

Survey of Dispute Resolution Processes

Course Syllabus – Spring 2023

Professor Jill I. Gross

Mondays, 2:00 – 3:50 p.m., plus 55 minutes asynchronous weekly (on average)

Office: Preston 311

Phone: 422-4061

jgross@law.pace.edu

Prof. Gross' Assistant: Judy Jaeger

Phone: 422-4292

jjjaeger@law.pace.edu

This course surveys the alternative dispute resolution (ADR) processes of negotiation, mediation and arbitration, as well as the legal framework governing and regulating those processes, primarily for domestic, commercial disputes. The course examines the techniques, rules, and procedures of the processes, explores the roles of the parties, counsel and neutral(s) in these processes, and compares all three to litigation. Students will learn through listening in class, reading assigned materials, viewing videos, discussing the material in class, preparing for and participating in various simulations, and reflecting orally and in writing on those simulations.

Learning Outcomes:

By the end of this course, you should be able to understand:

- how the processes of negotiation, mediation and arbitration resolve commercial disputes in the United States;
- the basic differences among the processes of negotiation, mediation, arbitration and litigation;
- the legal framework governing enforcement of agreements to mediate and mediation settlements;
- the legal framework governing the enforcement of agreements to arbitrate and arbitration awards;
- the ethical constraints of lawyers representing clients in ADR processes;
- the ethical constraints of ADR neutrals, primarily mediators and arbitrators;
- how to counsel clients as to the pros and cons of each dispute resolution mechanism; and
- how to negotiate and draft a basic ADR clause in a contract.

NOTE: This course does NOT count towards the Upper Level Skills Requirement or the Upper Level Writing Requirement.

Assigned Text: Folberg, Golann, Stipanowich, Reynolds & Schmitz, RESOLVING DISPUTES: THEORY, PRACTICE AND LAW (4th ed. 2022)

Grading: There will be no final exam in this course. Your grade in the class will be computed on the basis of 100 points as follows:

Component	Points	Due Date
Mediation Paper (4-5 pages; reflection/law/policy)	25	March 19
Negotiation Practicum Report (online questionnaire)	20	March 31
Arbitration Paper (4-5 pages; reflection/law/policy)	25	May 1
Drafting ADR Clause Final Project (2-3 pages; group project)	10	May 12
Class attendance and participation (including in class simulations)	20	N/A

Weekly assignments: The chart below lists the “reading, watching and doing” activities to be completed for each class. “RD” refers to your assigned textbook. Assigned pages INCLUDE any problems, questions and videos contained on those pages. Additional assigned readings are available on CLASSES under “Course Materials,” or “Web Links,” the internet and/or through hand-outs. Assigned activities are tentative and subject to adjustment during the semester. Please check the CLASSES course site frequently for new postings.

Written Assignments: Except for the Negotiation Practicum questionnaire, I will post assignments on CLASSES under “Assignments.” The chart below indicates in bold the due date of all written assignments. Assignments are due by 10:00 p.m. that day, by uploading them onto CLASSES under “Assignments.” If you cannot upload the assignment because of a CLASSES site malfunction, please email your assignment to my assistant, Judy Jaeger, at jjaege@law.pace.edu by the due date and time. NO LATE ASSIGNMENTS WILL BE ACCEPTED WITHOUT PERMISSION following a *written* demonstration of good cause for the delay.

Unless instructed otherwise, you must prepare all written assignments in double-spaced, 12-point text, in a legible font, except that footnotes, headings and blocked, indented quotes *must* be single-spaced. Footnotes may be in 10 or 11 point font. All documents must include a one-inch margin on all sides and page limitations are strictly enforced. You need not follow Bluebook citation format as long as the citation provides me with enough information to be able to look up the source.

Inter-school Negotiation Practicum, hosted by South Texas College of Law, will take place during the month of March 2023. All students in this class must participate in the practicum. Students will be paired with a student currently attending another law school and will negotiate a simulated transaction via email, phone or videoconference. For more information about the Practicum and how to register to participate, see <http://www.stcl.edu/academics/center-for-conflict-resolution/inter-school-negotiation-practicum/>. Students will be required to submit a report and reflection on the negotiation by March 31, 2023. You will be provided with further details and question prompts for that report after you complete your negotiation.

Class Attendance and Participation: The ABA and Pace Law School academic rules require regular and punctual attendance in class. Excessive absences will be taken into account for grading purposes. If you miss more than three (3) classes **for any reason**, absent extraordinary circumstances, you will automatically fail the class. ZOOM ATTENDANCE to in-person classes

IS PROHIBITED absent a disability accommodation from the University Student Accessibility Services' office, or military deployment.

Pace University COVID-19 Safety: Students are expected to be familiar with and comply with the current COVID-19 regulations, which are posted on the [Return to Campus website](#).

Wireless use during class: Please turn off your cell phone ringers before class begins and refrain from messaging during class. Just as it is inappropriate for students to engage in private conversation during class, it is also both improper and unprofessional for students to misuse our school's wireless capability to chat, go on-line (unless it is related to the class discussion), or send and receive messages or e-mails while class is in session. I find it *very* distracting to my teaching and classroom discussions as do many other students. Students who appear to me to be consistently using classroom time to check their email, shop, text, check social media, or play computer games will lose class participation points. I also reserve the right to ask a student who is clearly engaged with any electronic device (cell phone, iPad, laptop) for non-classroom purposes (e.g., laughing or grinning during non-funny classroom moments) to leave the classroom. Numerous studies have shown that students who want to pay attention are unnecessarily distracted by other students' computer screens and devices open to websites not related to the classroom discussion.

Honor Code: The Law School Honor Code prohibits plagiarism (copying another's words or ideas without attribution, regardless of intent), and restricts collaboration (working with another student on an assignment), unless the assignment specifically allows it. While you may discuss generally your assignments with your classmates, your writing must be individual and independent. No one else may review, proofread, or edit your assignments before you hand them in unless I have specifically instructed you otherwise or advised you to consult the Writing Specialist or Office of Academic Success. Any suspected violations of the Honor Code will be reported promptly.

Procedure for Students with Disabilities Who Wish to Obtain Reasonable Accommodations for this Course: The University's commitment to equal educational opportunities for students with disabilities includes providing reasonable accommodations for the needs of students with disabilities. To request a reasonable accommodation for a qualified disability, a student with a disability must self-identify and register with the Office of Student Accessibility Services for his or her campus. No one, including faculty, is authorized to evaluate the need for or grant a request for an accommodation except the Office of Student Accessibility Services. Moreover, no one, including faculty, is authorized to contact the Office of Student Accessibility Services on behalf of a student. For further information, please see "Information for Students with Disabilities," at <https://www.pace.edu/student-accessibility-services>.

Office Hours: My office hours this semester vary week to week, but I am always happy to make time to meet with students. Please contact me directly to schedule an appointment. Please do not hesitate to consult with me as often as necessary for any questions or concerns regarding any topic covered in the course.

Class, Reading and Assignment Schedule (subject to change with notice):

DATE	TOPIC	Reading/Watching/Doing for Class
Week 1 M Jan. 23	Introduction to Appropriate Dispute Resolution, Conflict and Negotiation	Read: Syllabus – ALL information; RD pp. 3-60 Watch: Videos referenced on pages 59-60 Download and review from CLASSES Course Materials: Chart of Dispute Resolution Processes
Week 2 M Jan. 30	Negotiation Styles, Strategies and Planning; Negotiation Process	Read: RD pp. 60-120 Complete DYNAD exercise (on CLASSES) Review negotiation simulation materials
Week 3 M Feb. 6	Negotiation reflection Negotiation and identity, law and attorney ethics	Read RD pp. 125-156 Outside of class: Plan for and conduct negotiation simulation (must complete BEFORE class)
Week 4 M Feb. 13	The Mediation Process; The Role of the Mediator	Read: RD Chapters 9 and 10 (pp. 185-268) Watch Mediation: The Red Devil Dog Lease, at https://law.missouri.edu/csdr/drle/videotapes/ (4 th entry down the page) Download and review from CLASSES Course Materials: Tasks of the Mediator in a Mediation; Mediator Opening Statement Checklist
Week 5 M Feb. 27	Mediation Advocacy	Read: RD Chapters 11 and 12 (pp. 269-322) Watch: Videos referenced in chapters
March 1, 12:45 PM	Arbitrator Disclosures	Attend Blank Lecture by Professor Andrea Schneider on Arbitrator Conflicts of Interest
Week 6 M Mar. 6	Legal, Ethical and Fairness Issues in Mediation	Read: RD Chapters 14, 15 and 16 (pp. 358-425) Plan for Mediation Simulation
Week 7 M Mar. 13	Mediation Simulation Reflection; Introduction to Arbitration	Read: RD Chapters 17 and 18 (pp. 429-471) Outside of class: Mediation Simulation (must complete BEFORE class)
Week 8 M Mar. 20	The Arbitration Process I: Pre-Hearing Procedures	Read: RD Chapters 19 and 20 thru p. 495 (pp. 457-495) Review AAA Commercial Arbitration Rules: https://adr.org/sites/default/files/Commercial_Rules-Web.pdf Mediation Paper due March 19
Week 9 M Mar. 27	The Arbitration Process II: Hearing through Award	Read: RD Chapter 20, remainder (pp. 495-507); AdAgent vs DST Summary (on CLASSES under

		<p>Course materials)</p> <p>Watch: Recording of simulated arbitration hearing (AdAgent v DST), on CLASSES>Video>Panopto>Arbitration of a Commercial Dispute</p> <p>Negotiation Practicum Reflection Report Due March 31</p>
<p>Week 10 M Apr. 10</p>	<p>Arbitration Law and Policy I</p>	<p>Read: RD Chapter 21 (pp. 509-550)</p> <p>Download: Top Ten Defenses to Arbitrability (on CLASSES under Course Materials)</p> <p>Outside of class: Prepare for and conduct arbitration deliberation simulation; complete BEFORE class</p>
<p>Week 11 M Apr. 17</p>	<p>Arbitration Law and Policy II; Judicial Review of Arbitration Awards</p>	<p>Read: RD Chapter 22 (pp. 551-589)</p> <p>Watch: any two “Arbitration Conversations”: https://arbitrate.com/category/arbitration-conversations/ (also on casebook website)</p>
<p>Week 12 M Apr. 24</p>	<p>Arbitration Fairness; Class Action Waivers</p>	<p>Read: RD Chapters 23 and 24 (pp. 591-655)</p> <p>Richard Silberberg & Neal Eiseman, <i>Debunking Misperceptions: The Upsides of Commercial Arbitration</i> (on CLASSES under Course Materials)</p>
<p>Week 13 M May 1</p>	<p>Dispute System Design; Drafting an ADR Clause; Wrap-up</p>	<p>Read: RD pp. Chapter 26 (pp. 691-711)</p> <p>NY Presumptive ADR program (announcement and Interim Report): https://ww2.nycourts.gov/sites/default/files/document/files/2019-05/PR19_09_0.pdf</p> <p>Elizabeth J. Champnoi, <i>Drafting Arbitration Clauses: Practical Considerations for In-House Counsel</i>, NYSBA INSIDE, Fall 2014 (on CLASSES under Course Materials)</p> <p>Arbitration Paper Due</p>
<p>May 12</p>		<p>Drafting ADR Clause Final Project Due</p>