Alternative Dispute Resolution

George Mason University School of Law

Fall 2016

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Required Test: Jay Folberg, Dwight Golann, et al., Resolving Disputes: Theory, Practice & Law (2nd ed. 2010)

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 provide notification to the instructor 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 simulation with your assigned counterpart(s). Students are also expected to do the readings assigned for each class.

Papers: The written papers should be typed, double-spaced, with one inch margins. Each paper must be your own independent work. If you turn your assignment in late, there will be a significant negative effect on your grade. I prefer that you submit the paper to the course’s TWEN site in the appropriate drop box. Alternatively, you may email it to me directly or submit a copy to the Records Office. I prefer that the electronic document be sent in either a pdf, Word Perfect or Word (1997-2003 version) format.

Grades: Grades will be based on (1) class participation and application of skills (30% of grade); (2) a short annotated dispute resolution provision that addresses a specific circumstance, due in the final class (15%) of grade); and (3) a longer paper (10-12 pages) developing and analyzing a topic raised in, or inspired by, the reading assignments, due at the end of the semester (55% of grade). Each student must submit in advance a proposed thesis statement for the final paper.
Fall 2016 Schedule

8/23  Process of dispute resolution; 1-16 (esp. 5-16), 26-33. (All readings are from Resolving Disputes unless otherwise indicated.)

8/30  Approaches to negotiation; information exchange; ethics; 59-73, 77-80, 95-97, 108-117. 196-200

9/6  Alternatives; case value; bargaining techniques; 97-104, 121-31, 146-55, 158-61


9/20  Approaches to mediation; 249-52, 256-59, 267-78, 331-40

9/27  Mediation process; confidentiality; ethics; 299-331, 475-85, 498-500, 519-30

10/4  Mediation advocacy; 346-52, 359-61, 369-74, 379-84, 386-98; Recommended: 415-20

10/11  No Class – Law School observing Monday schedule

10/18  Court-connected mediation; 445-52, 459-72, 503-509; Recommended: 409-11

10/25  Collaborative practice; dispute resolution design; private judging; arbitration; 216-22, 501-02, 745-54, 766-68, 538-47; Robert W. Wooldridge, Jr., ‘the New Use of an Old Tool: the Judge Pro Tem Statue,” Virginia ADR, Fall 2010 at 1.  Due: Thesis statement

11/1  Arbitration process; 561-76, 579-601

11/8  Legal framework for arbitration; 611-18, 620-23, 627-29, 636-41, 659-64, 682-90; AT&T Mobility v. Concepcion (excerpt)

11/15  No Class

11/22  Fairness and mandatory arbitration; 695-708, 717-31; Also, Peter B. Rutledge, “The Case Against the Arbitration Fairness Act,” and Jean R. Sternlight, “Fixing the Mandatory Arbitration Problem: We Need the Arbitration Fairness Act,” from the ABA Dispute Resolution Magazine, Fall 2009.


Due: on Monday, 12/12 (no later than noon EST): Final paper