioned) in mediation?
Exercise:
 - > Mock Legislative Hearing on Mediation Confidentiality and Mediator Regulation
 - > Group drafting project: Propose Standards for Mediation

Handout: Mediation Exercise for Next Week

Week #6 **Mediation Advocacy** **Chapter 6**

1. Representing Clients in Mediation (as opposed to other processes)
2. How Should a Lawyer/Advocate Prepare for Mediation (self and client)?
3. How and when should a client participate in mediation?
4. Written Mediation Briefs – confidential and open
5. *Exercise:* Writing a Mediation Brief (based on case for next week)
6. Next Week: ABA Representing Clients in Mediation Competition
 - Case & Role Assignments
 - Judging Criteria

Week #7 **Mediation in Action**

Full Mediation Exercise & Debrief

- Midterm Option: Critique of Mediation Video

Week #8 **Collaborative Law** **Chapter 7**

1. What is Collaborative Law?
2. What are the elements for a collaborative law process?
3. Advantages and Disadvantages of CL?
4. Ethical considerations in a CL process?
5. The Collaborative Law Participation Agreement

Week #9 **The Arbitration Process** **Chapter 8**

1. Uses, Practice, and History of Private Arbitration
2. Defining Arbitration & Why
3. How Cases Get into Arbitration
4. Arbitrator Selection
5. Steps in the Arbitration Process
6. The Arbitration Award - types, enforcement, and judicial review

Week #10 **Arbitration – The Law Part** **Chapter 9**

Read also: THE FEDERAL ARBITRATION ACT, 9 U.S.C § 1-16

- A. The Legal Framework for Arbitration
 1. Federal Arbitration Act
 - Purpose/Date enacted/Basic Provisions & Effect
 2. State Arbitration Laws – *See* Uniform Arbitration Act
California & State Efforts to Regulate Arbitration
 3. International Treaties & Conventions
 4. Private Institutional Provider Rules
 5. The Arbitration Agreement

Exercise: Drafting an Arbitration Clause
- B. The Gateway Issues – Arbitrability
 1. Who Decides – arbitrator or judge?
 - Substantive v. Procedural Arbitrability
 2. Arbitrating Statutory and Regulatory Claims
 - Shifting Judicial Attitudes
 - The Costs of Arbitration – any financial exception?
 - Vindication of Rights

3. Contractual Defenses to Arbitration Enforcement
4. Policy and Fairness Issues
 - Unconscionability, Adhesion, Consumer/Employment
 - Class Action Waivers & Class Arbitration
5. Ethical Standards in Arbitration
 - Arbitral Immunity

Handout: Arbitration Exercise/Role Assignments

Week #11 **Arbitration Hearing**

See: AAA, Commercial Arbitration Rules

1. Arbitrator Announcements & Preliminary Hearing Motions & Rulings
2. Party Openings; Witness Examinations; Closing Arguments

Post-Hearing Assignment: Arbitrator Rulings and Individual Summaries/Critiques.

Due: next Wednesday by noon

Week #12 **Other ADR Processes** **Chapter 10**

1. What is Med-Arb? Arb-Med? Uses? Ethical Issues?
2. Arbitration Variations
3. Online DR
4. Ombuds Procedures
5. Summary Jury Trials & Mini-Trials
6. ENE
7. Restorative Justice Processes
8. Negotiated Rulemaking
9. Limited Scope Representation & ADR

Week #13 **Designing and Selecting Dispute Resolution Processes**

Week #14 **Course Review**

* Distribute Take Home Essay Final Open Book Examination - **Due Friday, _____ by 5pm**