

**Alternative Dispute Resolution (LAWS*515*01)
Spring Semester, 2020**

Prof. Charles Pillsbury

Charles.Pillsbury@quinnipiac.edu

Office: School of Law and Education, Room 252

QUSL phone: 203-582-8145; Cell phone: 203-640-3889

Alternative Dispute Resolution (ADR) (LAWS*515*01)

Spring 2020, 14 Weeks; **SLE Room 364**

Mondays, 6:00–7:50pm, 01/06/2020–04/20/20, except Mon. 1/20, 3/9 & 3/16

Two or Three Credits – see Course Requirements below.

SYLLABUS #3 – 03/19/20 (subject to further revision)

Course Description. This course examines alternative approaches to the traditional resolution of disputes through litigation. These include: adjudicative processes, such as arbitration; consensual processes, such as interest-based negotiation and mediation, including a range of theories and approaches to negotiation and mediation; and other emerging alternative processes, such as collaborative lawyering or ombuds work. This course examines and explores how practicing lawyers classically trained for the courtroom must adapt and adjust to a wide spectrum of ADR processes increasingly being used to resolve disputes inside and outside of court. (2 or 3 credits)

Required Textbook: Resolving Disputes: Theory, Practice, and Law, Folberg, Golann, Stipanowich & Kloppenberg, 3rd Edition (2016), Wolters Kluwer Publisher (Aspen Casebook Series) (ISBN: 978-1-4548-3874-6)

References below to chapters and pages are to this text. Specific page assignments for each chapter will be made at the beginning of the course. Other readings from current articles and literature may be assigned with at least two weeks' notice.

Course Requirements: This is an introductory course and is one of the courses required for the **Civil Advocacy and Dispute Resolution Concentration**. The course is designed for two or three credits:

- **Two credits**, if a student writes a **short final paper (at least 1,800, but no more than 2,400, words)**, including footnotes (excluding, if applicable, a bibliography, added as an appendix); double-spaced and single-sided; or
- **Three credits**, if a student writes a **long final paper (at least 3,600, but no more than 4,800, words)**, including footnotes (excluding, if applicable, a bibliography, added as an appendix); double-spaced and single-sided.

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The course provides an overview of three basic elements of dispute resolution: **negotiation, mediation and arbitration**, with the focus on consensual resolution approaches. This is not an experiential course, although there will be some role-play and skills exercises to help you assimilate the material.

Graded Writing Assignments

You will have two graded short writing assignments, which should be *at least 900, but no more than 1,200, words, including footnotes; and double-spaced.*

1. Analysis of a **Negotiation** due **6:00 p.m., Mon. 2/10** – Analyze a negotiation in which you were involved; **OR** interview a lawyer for no more than one hour in person or by phone about a negotiation in which they were involved. Ask what you or they did well in that negotiation. Then ask what they might have done differently, given the benefit of hindsight; or, in the case of your negotiation, what you might have done differently, based on what you have learned from your assigned readings and class discussions. ***NOTE: Whether or not you cite our text when analyzing an interview with a lawyer will not affect your grade one way or the other. On the other hand, when analyzing your own negotiation, citing our text is important.***
2. Analysis of **Mediation** topic of your choice due **6:00 p.m., Mon. 3/2**; **OR**
3. Analysis of **Arbitration** topic of your choice due **6:00 p.m., Mon. 4/6.**

NOTE: In writing these two short assignments, please use section headings to demark where the following sections begin and end:

- a. **Introduction** (one paragraph);
- b. **Description** of negotiation, arbitration, or mediation topic (one paragraph);
- c. **Analysis**; and
- d. **Conclusion** (one paragraph).

In lieu of a final exam, you will write either a **short (2 credits) or long (3 credits)** final paper on an ADR topic of your choice. YOUR PAPER SHOULD PROVIDE REASONED SOLUTION(S) TO PRACTICAL LEGAL PROBLEM(S).

NOTE: Your short or long paper may address the same topics analyzed for any of your short graded writing assignments. Long papers simply require more research and better documentation than short papers. In outlining your paper and then when writing it, I recommend you use this 5-section format.

- I. INTRODUCTION**
- II. BACKGROUND**
- III. CURRENT PROBLEM(S)**
- IV. PROPOSED SOLUTION(S)**
- V. CONCLUSION**

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Below I suggest ways to do this. Having a good outline is the key to writing a good paper. In writing your paper, I recommend you write Sections II, III & IV first, before writing either your Introduction or Conclusion.

I. INTRODUCTION

Your **Introduction** should introduce your paper topic and provide the reader with a guide or “road map” to your paper. What this means is that your introduction should include your thesis statement, which is the argument your paper will be making; and then it should briefly note what you plan to cover in Sections II, III, & IV of your paper.

Introduction and Conclusion are adequate section headings for Section I & V, but **do not use generic section headings for Sections II, III & IV**. Please use descriptive section headings telling the reader what to expect to learn when reading each of these sections. When sections II, III & IV have subsections, e.g., A., B. C...1.2.3..., please also use descriptive headings for these subsections.

II. BACKGROUND

Section II provides general background on your paper’s topic.

III. CURRENT PROBLEM(S)

Sections III & IV are the heart of your paper. **Section III** is dedicated to describing the legal problem(s) your paper is addressing.

IV. PROPOSED SOLUTION(S)

Section IV offers proposed solutions to the legal problem(s) you have identified. These solutions might be ones proposed by others, and/or ones you propose.

V. CONCLUSION

Your **Conclusion** summarizes what you discussed in Sections II, III & IV.

In addition, if your paper has identified and discussed more than one solution, please use your **Conclusion** to state what you personally think should be done after considering all the proposed solutions you discuss in **Section IV**.

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In accordance with the following schedule, please submit a:

1. One-two paragraph description of your proposed final **paper topic** by **6:00 p.m., Mon. 2/24.**
2. 1 or 2-page outline of LONG or SUPERVISED SHORT paper by **6:00 p.m., Mon. 3/23.**
3. 1-page outline of SHORT paper by **6:00 p.m., Mon. 3/30.**
4. **First draft** of LONG or SUPERVISED SHORT paper by **Noon, Fri. 4/17.**
5. **Final draft** of all papers by **Noon, Thurs. 5/7.**

Class Participation

Class attendance is rewarded – see below. Class participation is expected. Your participation in class discussion, exercises and role plays, therefore, are critical both to your learning in this course and to the success of the course. I invite you to engage with the material and in the exercises, role plays and debriefs. This may present you with opportunities to do things out of your comfort range, but I encourage you to push yourself; because, trite as it sounds, the more you participate in this class, the more you will learn.

In this regard, students with disabilities who wish to request reasonable accommodations should contact the Associate Dean for Academic Affairs, as Quinnipiac University complies with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

Course Grading

Your grade for the course will be based on the following:

A. Class Attendance--20%.

Because class attendance is critical to your understanding the practice of dispute resolution, you are expected to attend ALL 14 classes. Indeed, 20% of your grade is based on class attendance; not class participation, although the latter is also expected. Recognizing, however, that things happen over which you have no control: **A student enrolled in this class should not miss more than two class sessions. Absences, whether excused or unexcused, in excess of this limit will result in a lower grade for the course. In contrast, if a student misses none or only one class, your attendance record will result in a higher grade.** *For example, a student with a grade of B, based on their written work, who*

- *attends 13 or 14 classes, will receive a B+ for the course;*
- *misses two classes OR MORE, will receive a B; ADDED or*
- *[misses more than two classes, will receive a B-.] DELETED*
- **ABSENCES AFTER MON. 2/24 ARE EXCUSED**

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Should you discover that you are unable to attend any class for any reason, please notify me by e-mail or voicemail AS SOON AS POSSIBLE. I plan interactive exercises based on the entire class being present and may need to change assignments should anyone be absent.

B. Graded Writing Assignments and Final Paper--80%.

If you are taking this course for TWO credits,

- your two graded short writing assignments will account for 30% of your grade; and
- your final short paper will account for 50% of your grade.

If you are taking this course for THREE credits,

- your two graded short writing assignments will account for 20% of your grade; and
- your final long paper will account for 60% of your grade.

In evaluating your two graded short writing assignments, I will consider, as applicable, four criteria: **argument, documentation (including whether or not you cite the text), organization and writing.**

In grading your final paper, I will weight these criteria accordingly:

- Argument (30%);
- Documentation (30%);
- Organization (20%); and
- Writing (20%).

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CLASS SCHEDULE & ASSIGNMENTS

<u>Date</u>	<u>Topic</u>	<u>Possible Class Activities</u>	<u>Assigned to Read Before Class</u>
Week 1 Jan. 6	Dispute Resolution (DR) Negotiation and Conflict	Before class, complete and score the attached DYNAD instrument.	Ch. 1, DR-The Big Picture Ch. 2, Negotiation & Conflict-The Big Picture pp. 1 – 35
Week 2 Jan. 13 (no class Jan. 20)	Negotiation Styles		Ch. 4, Negotiator Styles pp. 59-93 “Getting to Yes”: Summary
Week 3 Jan. 27	The Negotiation Dance Stages 1 – 5		First part of Ch. 5, Negotiation Dance-Step by Step pp. 95 - 144
Week 4 Feb. 3	The Negotiation Dance Stages 6&7: Negotiation Impasse/Agmt. & Gender		Remainder of Ch. 5 and 1 st part of Ch. 6: Gender, pp. 151 – 178 A.Schneider’s TEDx talk http://www.indisputably.org/?p=10201 See also http://www.indisputably.org/?p=12621
Week 5 Feb. 10	An Overview of Mediation-The Big Picture Process & Styles		Ch. 9, Mediation-The Big Picture pp. 253 - 302 <i>Negotiation Paper Due</i>
Week 6 Feb. 17	Representing Clients in Mediation	Speaker on Rep. in Med. The Hon. Elaine Gordon: 6-7PM	Ch. 11: Representing Clients in Mediation, pp. 351-380; <u>Representing Clients in Mediation, Golann, 2000 (ABA-CLE) Mediation Agmt. Form</u>
Week 7 Feb. 24	Representing Clients in Mediation		Ch. 12: Representing Clients in Mediation, pp. 381-411; <i>Proposed Final Paper Topic Due</i>

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<p>Week 8 Mar. 2</p> <p>(no class Mar. 9)</p>	<p>Specific Applications: Family & Divorce Mediation Collaborative Law</p>	<p>Speaker on Family and Divorce Mediation & Collaborative Law Atty. Frances Calafiore: 6-7PM</p>	<p><u>Family Disputes & Policy Issues</u> Ch. 13, pp. 413-22 Ch. 14, pp. 464-79 <u>Collaborative Law</u> Ch. 7, pp. 213-19; Ch. 27, pp. 838-42 <i>Mediation Paper Due</i></p>
<p>Week 9 Mar. 16 CLASS Canceled</p>	<p>Specific Applications: Labor & Empl. Mediation & Arbitration</p>	<p>Atty. Brendan Holt on QUSL's CHRO Mediation Program: 7:10-7:40PM Rescheduled to April 20</p>	<p><u>Employment Cases</u> Ch. 13, pp. 422-28; <u>Optional:</u> Sections I, II & V of QUSL CHRO Manual</p>
<p>Week 10 Mar. 23 ONLINE</p>	<p>Arbitration: An Overview</p>	<p>Speaker on Labor & Empl. ADR Atty. D. Charles Stohler: 6-7PM</p> <p>Student Presentations – 1 Final Paper Topics</p>	<p>Ch. 17, The Big Picture pp. 543 – 571 <u>Optional:</u> CT Revised Uniform Arbitr. Act <i>Long & supervised short paper outlines due</i></p>
<p>Week 11 Mar. 30 ONLINE</p>	<p>Arbitration Agreements, Procedures & Awards</p>	<p>Student Presentations – 2 Final Paper Topics</p> <p>Speaker on Arbitration Atty. Roy De Barbieri:6-7PM</p> <p><u>Optional Reading:</u> AAA Commercial.Arb.Rules 2013</p>	<p>Ch. 18, Arb. Agrts. pp. 573 - 589 Ch. 20 (last part), Arb. Procedures & Awards pp. 618 – 627</p> <p><i>Final Short Paper Outline Due</i></p>
<p>Week 12 April 6 ONLINE</p>	<p>Fairness in Arbitration</p>	<p>Student Presentations – 3 Final Paper Topics</p> <p><u>Optional Reading:</u> AAA Consumer.Arb.Rules.2018</p>	<p><i>Arbitration Paper Due</i> Ch. 23, Fairness, Part I (first part) pp. 715-730 Ch. 24, Fairness, Part II pp. 756-779</p>
<p>Week 13 April 13 ONLINE</p>	<p>Ombuds: An Overview</p>	<p>Student Presentations – 4 Final Paper Topics</p> <p>Ombuds Speaker Atty. Donna Douglas Williams: 6-7:00PM</p>	<p>readings & materials to be assigned <i>1st Draft of Long & Supervised Short Papers Due Friday 4/17</i></p>
<p>Week 14 April 20 ONLINE</p>	<p>Dialogue & Facilitation</p>	<p>Atty. Brendan Holt & Jamie Saint Paul, 3L, on QUSL's CHRO Mediation Program: 6:05-6:35PM Course Evaluation online & in class</p>	<p>readings & materials to be assigned</p> <p><i>NOTE: Final Papers Due NOON, Thurs. 5/7</i></p>

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This course is directed toward the First Tier Learning Outcomes identified below. Progress toward these learning outcomes will be assessed through your written work and to a lesser extent through classroom participation:

First Tier Learning Outcome 2: Graduates are expected to demonstrate knowledge and understanding of legal theory, systems, and doctrine, including core areas of substantive and procedural law and alternative methods for resolving disputes.

Specific Criteria

- 2.3 The range of dispute resolution processes and the ability to advise clients and others on choices of process/forum.

First Tier Learning Outcome 3: Graduates are expected to demonstrate competency in oral and written communication in the legal context.

Specific Criteria

- 3.2 Competency in listening effectively to clients and others.
- 3.3 Competency in cogently communicating analysis and advice in writing across a range of types of writings (e.g., memos, briefs, and client letters).
- 3.5 At least novice-level understanding of and competency in a spectrum of advocacy skills.

First Tier Learning Outcome 6: Graduates are expected to demonstrate at least novice-level competency in other professional skills needed for competent, effective and ethical participation as a member of the legal profession.

Specific Criteria

- 6.1 At least novice-level understanding of and competency in approaches for managing conflict for effective problem solving.
- 6.2 At least novice-level competency in collaborative work approaches.
- 6.3 At least novice-level understanding of and competency in effective approaches for client interviewing and counseling.
- 6.4 At least novice-level understanding of and competency in effective negotiation practices.

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COMPLIANCE WITH ABA Accreditation Standard 310:

Standard 310 of the ABA's Accreditation Standards requires that for each credit hour earned, a student must do an amount of work that reasonably approximates at least 50 minutes of classroom instruction per week and at least an average of 120 minutes of out-of-class work per week for 15 weeks.

Out-of-class work includes class preparation, post-class review, outlining, time spent on written and other class assignments, meeting with study groups, meeting or otherwise communicating with the professor to discuss course-related topics, and exam preparation. The 15-week period includes one week for examinations.

In my judgment, based on the average length and difficulty of the reading assignments and the number and average difficulty of other course exercises and assignments, at least 4 or more hours (2 credits), or 6 or more hours (3 credits), of out-of-class work will be required on average per week to prepare adequately for class, complete all assignments, master the course material, and perform satisfactorily on all course assessments.

At the end of the course, you will be asked to estimate approximately on average how much out-of-class time you spent per week per credit hour in this course, so please be mindful of this requirement as the course progresses.

COMPLIANCE WITH Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Students with disabilities who wish to request reasonable accommodations should contact the Associate Dean for Academic Affairs. Quinnipiac University complies with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

COMPLIANCE WITH Title IX Policy Against Gender-Based Discrimination and Sexual Misconduct. Quinnipiac University is dedicated to fostering a healthy and safe environment in which every member of the community can realize their full potential in an educational, working and living environment free from all forms of gender or sex discrimination and sexual misconduct. The University's Title IX Policy is available in the MyQ catalog at <https://catalog.qu.edu/university-policies/titleix-policy/>. The document contains information about university policies, the Title IX grievance procedures, notice of the Title IX Coordinator, and rights and resources available to anyone who is involved in a Title IX matter.