

ALTERNATIVE DISPUTE RESOLUTION SEMINAR
Summer 2020
Monday/Wednesday, 6:15-9:00

Professor Robert Rubinson
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OFFICE HOURS: Please contact me by email so we can arrange a mutually convenient time through Zoom.

GOALS FOR THE COURSE:

- Consider the nature of conflict and the different means to resolve conflict.
- Examine dispute resolution as a social, political, and legal process.
- Explore the norms and realities of adjudication as a means for dispute resolution.
- Gain familiarity with and basic skills of negotiation, arbitration, and mediation.
- Assess the socioeconomic dimensions of the choice and quality of ADR processes.
- Reflect on attorneys' roles and ethical obligations in representing clients in different dispute resolution processes.

REQUIRED TEXTS: Carrie Menkel-Meadow, et. al., DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL (3d edition)

ZOOM: Each class will be conducted through Zoom. The following are protocols for Zoom classes:

- While I will record class, you will be marked absent if you are not on Zoom during the entire class session.
- Whenever possible, please enable "show video." If for any reason you believe this might be an issue for you either for all classes or intermittently, please let me know. I will keep our conversation confidential.
- Use your "ubalt" email address and actual name when you log on to Zoom. This is necessary in order to accurately take attendance.

ASSIGNMENTS: Assigned readings are set forth below. Most classes will also include additional assignments/study questions which will be posted individually on TWEN. Readings will be supplemented with materials on the course TWEN site. The syllabus is also subject to change.

SIMULATIONS: You will perform many simulations during this course. We will typically use the "breakout rooms" feature of Zoom. I will distribute roll assignments and facts for each simulation usually prior to class. **IN ORDER TO PLAN FOR EACH SIMULATION, PLEASE ADVISE ME 24 HOURS PRIOR TO CLASS IF YOU BELIEVE YOU WILL NOT BE ATTENDING CLASS.** Obviously situations can arise when you will miss class for

unanticipated reasons. Should that be the case, please let me know, if possible, prior to class.

WEB PAGE: This course has a TWEN page through Westlaw. The page will include this syllabus and future revised syllabi, readings, and other materials. You are responsible for self-enrolling in the TWEN page and for checking it for course information.

GRADES:

There will be three components to the grading for this course: scholarly paper (65%); class participation (20%); paper presentation (20%). The following describes each of these components in greater detail.

Scholarly Paper (65%)

This course, as a seminar, fulfills the School of Law's upper level research and writing requirement. Each student will be required to submit a proposed topic for approval, an outline of the paper, a first draft, and the final paper. The following provides more detail on each of these steps:

The topic proposal: The topic proposal should be at least one typewritten page and include at least three sources, apart from readings from the course, that students believe relevant to their proposed topic.

The paper can be on any subject relating to ADR. There are many issues that we will not have time to discuss in this course, but which would make for interesting and important papers and contributions to this class. Students are encouraged to consider topics that will require some independent factual investigation and/or interviews, as well as legal analysis. I will review the proposed topic in order to assess whether it is too narrow, broad, or appropriate. Interdisciplinary research can be acceptable.

The outline: The outline must include all portions of the paper, from introduction to conclusion. It should contain headings for each section and subsections in a logical order. Key research sources should be noted in the outline where appropriate.

First draft: The first draft should be an attempt at writing the entire paper, including footnotes even if they are not yet in proper citation form. The more complete the first draft and the greater the effort put into it, the more useful the feedback students will receive.

Final draft: The final draft should be polished, proofread, and properly footnoted in ALWD or Bluebook form. The paper is to be students' own work, prepared solely for this seminar, involve significant research and analysis, and contain students' own perspectives on the issue or issues discussed. The paper must be at least 25 pages and no more than 30 pages, including footnotes. The text of the paper must be double-spaced with one-inch margins and use Times New Roman 12-point font. The

footnotes should be single-spaced. A detailed rubric for grading the paper will be posted on TWEN.

Presentation: Each student will present his or her topic in class. Each classroom presentation and the questioning that follows will be approximately 25 minutes. The presenter is responsible for having an outline of the presentation or, alternatively, a printout of PowerPoint slides to distribute to the class.

Due Dates (in TWEN Dropbox):

TOPIC AND THESIS June 17 by 5:00 pm

OUTLINE July 1, by 5:00 pm

FIRST DRAFT July 15, by 5:00 pm

FINAL DRAFT July 28 by 5:00 pm

Note that the grade for the paper includes the timely and full completion of each paper assignment. Hurried or undeveloped submissions will not receive full credit. No extensions will be granted unless there are extraordinary circumstances.

Class Participation (20%)

Class participation will be evaluated on the basis of consistent involvement in class discussion that displays familiarity with readings, and the level of preparation for role-plays and other class activities.

Paper Presentations (15%)

The last three classes of the seminar will involve primarily presentation of papers by students. Details and a schedule of presentations will be distributed in class.

ATTENDANCE

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

Note: attendance for only half of the class constitutes a half-day absence.

Regular Semester Hours		
Credit Hours	Meetings Per Week	
3	2	2.5 absences

CLASS CANCELLATION

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

ACADEMIC INTEGRITY

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

TITLE IX SEXUAL MISCONDUCT AND NONDISCRIMINATION POLICY

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

Disability Policy

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Director, Center of Educational Access, Office of Disability and Access Services, at 410-837-4141 or kschulz@ubalt.edu.

OUTLINE OF THE COURSE

I. INTRODUCTION TO CONFLICT ADR AND PROBLEM-SOLVING LAWYERING

- 6/8 Conflict and Dispute Resolution: An Introduction
Readings: Menkel-Meadow, pp. 3-12; 21-33; 43-73
Model Rules of Professional Conduct Rule 2.1 and Comments (TWEN)

II. NEGOTIATION

- 6/10 Theories and Practice of Negotiation
Readings: Menkel-Meadow, 77-104; 107-116
Simulation: Puppy Peril (To Be Distributed in Class)
- 6/15 Skills and Ethics
Reading: Menkel-Meadow: 129-137; 147-183

III. ARBITRATION

- 6/17 Introduction and Law
307-338; 345-346; 349-350; 364-371; 375-383
- 6/22 Practice and Ethics
Reading: Menkel-Meadow: 385-392; 401-424
Model Rule of Professional Conduct 2.4 (TWEN)

IV. MEDIATION

- 6/24 Theories and Norms of Mediation
Reading: Menkel-Meadow: pp. 185-222
- 6/29 Confidentiality/Practice Skills in Mediation
Reading: Menkel-Meadow: pp. 223-250; 259-260
- 7/1 Legal Representation in Mediation/Mediation Ethics
Reading: Menkel-Meadow: 250-258; 263-283; 297-301
- 7/6 Policy Issues/Simulations
Reading: p. 283-297

V. APPLICATIONS AND CONTEXTS

- 7/8 Hybrid Processes/Counseling Clients about ADR
Reading: 428-439; 448-456; 462-466; 470-472; 517-537

VI. POVERTY AND ADR

7/13 Socioeconomics and ADR

Readings:

Russell Engler, *Out of Sight and Out of Mind: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons* (TWEN)

Reginald A. Holmes, *Unrepresented Party (Pro Se) Arbitrations: The Arbitrator's Duty and the Fairness Imperative* (TWEN)

Robert Rubinson, *Of Grids and Gatekeepers: The Socioeconomics of Mediation* (TWEN)

VII. Paper Presentations

7/15 Paper Presentations

7/20 Paper Presentations

7/22 Paper Presentations