

# ALTERNATIVE DISPUTE RESOLUTION

Course #6013

## Syllabus - Fall 1996

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**Class Hours:** MW, 8:30-10:00 a.m., Room 103

**Office Hours:** M, 10:00 a.m.-12:00 noon; Tu, 2:00-4:00 p.m., or by appointment.  
If you have questions about assignments that are more immediate, you may call or E-mail me at the office (first) or call at home.

### General Information

**Course goals:** To understand various methods of preventing and resolving disputes, so you can help your clients and society select and employ the most effective, just, and humane methods.

**Textbook:** DISPUTE RESOLUTION AND LAWYERS, Riskin & Westbrook (West Publ. Co., 1987).

DISPUTE RESOLUTION AND LAWYERS, 1993 Supplement to Hardcover Edition, Riskin & Westbrook (West Publ. Co., 1987).

### *Course Requirements and Grading:*

Forty percent of your grade (40%) will depend on class participation. Class participation includes

- (1) Attendance (6% - mandatory),
- (2) Completion of two brief written assignments (14% - which will be graded),
- (3) Participation in exercises (which are not graded),
- (4) Participation in class discussions (5%), and
- (5) Personal journals (15% - which will be graded).

Sixty percent of your grade (60%) will depend on the final examination (which will be open-book, take-home, and composed entirely of essay questions).

### *"Foul Weather" Plan:*

As required by the University, should winter weather raise questions about whether class will be held, the procedure is as follows:

Call my office number after 7:00 a.m. If class is canceled, there will be a message to that effect. (But, be warned, it would take a lot to cancel class. I hate makeup sessions.)

## Class Schedule and Assignments

On some dates, we will not meet because you will be doing an assignment outside of class. The schedule appears below; assure that you have entered the class dates in your personal calendar. [NOTE: The assignments and information below indicate the *preparation* required for each class, e.g., *before* Class 1, you should have read Chapter I.A. Reading assignments in the textbook *include* the relevant pages in the Supplement.]

### Week 1

*Class 1* (M, 8/26): INTRODUCTION

Read for class: Chapter I.A., *An Introduction to the Alternative Processes for Preventing and Resolving Disputes*.

*Class 2* (W, 8/28): WHAT PROCESS IS APPROPRIATE?  
WHAT ARE THE ROLES OF THE LAWYER?

Read for class: Chapter I.B., What Process is Appropriate?  
Chapter I.C., What are the Roles of the Lawyer?

In class, Exercise 1 - Bar Association Meeting.

### Week 2

*Class 3* (W, 9/4): THE ROLE OF THE LAWYER; INTERVIEWING  
SKILLS

Read for class: Chapter II, *Introductory material*; Chapter II.A., *Models of Professional-Client Relationships*; and Chapter II.B., *Interviewing*.

Distribution of Ex. 2 materials - "Let the Buyer Beware." Conduct exercise outside class as assigned. One pair of students will be assigned to perform the exercise during the next class.

### **Week 3**

*Class 4* (M, 9/9): INTERVIEWING AND COUNSELING

Read for class: Chapter II.C., *Counseling*, and Chapter II.D., *Additional Perspectives on Interviewing and Counseling (and Negotiation)*.

Demonstration and discussion “Let the Buyer Beware.”

Distribution of Ex. 3 materials - “Caught with Cocaine.” Conduct the counseling portion of the “Caught with Cocaine” exercise outside class in pre-assigned pairs. After the counseling session, read each other’s confidential instructions and discuss the questions at the end of the lawyer’s instructions.

*Class 5* (W, 9/11): COUNSELING

Read for class: Chapter II.D., *Additional Perspectives on Interviewing and Counseling (and Negotiation)*.

Demo and discussion “Caught with Cocaine.”

Distribution of Ex. 4 materials - “Sad Shades of Green.” Conduct “Sad Shades” exercise outside class after you’ve done the next assigned readings.

First journal segment due next class (9/16).

### **Week 4**

*Class 6* (M, 9/16): NEGOTIATION

Read Chapter III, *Introductory material* and Sections A-D.

CLASS WILL NOT MEET. Instead, you will conduct the “Sad Shades of Green” interviewing and negotiation exercise.

Negotiation outcome reports on this exercise are due to me by noon on Tuesday.

*Class 7* (W, 9/18):

Discussion of “Sad Shades.”

Distribution of Ex. 6 materials - “Bowling Ball Manufacturer.”

## **Week 5**

*Class 8 (M, 9/23): INTERVIEWING AND NEGOTIATION*

CLASS WILL NOT MEET. Instead, you will perform the “Bowling Ball” negotiation exercise.

Negotiation outcome reports on this exercise are due to me by noon on Tuesday.

*Class 9 (W, 9/25): NEGOTIATION*

Discussion of “Bowling Ball” exercise.

## **Week 6**

*Class 10 (M, 9/30): REVIEW OF NEGOTIATION ALTERNATIVE*

Review for class: Chapter III; read carefully Section D, *Lawyers’ Ethics and Morality*. Bring your questions.

Second journal segment due next class (10/2).

*Class 11 (W, 10/2): INTRODUCTION TO MEDIATION*

Read for class: Chapter IV., Introductory material and Sections A and B.

Guest lecturer(s).

Distribution of Ex. 7 materials - “Broken Bicycle.” Conduct the “Broken Bicycle” mediation exercise outside class. Reports on results due to me by noon on Sunday. If no agreement is reached, indicate the last “positions” of the parties. After the mediation, spend 30 minutes in your group discussing the “Questions for Class Discussion.” Do not look at the questions before you perform your mediation exercise.

## **Week 7**

*Class 12* (M, 10/7): MEDIATION PROCESS

Read for class: Chapter IV.C.

Discuss “Broken Bicycle” exercise.

Distribution of Ex. 8 materials - “Inexperienced Landlord.” Prepare to conduct the exercise during the next class.

*Class 13* (W, 10/9): PERSONAL INJURY INSURANCE CLAIM MEDIATION;  
LANDLORD-TENANT MEDIATION

Read for class: Gordon Winfield v. Jefferson Casualty and Alvarez v. Grant case studies in Chapter IV.D.

Mediation exercise and discussion.

Distribution of Ex. 9 materials - “Bill and Sandy.” Prepare to conduct the exercise during the next class.

## **Week 8**

*Class 14* (M, 10/14): FAMILY AND DIVORCE MEDIATION

Read for class: Chapter IV.E.2., *Divorce and Family Mediation*.

Mediation exercise and discussion. Guest lecturer(s).

*Class 15* (W, 10/16): MEDIATION IN APPELLATE COURTS

Read for class: Chapter IV.D., Sisters of the Precious Blood v. Bristol-Myers Co., and Chapter IV.E.1., *Mediation in the Courts*.

Discussion of readings and windup of mediation coverage.

Third journal segment due next class (10/21).

## **Week 9**

### *Class 16* (M, 10/21): THE NATURE OF ARBITRATION

Read for class: Chapter V, the Introduction, and Section A.1., 2., 5., and 6, and Section B.

Distribution of Ex. 10 materials - "Case of the Barbering Pirates," and take special note of Supplement readings assigned for next class. Read exercise for next class discussion (in context of case law).

### *Class 17* (W, 10/23): THE LAW OF ARBITRATION

Read for class: Chapter V.A.3., Southland Corp. v. Keating, and 4. Mitsubishi Corp. v. Soler Chrysler-Plymouth; Chapter V.B.

Discuss "Barbering Pirates."

Distribution of Ex. 11 - "Amanda and the Hospital." Read for next class discussion.

## **Week 10**

### *Class 18* (M, 10/28): ARBITRATION OF MEDICAL MALPRACTICE CLAIMS

Read for class: Chapter V.C., *Deciding When to Use Arbitration: Is it Suitable in Dealing with Medical Malpractice?*

Discussion of "Amanda & the Hospital."

Distribution of Ex. 12 - "The Legislator and the Medical Malpractice Crisis." Read for next class discussion.

### *Class 19* (W, 10/30): ARBITRATION OF MEDICAL MALPRACTICE CLAIMS (cont.)

Discussion of "Legislator etc."

Distribution of supplementary reading materials for next class.

## **Week 11**

*Class 20* (M, 11/4): COURT-ANNEXED MIXED PROCESSES

Read for class: Chapter VI, the introductory materials and Section A., *Court-Annexed Processes*.

Discussion of readings.

*Class 21* (W, 11/6): THE MINI-TRIAL

Read for class: Chapter VI.B.1.

Videotape review; discussion.

## **Week 12**

*Class 22* (M, 11/11): OTHER PRIVATE MIXED PROCESSES: MED-ARB, PRIVATE ADMINISTRATIVE AGENCIES, AND OMBUDSMEN

Read for class: Chapter VI.B.2., *Mediation-Arbitration*, 3. *The Asbestos Claims Facility*, and 4. *Ombudsmen*.

Discussion of readings.

Distribution of Ex. 13 - "The Yellow Light." Conduct "Yellow Light exercise outside class.

*Class 23*(W, 11/13): BUILDING A DISPUTE RESOLUTION PROCESS

CLASS WILL NOT MEET. Instead, you will perform the "Yellow Light" exercise.

## **Week 13**

### *Class 24* (M, 11/18): BUILDING A DISPUTE RESOLUTION PROCESS

Discussion of “Yellow Light” exercise.

Assignment: Draft a one-page description of a completed case (from another class, the newspaper, etc.) with which you are familiar, make a judgment as to what dispute resolution process would have been best in those circumstances, and state why you think so. Description due in class, Wednesday, November 20, and will be collected and graded.

### *Class 25* (W, 11/20): SOCIETAL PERSPECTIVES ON CHOOSING AND BUILDING DISPUTE RESOLUTION PROCESSES

Read for class: Chapter VII, introductory material and Section A. - *Societal Perspectives*.

Discussion of ADR methods and readings.

Distribution of Ex. 14 materials - “What is a Hog?” Draft a dispute resolution clause that should have been included in the original contract. Exercise 14 and drafts will be discussed in next class (11/25), and then submitted for grading.

Submit dispute descriptions (assigned last class).

## **Week 14**

### *Class 26* (M, 11/25): ATTORNEY AND CLIENT PERSPECTIVES ON CHOOSING OR BUILDING DISPUTE RESOLUTION PROCESSES

Read for class: Chapter VII.B. - *Client Perspectives*.

Discussion of “What is a Hog?” and proposed dispute resolution clauses.

### *Class 27* (W, 11/27): ATTORNEY AND CLIENT PERSPECTIVES ON CHOOSING OR BUILDING DISPUTE RESOLUTION PROCESSES

Read for class: Chapter VII.B. *Client Perspectives* (cont.).

Discussion of selected dispute description memos.

**HAPPY THANKSGIVING!**

**Week 15**

*Class 28 (M, 12/2):* DISPUTE RESOLUTION IN THE LAW SCHOOL CURRICULUM

Review the information on dispute resolution materials we've discussed during the semester. Think about what efforts should be made to integrate dispute resolution into the first-year curriculum and how those efforts should be related to advanced courses such as this. Class discussion will focus on this topic.

*Class 29 (W, 12/4):* Exam distributed. Evaluations.

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