

LAW 412: ALTERNATIVE DISPUTE RESOLUTION SYLLABUS



compromise party advantage
strategy condition bargain
purpose tactic benefit
Negotiation goal
dialog accommodating
difference competing outcome
alternate collaborating
avoiding debate understanding
debate agreement
consideration gain principle



ALTERNATIVE DISPUTE

- Resolution -



Professor Derrick Howard
Fall Semester 2017

LAW 412: ALTERNATIVE DISPUTE RESOLUTION SYLLABUS

SEMESTER: Fall 2017

PROFESSOR: Derrick Howard
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REQUIRED TEXT:

The textbook is Riskin, Westbrook, Guthrie, Reuben, Robbennolt, and Welsh's *Dispute Resolution and Lawyers*, Abridged 5th ed. (2014) ("DRL"). In addition, throughout the semester I will distribute Supplementary Materials to you in class as Handouts or on Blackboard.

OFFICE HOURS:

Monday and Thursday (8:30 a.m.-10 a.m.) or by appointment. If you would prefer to set up an appointment, please e-mail me. If I need to contact you, I will use your Valpo e-mail account or the announcement page on Blackboard. You are responsible for checking these locations regularly. If you have a disabling condition that might require me to consider a reasonable accommodation, you have an affirmative obligation to notify me immediately.

COURSE CREDITS:

This is a 3 credit course.

CLASSROOM & TIMES:

Pelzer Classroom 155, Wesemann Hall; Monday and Thursday 11:30 a.m. to 12:45 p.m.

COURSE OBJECTIVES:

It is not possible to understand the processes by which we resolve disputes, simply by listening to someone talk about the subject: Actual experience is essential. So, in addition to the regular course lectures and discussions, on a number of occasions during the semester the class will be divided into small groups for the purpose of conducting exercises in negotiation, mediation, and other dispute resolution processes. These will be simple, self-contained exercises, which presumably can be carried out during class hours.

By the end of the course, you will understand and be able to use effectively:

1. Self-Aware Problem Solving Through Increased Mindfulness. You will have greater self-awareness of what you and others are doing when you are interacting. You will be able to manage effectively your and others' strong negative emotions in high-conflict situations. You will be able to create problem-solving conversations. You will be able to choose and apply useful interventions in negotiation and mediation to accomplish your objectives.
2. Negotiation Strategy. You will understand and use effectively different strategies of negotiation, such as:

- a. Performative Negotiation, where the issue is improving the parties' communication;
- b. Transformative Negotiation, where the issue is improving the parties' relationship;
- c. Integrative Negotiation, where the issue is creatively resolving a mutual problem; and
- d. Distributive Negotiation, where the issue is the fair exchange of value.

3. Mediator Concepts and Skills. You will understand the procedural framework and dynamics of mediation. You will understand and employ the basic mediator skills of initiating mediation, facilitating communication, asking questions, brainstorming, using private sessions called caucuses, analyzing risks, overcoming impasses, documenting agreements, and providing closure. You will understand mediation statutes and rules and mediator ethics and best practices.
4. Arbitration. This course also explores the distinctive characteristics and utility of private and public arbitrations. In discussing arbitration law, we will focus a great deal on procedures and practice issues – both within the arbitral setting as well as dealing with courtroom issues related to arbitration. We will consider the types of claims that go to arbitration and whether arbitration is appropriate in all circumstances. We will consider the historical reasons for arbitration and whether arbitration's expansion to deal with most disputes has promoted justice and fairness.

STUDENT LEARNING OUTCOMES:

This course will examine lawyers' roles and how they act when practicing as lawyers. It will focus on the theory and practice of appropriate dispute resolution and discuss resolution techniques that may be used in a variety of legal, administrative or other proceedings. There will be videos, simulations and other exercises to help reinforce the principles discussed. By the end of this course you will be able to:

- Understand the mediator's and arbitrator's roles;
- Understand the ethics standards for negotiators, mediators and arbitrators;
- Understand the processes of negotiation, mediation, arbitration, and their hybrids;
- Understand the benefits and weaknesses of each process;
- Understand the law of mediation and arbitration; and
- Practice beginning negotiation and mediation skills through simulations.

TEACHING ASSISTANTS:

Yasmeen Naoum and Jasmine Chowdhury

COURSE POLICIES:

Assignments

As you do the readings, consider what makes sense to you and what does not. Do not assume that everything in the readings is the only or necessarily correct perspective. For most issues in this course, there are multiple valid perspectives. Consider what generalizations you can develop that you can use to advance your clients' interests.

Discussion in class will inevitably cover some but not all of the material in the readings. If you have questions about the readings, please ask them, preferably in class. Readings for class are also listed in this Syllabus. There may be Supplementary Materials assigned as readings throughout the semester. There may be short written assignments distributed as well that will require some work both inside and outside of the classroom.

Class Attendance and Participation

Your grade is largely dependent upon your class attendance and participation. Therefore, your grade may be adjusted downward for unexcused absences, excessive tardiness, late assignments, leaving class early, lack of class preparedness, failure to participate in the exercises, discussions, and simulation activities, and disruptive class behavior.

Further, because the class is highly interactive -- requiring your participation in simulations and exercises on a regular basis -- your attendance is expected. Attendance will be taken by a sign-in sheet that will be passed around in class. Only sign in for yourself; do not sign in if you are late. Instead, please see me after class. You cannot participate if you are not in class, so being absent can affect your participation grade. You are allowed up to 3 absences during the semester. More than 3 absences will negatively affect your final grade and may subject you to academic withdrawal.

The final course grade will be a function of the grading components noted in this Syllabus. In addition, I am likely---after tentative grades have been placed on your exams---to take class participation into account raising or lowering grades in particular cases by one gradation (e.g., from B- to C+). By "class participation" I am referring to class discussions, participation in simulations and exercises, presence in class, and any written assignments. Note that I am *not* talking here about the quantity of class participation---I am talking about students who demonstrate that they have prepared and thought about the material ahead of time, who have asked themselves pertinent and interesting questions, and who are able to engage with each other and with me in the dialectic, that is, in dialogue and discussion.

Computer/Laptop Policy

The use of devices like laptops to surf the web; play solitaire; send e-mail and instant messages; look at photos, whether of the cute kitty or the "adult" variety; check sports results or the stock market; or go shopping, has proven extremely distracting and disrupting to other students who may just possibly be taking seriously the need for intense concentration in a graduate school environment. And me too. Therefore, laptops and other electronics are not to be used in this class---at any time (with the exception of the start of the Mediating Mayhem Negotiation Project, *infra*.)

Conduct

All work for this course must be completed in adherence to Valparaiso University Law School's rules and policies related to academic integrity, the Honor Code, and University Data and Network security policies.

Disability Support Services

Valparaiso University is committed to providing all students equitable access to Valpo's experiences and learning opportunities. Access and Accommodations Resource Center (AARC) is the campus office that works with students who have different abilities to provide and/or arrange reasonable accommodations.

- Students who have, or think they may have, different abilities (e.g. mental health, emotional, attentional, learning, vision, hearing, physical, systematic, chronic diseases, etc.) are invited to contact AARC to arrange a confidential discussion with the AARC office.
- Students registered with AARC, who have a letter requesting testing accommodations, are encouraged to contact Kristin Takish early in the semester to discuss accommodations outlined in their letter. At no point are you to contact your professors about

accommodations. Please work with AARC and Kristin Takish with anything related to accommodations.

Contact Information
(Office) 219.464.5206
(Fax) 219.464.5038
AARC@valpo.edu

valpo.edu/AccessAccommodationsResourceCenter

Grading

1. **Attendance, preparation and participation - 10%.** Students are expected to attend class, be on time and stay until class is dismissed. You should come to class prepared to discuss all of the readings and to participate in the simulation activities and exercises. Students are expected to volunteer in class, but will be called on if there are no volunteers. The quality, not quantity, of class participation is important. If a student is not prepared to participate in the discussion intelligently, I may consider that student absent from class.
2. **Independent Reflection Assignments – 4%.** Note that certain days on the calendar reflect “Independent review” or “independent reflection.” On these days, there will not be class, and you are expected to perform the independent task in question and submit a summary paper with reflections on the assignment. The paper should be double-spaced, Times New Roman font and 1” margins on each page. The summary exercise paper will be a two-page reflection on the assignment based on questions I will post on Blackboard.
3. **Quizzes - 16%.** After each section (negotiation, mediation, arbitration), a quiz will be distributed to assess your mastery of the topic. Each quiz will be worth 8 points. Your highest two quizzes will count towards your grade and the lowest quiz will not be counted. The quizzes will be fairly short and given during the end of class pursuant to the schedule below. They are designed to be completed within 15 minutes. You will put your name on your quiz. I do not give make-up quizzes, so if you are not present the day a quiz is given, you will receive a zero for that quiz.
4. **Final Project - 20%.** You must select a final project from one of the following options by August 31, 2017:
 - a. **Mediating Mayhem: Fantasy Football Negotiation Project:** If you select this as your final Project for this course, you will be required to join the Mediating Mayhem Fantasy Football League and perform 4 trade negotiations following specific guidelines. All trades must be completed by November 21, 2017, but you have until **December 1, 2017, at midnight** to submit your work product for this project on Blackboard.
 - b. **Final Paper:** You may either write a short (7-10 page) paper and present your work to the class near the end of the semester or you may write a longer (15-20 page) paper if you prefer not joining the Mediating Mayhem Negotiation Project. The shorter paper should be 7-10 pages long, in a 12-point font, one-inch margins on each page, double-spaced. Your topic should be scholarly in nature and deal with the development of, usage of, and your opinion of one of the primary methods of ADR discussed in this class (negotiation, mediation or arbitration). It should include footnotes and citations to key authority you utilized to develop your paper (15 minimum), similar to what would be found in a law review article. Your paper or project will be presented to the class. It will be a 3-5 minute presentation. Those who shy away from oral presentation may opt to turn in a longer, 15-20 page paper in lieu of the oral presentation (30 minimum citations). If you like a certain area of law, develop

your topic around it. Please contact me if you are struggling to develop a topic for your paper. Upon request, I am willing to review one rough draft paper and give feedback relative to the direction of the paper. However, I will not review any drafts that are given to me within 14 days of the due date of the final draft. Papers should be turned in via both email and hardcopy. You have until **December 1, 2017, at midnight** to submit your final paper.

5. **Final Exam - 50%.** The final exam will be distributed to the class on November 30, 2017, at noon. The exam will be a take-home exam. In real life you will be able to utilize resources to answer challenging legal questions. Therefore, you can utilize your book and notes for the exam in this class. You will have 24 hours to complete the exam and submit it on Blackboard by **Noon Friday, December 1.**
6. **Stone Soup Dispute Resolution Knowledge Project - Interview About an Actual Case - Extra Credit (5 Points):** This national Project is designed to promote global collaboration by faculty, students, scholars, practitioners, educational institutions, and professional associations to produce, disseminate, and use valuable qualitative data about actual dispute resolution practice for educational advancements, similar to the Stone Soup fable. This year, this Project should engage at least 700 students in 41 classes covering 15 subjects, taught by 27 faculty from 23 schools in 3 countries, including those of you from this class who voluntarily participate.

The goals of the assignment are to provide you with the opportunity to: (1) learn from someone's experience in an actual negotiation, mediation and/or arbitration as that process relates to an issue in this course; (2) practice interviewing skills including developing rapport and protecting confidentiality; and (3) reflect on how concepts we discuss in class may or may not apply in an actual case.

You should interview someone who has been involved in a "significant" negotiation, mediation and/or arbitration within the last year. It is considered significant if it took a substantial amount of time. The subject should describe a recent significant case involving the subject. The goal of the interview is to allow you to learn about an issue covered in this course, as it relates to the subject's past experiences. You should particularly look for anything that seems to deviate from theory – as well as to analyze things that seem to fit. In other words, **you should try to be truly open-minded about whether the subjects' accounts fit the theory or not.**

Submitting Your Paper - The report will be due on **December 1, 2017, by midnight**. The report should be 7-10 double-spaced typed pages, with one inch margins on each side, in Times New Roman 12 Font. About 1-2 pages should address your insights from the negotiation, mediation and/or arbitration. Other relevant deadlines are as follows: By end of class on August 28, 2017, inform Professor Howard that you will complete the Project; and By September 11, 2017, email to Professor Howard the name of the attorney who will be the subject of your interview. Additional instructions will be provided to those of you who indicated by the conclusion of class on August 28, 2017, that you will complete the assignment.

7. **Additional Extra Credit** - Periodically throughout the semester I reserve the right to offer additional extra credit projects. Should I choose to offer extra credit, you will be advised as to how you can receive the extra credit and how many points you will receive.

Honor Code Statement

The Honor Code pledge and your signature must appear at the **end** of every assignment you hand in. Any project or assignment handed in without the Honor Code pledge written and signed will be penalized. The following must appear on **all** your work:

I have neither given or received, nor have I tolerated others' use of unauthorized aid.

BY: *signed*
Name Printed

Recording Class

This class will not be recorded by Coursecasting unless someone in class needs this for accommodation under the ADA. Generally, students also may not record class using their own devices. Prior permission must be obtained from Professor Howard to record class.

Statement of Diversity

Valparaiso University Law School recognizes that our individual differences can deepen our understanding of one another and the world around us, rather than divide us. In this class, people of all ethnicities, genders or gender identities, religions, ages, sexual orientations, disabilities, socioeconomic backgrounds, regions, and nationalities are strongly encouraged to share their perspectives and experiences. If you feel your differences may in some way isolate you from our community, or if you have a need of any specific accommodations, please speak with Professor Howard early in the semester about your concerns and what we can do together to help you become an active and engaged member of our class and community. Please respect your fellow students' opinions and refrain from personal attacks or demeaning comments of any kind.

Syllabus Changes and Schedule Adjustments

The following Course Schedule is tentative. I emphasize that this is "tentative" because the precise topics covered---and when we get to them---will depend to some extent on the nature of class discussion and class interest, and on the availability and schedules of guest lecturers. I will of course keep you informed by e-mail with respect to any changes that are necessary, and with respect to the schedule for the later part of the semester.

Questions?

If you have any questions about how this course will proceed at this time, please make them known to me in a timely manner. In order to make sure the class runs smoothly and consistent with our mutual expectations, you must communicate your concerns and ideas to me when they arise, not after the semester or some other time when little can be done to make improvements.

COURSE SCHEDULE

Week	Weekly Reading Assignment	Class Activities & Exercises
1 - 8/14 and 17	<p>Read (1) Syllabus and (2) DRL, Chapter I - Overview of Dispute Resolution & Conflict Management, pages 1-41.</p> <p>Watch "<i>Bridge of Spies</i>" during the first week of classes. This is a film that will repay careful watching: It is rich in insight, as well as extremely entertaining. The price of admission is the writing of a very short memorandum---<u>which will not be graded</u>---and which is due by <u>noon on Monday, 8/21</u>. I would like you to write a 1-2 page memorandum, typewritten, concerning the film. <u>You may write about whatever you wish</u>, but I am particularly interested in your personal reaction to the story, and---while this is not in the least a research paper and need not be tied in with the required readings---I am of course interested in what you think the relevance of this film is to this course---and for that matter to your legal education generally. You should submit your paper on Blackboard by noon on the 21st. As noted, <u>this will not be graded, but a good faith effort is required of everyone</u>.</p>	<p>Class 1 – Discuss Syllabus and General Course Overview.</p> <p>Class 2 – Discuss DRL, pages 1-41.</p>
2 - 8/21 and 24	<p>Read DRL, Chapter II - The Attorney-Client Relationship, pages 43-97.</p> <p>Read DRL, Chapter III – Negotiation, Sections A-B, pages 99-112 and Handout.</p>	<p>Class 1 – Discuss DRL, pages 43-97 and "<i>Bridge of Spies</i>" Papers.</p> <p>Class 2 – Discuss DRL, pages 99-112 and Handout.</p>
3 - 8/28 and 8/31	<p>Read DRL, Chapter III – Negotiation, Sections C-D, pages 112-157.</p> <p>Read DRL, Chapter III – Negotiation, Sections E-F, pages 158-203.</p>	<p>Class 1 – Discuss DRL, pages 112-157.</p> <p>Class 2 – Discuss DRL, pages 158-203 and Mindfulness.</p>
4 - 9/4 and 7	<p>Read Handouts.</p>	<p>Class 1 – Commence Mediating Mayhem Negotiation Project.</p> <p>Class 2 – Cross the Line Exercise, video and/or simulation.</p>
5 - 9/11 and 14	<p>Read Handouts.</p>	<p>Class 1 – Race Horse Negotiation Exercise, video and/or simulation.</p> <p>Class 2 – Exercise, video and/or simulation and Quiz 1.</p>
6 - 9/18 and 21	<p>Read DRL, Chapter IV – Mediation, Sections A-B, pages 209-280.</p>	<p>Class 1 – Discuss DRL, pages 209-260.</p>

		Class 2 – Discuss DRL , pages 260-280.
7 - 9/25 and 28	Read DRL , Chapter IV – Mediation, Section C, pages 280-372.	Class 1 – Discuss DRL , pages 280-372. Class 2 – Continue discussion of DRL , pages 280-372.
8 - 10/9 and 12	Read DRL , Chapter IV – Mediation, Section D, Pages 372-386. Read ABA Model Standards of Conduct for Mediators (<i>see</i> Blackboard). Read DRL , Chapter IV – DRL Mediation Exercises, pages 386-390.	Class 1 – Discuss DRL , pages 372-386. Class 2 – DRL Mediation Exercises , video and/or simulation.
9 - 10/16 and 19	Read Handouts.	Class 1 – Red Devil Dog Lease Mediation Exercise, video and/or simulation. Class 2 – Exercise, video and/or simulation.
10 - 10/23 and 26	No reading this week	Class 1 – Mindfulness Mediation Exercise, video and/or simulation. Class 2 – A Neighbor to Neighbor Conflict Role Play Exercise, video and/or simulation and Quiz 2 .
11 - 10/30 and 11/2	Read Handouts.	Class 1 – Independent reflection and 2-page summary exercise. Class 2 - Guest Speaker and discuss DRL , pages 391-401 and hand in summary paper.
12 - 11/6 and 9	Read DRL , Chapter V - Arbitration, Section A-B, pages 391-477.	Class 1 – Discuss DRL , pages 391-477, Compulsory Arbitration Programs and sample Arbitration Clauses. Class 2 – Continue discussion of DRL , pages 391-477.
13 - 11/13 and 16	Read DRL , Chapter VI – Mixed Processes, Adaptations, and Other Innovations, Sections A-B, pages 495-568.	Class 1 – Discuss DRL , pages 495-568. Class 2 – Attend Taping of the Judge Mathis Show. (Please confirm now with

		any other faculty or employers that you will not have a conflict that should take priority over traveling to Chicago, IL to participate in this event.) Independent reflection and 2-page summary exercise.
14 - 11/27 and 30		<p>Class 1 - Continue discussion of <i>DRL</i>, pages 495-568 and Quiz 3.</p> <p>Class 2 – Exercise, video and/or simulation.</p>