Dispute Resolution in the Digital Age
Tuesdays, 5:00 – 7:40 PM  Room 332
Office Hours Tuesdays, 11:50 to 1:30

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Consumer Outreach: MyConsumertips.info (website and app)
SSRN Author Page:

I. Introduction:

There was a time when individuals would meet in person to make purchases and negotiate deals. They would discuss the terms, assess the trustworthiness and character of their contracting partners, and conclude the deal with a handshake. The handshake was more than a kind gesture—it helped ensure the enforcement of the deal without need for the rule of law or legal power. Reputations and respect were at stake because individuals worked in the same community and knew each other’s friends and business partners. That handshake was one’s bond—it was a personal “Trustmark” of sorts.

Those days are gone. We do not do deals on a handshake any more. We seem to have lost interest in face-to-face meetings in our digitized society. We text; we Skype; we FaceTime; we send e-mails. We do not connect in person because we conclude contracts in virtual spaces. The physical handshake is dying, especially in business-to-consumer (“B2C”) contexts. Consumers increasingly turn to the Internet for their buying needs and make any in-person purchases at big box stores where they rarely have any personal connections. This has created the need for a “New Handshake” – using the Internet to empower consumers and inspire companies to remain responsible to their customers regarding their products and services.

Of course, the Internet is not perfect and its growth has not been purely positive for consumers. The Internet empowers companies and consumers by giving companies access to multitudes of customers and connecting consumers with companies they would never otherwise encounter in the physical world. The Internet has become a gateway to an ever-expanding and globalized eMarketplace for consumer goods and services. Nonetheless, the Internet has created disconnections in B2C exchanges by allowing companies to easily hide from responsibility behind the anonymity and depth of the Internet. Customer service representatives operating wholly online do not have to look their customers in the eye when denying remedies, and feel less beholden to customers that are replaceable by a seemingly bottomless barrel of online shoppers.

That said, companies must pay attention to online consumers. Social media and Internet communications have opened new avenues for consumers to complain.
Consumers may email or “chat” online with customer service, post complaints on Facebook or complaint sites like Yelp, file online complaints with the Better Business Bureau, or even submit complaints online to government regulators like the Consumer Financial Protection Bureau (“CFPB”). Indeed, dispute resolution has entered the digital age.

Moreover, these complaints process may now go further. This has led to the development of an entire field of study and practice broadly referred to as “online dispute resolution” (“ODR”). ODR goes beyond online complaints filing sites to allow for online negotiation, mediation, and arbitration processes for resolving disputes of various types. Although ODR has been around for some time, it is now hitting its stride and becoming a necessary staple for legal education and justice policy. It is the new gateway to justice.

ODR may create that “New Handshake” for consumers in B2C exchanges by expanding consumers’ access to remedies in an otherwise “top-down” world of eCommerce. ODR can be effective and satisfying for low-dollar claims such as those in most B2C contexts because of its efficiencies. ODR systems lower the costs and burdens of pursuing purchase complaints so that all consumers, regardless of power and resources, feel comfortable and able to seek assistance. Online complaint systems also create transparency around seller behavior and give voice to common consumers who may then police market fairness and empower others to “vote with their feet.” In this way, ODR has potential to ease power imbalances that have hindered market regulation in B2C commerce.

ODR is not merely for B2C eCommerce. It is growing into an expanding universe of technological solutions for legal problems. Indeed, ODR is now being used for small claims, personal injury, tax appeals, filing for divorce, and dealing with a wide variety of legal issues. There is even talk of developing “block-chain” solutions for sovereign identity issues. This would be a foundation for digital identity which is not easily hackable - something which does NOT exist in any form today. Digital identity on the blockchain is what Sovrin.org has built. Law and technology are intersecting to solve problems and increase access to justice.

That said, ODR is not perfect. It has drawbacks as well. Like any justice system, online systems must be carefully constructed and regulated. They also are not free. Someone is paying for their development and upkeep. Neutrals behind these systems also must be properly trained and regulated. Moreover, there are continual concerns with privacy online and Internet security. These are just a small handful of issues to be explored!

Accordingly, this course will explore ODR systems and use of technology to address legal problems. We will look at the various systems currently used by major companies and have guess presenters in person or via Zoom who are the leaders in the industry! I am fortunate to be a “Fellow” of the National Center for Technology and Dispute Resolution, which allows me to work with developers and policymakers.

This work also includes my serving as the Co-Chair of the ABA ODR Task Force.
Accordingly, the class also will include deep consideration of both the potential and drawbacks of ODR systems. Therefore, we also will discuss development of best practices and question policy directions. For starters, consider whether rules regarding alternative dispute resolution (“ADR”) offline could or should apply to ODR? How does technology change the equation? Can ODR be effective when parties are not looking into the eyes of the other side? How can offline neutrals best translate their skills online? How can technology merge with face-to-face ADR to make it more effective? What ethical challenges does ODR present? Are there contexts in which ODR should be banned?

II. Course Objectives and Learning Outcomes:

The following are some of the key course objectives:

- We will examine the development of ODR, and think through some of the new challenges it poses to neutrals and systems designers
- We will look at the major providers, administrative agencies, and international organizations currently involved.
- We will sample state-of-the-art ODR technologies through a series of simulations
- We will begin to wrestle with the challenges of providing effective dispute resolution online.

The following are the key learning outcomes for this course:

- Learn about ODR and use of technology to solve legal problems.
- Discuss ethical issues surrounding use of technology for dispute resolution.
- Research and write a paper developing an original idea for solving a chosen legal problem using technology.
- Present a capstone project for the class, and generate discussion regarding one’s ideas.

III. Guests: We will have various guests in the class in person and via zoom or skype. I have assembled the leading individuals from across the US to be a part of this class in this way to maximize your learning and exposure to the key people in the ODR field. I hope that this will create long-lasting connections!

IV. Course Requirements & Grading: The final grade will be based upon writing assignments and presentations (75%), along with class participation (25%).

Writing assignments and final presentation (75%): This includes reflection papers, a “paper plan,” and the capstone paper as noted herein. Note also that all papers
are to be **double spaced and should not exceed maximum page limits.** For example, if the paper is to be 1 page long, then it should not exceed 1 page.

- **Reflection papers (15%)** – Reflection papers are due at the start of each class for which they are assigned. Students must come to class with hard copies of their papers because students will discuss the papers in class. Also, it is important to bring a hard copy to the class for which they are assigned because I will be collecting them in class.

- **Capstone System Design paper and presentation (60%)** – This capstone “system design” paper and presentation thereof will account for 60% of your final grade. A hard copy and an e-copy of your paper are due by May 3, 2020, at NOON. **Please note that this “design” requires no technical IT knowledge or explanation. Instead, this will be a concept paper that calls on students’ creativity and practical consideration of problem solving. See below for more specific guidance and rest assured that we will talk more about this in class and I am happy to work with you along the way.**

This paper should be 10 pages double spaced, unless you would like to obtain “Writing” credit (the “W” class required in one upper level course for graduation). If you are seeking “W” designation, then the paper must be 20 pages double spaced. **Please come see me if you are seeking “W” credit so that we have that established with the Registrar!**

For all papers, you will provide a design for an online dispute resolution system or other technological solution aimed at addressing a particular type of dispute or legal problem more broadly. Pick a type of dispute you are interested in (e.g. cell phone, tax appeals, parking fines, workplace, environmental, commercial, privacy, intellectual property, divorce, healthcare, bullying, University matters, dorm issues, etc), and set forth your concept for a design of a dispute resolution process using some sort of technology system (e.g. an app, a website, or other online platform) for assisting the resolution of your chosen type of dispute. Specifically, consider the following:

1. State the type of dispute or problem that your system is designed to address and why you believe ODR or a technological solution would be beneficial in this context. Also consider how the disputes are currently handled in the status quo? What are the advantages and disadvantages of the current resolution approach vs. ODR? This will require research regarding current methods for addressing the problem (be sure to include proper citations).

2. Describe your envisioned ODR system or other technological solution. Who will use the system (ie: consumers, businesses, government, etc.)? What information will you collect from participants and how? What are the phases and stages of your envisioned ODR process? What actions will participants need to take as part of the flow? Walk the reader through the resolution flow (you may choose to create a diagram).

3. Consider ethical issues and the fairness of your proposed system. How will moving these cases online change the volume of cases and quality of resolutions
in the area? What quality controls will your system employ to ensure due process at some level?

4. What data security measures will you employ and how will you ensure the safety of the system? At the same time, to what extent will data be shared?

5. How will the systems be paid for? What options and ideas have you developed for funding the system creation and maintenance?

6. What are some of the difficulties and drawbacks of your system? You should go beyond simply listing the remaining questions and concerns your system may present. Develop your ideas.

**The final classes will be dedicated to your presentation of your system design. You will create powerpoint presentations and have command of 25 minutes for your presentations!**

- **Class participation and attendance (25%)**: I expect students to attend all class meetings and actively participate in class discussions and activities. Regular attendance is expected in accordance with the ABA policy statement.

I will grade participation based on attendance as well as **active and thoughtful engagement with the course content**. Active participation in simulations and discussions is essential. This will enhance your learning and the learning experience for all students in the class. Again, the role of technology in the law is an exciting area and I hope that you will engage with the course wholeheartedly!

V. **Office Hours and Accessibility**: I will hold office hours Tuesdays from 11:50 to 1:30, and I am generally available. I am enthusiastic about this developing area, and here to assist your learning!

VI. **Laptops**: Please note that you must bring a laptop for classes in which we do the online simulations. If you do not have a laptop to use or have other accessibility issues with using a laptop for simulations, please let me know ASAP so we can seek arrangements.

VII. **Assignments/Open & Accessible Educational Resources (O&AER)**: Below is the schedule of topics and assignments we will cover during the class.

Please ask me any questions regarding assignments before they are due so that I can help you prepare for class in accordance with the schedule. Furthermore, these assignments are subject to change and you should not read too far ahead of the schedule. We also will be adding exercises and materials as they develop during the semester due to the evolving nature of law and technology!

This class is also part of the “O&AER” program at MU seeking to save you the costs of materials! To that end, all course materials are accessible on TWEN under Course Materials, linked from this syllabus via embedded hyperlinks, or are otherwise
accessible for free on the Internet. I also have placed materials that I created in the University of Missouri-Columbia Law School Repository. There are no materials you must purchase. The materials cost for the course is $0.

This means you must download the syllabus and be prepared to locate materials on the Internet as noted in the syllabus, on TWEN and/or on the Library open repository. You must register for this course on TWEN. If you have trouble accessing or locating the materials– please ask Cindy Basset in the library for assistance. Note also that optional readings are truly optional, and they are all available for free on my SSRN Page at https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=522704.

**Make-up Class:** Note that we will have **NO class in person on 2/11** but you must do the reading noted for that week prior to 2/13 and attend the make-up class on 2/13 1-2 PM in 332A!! At the same time, note that you must watch the video interview with Noam Ebner: https://www.youtube.com/watch?v=rF5nBVPxkAY&feature=youtu.be.

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<th>Class</th>
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<th>Reading Assignments and Exercises</th>
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| 1. 1/21 | Intro to Online Dispute Resolution (ODR) and Exploration of Expanded Remedy Processes for B2C Transactions | This week we are getting an introduction to ODR, and considering why it even was conceived. This especially emanated from need for low-cost and convenient resolution of small dollar disputes:  
  - Read the most current 10 blogs on the National Center for State Court’s ODR blog: https://odr2019.blogspot.com/  
  - Check out the information and get a sense of the “ODR World” by visiting www.ODR.info.  
  
  **Reflection Paper:** Briefly explain in 1-2 pages your experience and knowledge with online remedy systems and what you hope to learn in this course. Also, note your conceptions of ODR based on the readings and consider ODR’s problems and potential.  
  
  **Optional (yes, truly optional):**  
  - Amy J. Schmitz, *Building Trust in Ecommerce Through Online Dispute Resolution*, in RESEARCH HANDBOOK ON ELECTRONIC
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<td>2. 1/28</td>
<td>eBay, Modria, UNCITRAL, and growing ODR in public and private spheres. <strong>Visit from Cindy Basset to provide insights on how technology is revolutionizing research, including ideas that you may end up using to put together your papers and design your systems for the Capstone!</strong></td>
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**Amy J. Schmitz, *Building Bridges to Consumer Remedies in eConflicts*, 34.4 U. A. L. Rev. 779, 779-95 (2012).**

**Amy J. Schmitz, “*Drive-Thru* Arbitration in the Digital Age: Empowering Consumers through Regulated ODR*, 62 Baylor L. Rev. 178-244 (2010).**


Reflection Paper: Does the growth and international depth of ODR surprise you? Briefly list the pros and cons of the UNCITRAL endeavors based on the readings, and in light of parallel ODR projects in the private sphere. The paper should be only 1 page, and may include bullet points, but be prepared to discuss your thoughts in class. Consider how a public global system compares with private ODR like that used by eBay. Also, consider the policy differences among the UN Member States and the politics involved.
in Working Group III. Why do you think UNCITRAL Working Group III ended without clear ODR guidelines?

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<th>3. 2/4</th>
<th>ODR to assist Access to Justice and Economic Development</th>
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<td>Today, we will consider how ODR can assist Access to Justice. We will watch a demo and talk to the developer—TurboCourt. Their goal is to assist access to justice, and self-represented litigants. But what about the “digital divide,” and possibilities for ODR in developing nations? It is natural to ask whether ODR “makes sense” in places where daily necessities are scarce. Read the following:</td>
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<td>*We will also watch a demo from TurboCourt &amp; have a Q&amp;A with the developer via Zoom!</td>
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Exercise: Consider the ODR for refugees application at [http://www.odreurope.com/odr4refugees](http://www.odreurope.com/odr4refugees). It was a proposed app to help refugees have access to alternative dispute resolution services with an aim for providing refugees a path to information and mediation services. It does not focus on refugees permanently settled in the country of their final destination. Instead, it focuses on all those who are on the move or reside temporarily in refugee camps all over the world (including asylum seekers who have not yet gained refugee status). The app guides refugees to select the type of their dispute they seek to resolve, and processes all the data and appoints a mediator from a list of mediators (matching several criteria such as nationality, languages, area, topic, gender etc.) who communicates with both sides. The whole mediation process can be conducted online from their smartphones through video conference (in joint or separate sessions) or through a chat tool. You will be placed in groups representing ambassadors from nations with many refugee camps, ODR developers, and refugees (and their representatives/aid workers). How could or should this app work? What problems do you see with the concept and plans for the app...
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<th>Date</th>
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<td>2/11</td>
<td>Global ODR Governance</td>
<td>We will consider how ODR should be regulated. As prior readings have indicated, there are ODR systems developing at private and public levels, but no one unifying force. The EU has its ODR Regulation, but there is no one global structure or means for assuring applications that “speak” to one another. Moreover, there is no set of rules or standards regarding ODR. Do we need one open avenue for access to remedies throughout the world? Moreover, you should have concerns and questions regarding whether and how ODR should be monitored or regulated. Thus, please read:</td>
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<td>- Amy J. Schmitz, <em>A Blueprint for Online Dispute Resolution System Design</em>, 21 Journal of Internet Law 3 (2018). You can find this on my author page for SSRN and specifically at <a href="http://ssrn.com/abstract=3102412">http://ssrn.com/abstract=3102412</a> or <a href="https://scholarship.law.missouri.edu/facpubs/699">https://scholarship.law.missouri.edu/facpubs/699</a>. Reflection Paper: Write a one page reflection paper creating a flowchart or diagram for how you believe ODR should be regulated, if at all. Should there be a top-down or bottom-up approach? Is one global system practical or “doable” – why or why not? We will be going over your papers in the <strong>make-up class on 2/13</strong>, and thus you must be ready to explain your flowchart or diagram.</td>
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*There may be a list of questions related to the demo – stay tuned.*
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|


**Exercise:** Be prepared to work in teams representing: MO judges; MO Bar Association; MO attorney general’s office; MO legislators; MO legal aid groups; and private tech firms interested in selling their ODR products to courts in MO. You will be negotiating to create a “plan” for how MO should and could best incorporate ODR in its courts. Consider your group’s interests, budgets, assisting society, due process concerns, etc. Be prepared for robust debates and negotiations during the class!

*No paper due but be ready for participation! Also, look over [https://getmatterhorn.com/](https://getmatterhorn.com/).*

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<th>6. 2/25</th>
<th><strong>Ethics, and ODR Standards &amp; Principles</strong></th>
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<td><strong>Guest via Zoom – Leah Wing, Co-Director, National Center for Technology and Dispute Resolution Senior Lecturer, Legal Studies Program, Political Science Department, University of Massachusetts/Amherst.</strong></td>
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- Additional readings TBD! I am Co-Chair of the ABA ODR Task Force and will fill you in on the latest developments!

**Exercises:** Exercises will be distributed a week before the class.
| 7. 3/3 | CoParenter and Technological Solutions for Problems in Family Law | **Guests via Zoom from coParenter!**  
See [https://www.coparenter.com/what-is-coparenter](https://www.coparenter.com/what-is-coparenter). The coParenter platform aims to prevent custody from being litigated (or re-litigated) where possible. The tool seeks to bring parents together through a neutral platform that allows them to communicate, track scheduling, and manage responsibilities. The platform also keeps records of any communication made through its platform in the case that either party later needs it for a proceeding. The app can be used on mobile phones, or downloaded to a computer. Please fully read the website and materials regarding coParenter and be prepared to ask tough questions! They welcome your thoughts and questions.  
- Read [https://familylawyermagazine.com/articles/online-dispute-resolution-and-the-future-of-family-law/](https://familylawyermagazine.com/articles/online-dispute-resolution-and-the-future-of-family-law/) and check out some of the family ODR providers noted in the article to get a better sense of how they work.  
**Exercises:** Check out [https://coparenter.com](https://coparenter.com) thoroughly and be ready to ask questions! No paper due. |
| 8. 3/10 | Considering Online Negotiation and New Ideas! | We will have another ODR Leader in class! Chris Draper with Trokt, who runs the ODR Bowl will be in class and run simulations on his platform!  
First, be sure to look at [https://www.trokt.org/](https://www.trokt.org/). Read about it on the site and do some research to find out where it is used, and be ready with questions for the guest!!  
**Paper Plans due:** You must bring to class a short “Paper Plan,” or rough outline of what you plan to explore for your capstone/final project. We will be swapping plans to get ideas from classmates. It is imperative that you bring hard copies of your plans to this class!

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<th>Topic</th>
<th>Readings/Details</th>
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<tr>
<td>9. 3/17</td>
<td>Online dispute resolution simulations!</td>
<td>Readings TBA for simulations using CREK!.</td>
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- Colin Rule, *Technology and the Future of Dispute Resolution*, Dispute Resolution Magazine, 4-7 (Winter 2015) (On TWEN with the author’s permission and freely available on colinrule.com).  
**Presentation and Simulations for online mediations with Colin Rule via Zoom! Mr. Rule and I have lead such simulations with students here at University of Missouri-Columbia and at University of Colorado.**  
*NO Reflection Papers due.  
11. 4/7 | Hot Topics: ODR for Smart Contracts and UDRP (with visit from Prof. Lee who is an arbitrator for the UDRP!)  
We will get an intro into the UDRP—an online arbitration mechanism for domain name disputes!!  
We will spend the second half of class on ODR for smart contract dispute resolution!  
**Come with questions about the final presentations and “paper buddies” will be set up.  
Classes 12-14 (4/14, 21 & 28). | Final Presentations: You will each have roughly 25 minutes to present your proposed ODR processes and gather other students’ feedback. This time is yours and you are to take the lead. This allows for more speaking opportunities, and the discussion should assist you in completing your final seminar papers. This also means |
you may require the other students to prepare short readings, and
you should create a powerpoint presentation to lead the class.
Again, you are in charge for your time.

**We will also “swap” paper drafts, and I will hold office hours for paper questions.

VIII. Academic honesty

Academic integrity is fundamental to the activities and principles of the School of Law. All members of the law school community must be confident that each person’s work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The law school community regards breaches of the School of Law’s Honor Code as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or whether something might be seen as a form of cheating, consult the course instructor. Please understand that the instructor will follow university procedures on cases of academic dishonesty, and in such cases it may be necessary to assign a failing grade for the assignment or even the entire course.

IX. Recording classes not permitted

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may not make audio or video recordings of course activity, except students permitted to record as an accommodation under Section 240.040 of the Collected Rules. All other students who record and/or distribute audio or video recordings of class activity are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.
X. Executive Order #38, Academic Inquiry, Course Discussion and Privacy

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in section 200.015 of the Collected Rules and Regulations. Students found to have violated this policy are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

XI. Intellectual pluralism

The University community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Departmental Chair or Divisional leader or Director of the Office of Students Rights and Responsibilities. All students will have the opportunity to submit an anonymous evaluation of the instructor(s) at the end of the course.

XII. Students with disabilities

I am committed to providing affordable, open and accessible educational resources as part of the learning process in this course. Some resources, though, may have been designed with features that are inaccessible or create barriers to your participation. If you encounter barriers related to the format or requirements of this course please let me know as soon as possible so that we can discuss options.

If you have a documented disability (or think you may have one) and, as a result, need reasonable accommodations (for example, a note taker, extended time on exams, captioning), please establish an accommodation plan with the Disability Center (http://disabilitycenter.missouri.edu), S5 Memorial Union, 573- 882-4696, and then notify Associate Dean Mitchell or Registrar Denise Boessen.

For other resources for students with disabilities, visit http://disabilitycenter.missouri.edu. See also: Accessibility Policy (BPPM 1:025); Digital Accessibility Policy (BPPM 13:010); and Adaptive Computing Technology Center.

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