

Alternative Dispute Resolution
George Mason University School of Law
Fall 2009

Instructor: Sam Jackson
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Required Text:

Leonard L. Riskin, et al., *Dispute Resolution and Lawyers* (4th ed. 2009). (“DRL”)

Recommended readings:

Roger Fisher & William Ury, et al., *Getting to Yes* (2nd ed. 1991).
G. Richard Shell, *Bargaining for Advantage* (2nd ed. 2006).
Dwight Golann, *Mediating Legal Disputes* (ABA ed. 2008).
Pauline H. Tesler, *Collaborative Law* (ABA 2nd ed. 2008).
John W. Cooley and Steven Lubet, *Arbitration Advocacy* (NITA 2nd ed. 2005).

Course objectives: This course examines the various alternatives to adjudication that lawyers use to help clients resolve civil disputes, including negotiation, mediation, collaborative practice, arbitration, private and public hybrids and other innovative processes. Students will learn about the theoretical basis, legal framework and practical operation of each process. The course will also address process design, effective advocacy in ADR settings, ethical and policy issues relevant to each process, and the relationship of ADR processes to the court system.

Course policies: We will spend a significant part of each class engaged in role play simulations and other activities. Class attendance, therefore, is *required*. Absence or lateness will have a significant negative effect on your grade (excused absences are limited to religious observances, or medical or family emergencies). If you expect to miss a class, you must notify Mr. Jackson prior to the class you will miss. Before each role play, you may receive some “confidential information.” Please do not discuss the “confidential information” with your classmates, except during the negotiation with your assigned counterpart(s). Students are also expected to do the readings assigned for each class.

Grades: Grades will be based on (1) class participation and application of skills (20% of grade); (2) a short paper (~3 pages) addressing the selection of an appropriate ADR process, due in the final class (20% of grade); and (3) a longer paper (12-15 pages) developing and analyzing a topic raised in, or inspired by, the reading assignments, due at the end of the semester (60% of grade). Each student must submit his/her proposed thesis statement for the final paper in advance. All papers must be the student’s own independent work and must be submitted on or before the due date.

Fall 2009 Schedule

Class	Topics & readings	
8/26	Processes of dispute resolution DRL 2-21, 69-71, 73-74, 80-85	
9/2	Negotiation process; adversarial negotiation DRL 174-206, 227-29, 253-57	
9/9	Case value; client counseling DRL 238-43, 246-49, 86-89, 100-105, 115-117, 123-24, 128-32, 147-49, 156-163	
9/16	Problem-solving negotiation DRL 206-208, 213 (note #3), 214-29	
9/23	Approaches to mediation DRL 309-24, 458-62, 402-5; Va. R. Prof. Cond. 2.11(& comments).	
9/30	Mediation advocacy DRL 429-34, 439-56, 470-71 (note #6)	
10/7	Process integrity DLR 385-90, 394-95, 457-58, 482-489 (through note 2), 493-95, 521-25	
10/14	Court-annexed mediation DRL 756-765, [optional: 525-36], 513-15 542-48, 765-74, 473-76, 779-83	
10/21	Settlement counsel; collaborative & cooperative practice John Lande, "The Movement Toward Early Case Handling in Courts and Private Dispute Resolution," 24 <i>Ohio St. J. Disp. Resol.</i> 83, 115-29 (2008); DRL 840-42	Due: <i>Thesis statement for final paper</i>
10/28	Dispute systems design; arbitration process DRL 886-94, 553-62, 708-34	
11/4	Legal framework for arbitration DRL 563-72 (through note 3), 581-93, 595-600, 652-73	
11/11	Mandatory binding arbitration; process integrity DRL 608-35, 645-47; Robert Berner & Brian Grow, "Banks vs. Consumers," <i>Business Week</i> , June 5, 2008; <i>Minn. v. NAF, Inc.</i> Consent Judgment, July 19, 2009.	
11/18	Mixed processes; international commercial arbitration DLR 774-79, 820-35, 679-91	
11/25	No class: Have a nice Thanksgiving.	
12/2	Counseling and process selection DLR: 163-66, 923-44	Due: <i>"Process" paper</i>
Due: on 12/18 (no later than 3 pm EST): <i>Final paper</i>		