

ALTERNATIVE DISPUTE RESOLUTION SYLLABUS

**PROFESSOR ILANA HURWITZ
FALL 2009**

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Mondays and Wednesdays 11:00am-12:30pm Room 1420

Office Hours: By Appointment

Course Description:

This course is designed to teach you the theory and practice of negotiation, mediation and arbitration by exposing you to conceptual and behavioral forms of learning. Every lawyer negotiates, whether in dispute resolution (litigation) or in transactional or planning contexts. Many do so without understanding why they do so or how they do it. This course is designed to give you some of the theoretical models and frameworks to guide your conceptualization of negotiation processes. This course will also introduce you to the process of facilitated negotiation: mediation; and to arbitration as an alternative to litigation. Since this is both a “theory” and a “practice” course, you will be required to read, to write, to discuss, and to perform.

Course Requirements:

1. Attendance:

Because you will be playing roles as clients and lawyers and the learning of the whole class depends on it, attendance is mandatory for all in class negotiations and mediations. Absence for any reason must be approved by me.

2. Readings:

The required course books are:

- Goldberg, Sander, Rogers and Cole, Dispute Resolution, Negotiation, Mediation, and Other Processes (5th Edition, Wolters Kluwer, 2007)
- Fisher, Ury & Patton, Getting to YES (2nd Edition, 1991)

Recommended books are:

- Stone, Patton and Heen, Difficult Conversations (Penguin, 1999)
- Ury, Getting Past No: Negotiating in Difficult Situations (Bantam 1993)

There are recommended articles on TWEN.

There will be a fee of \$3 per student for role play problems (for copyright purposes)

3. Grading:

The grade for this course will be based on the quality of your written work and on your participation in and discussion of exercises. Grades will not be based on competitive grounds on the “results” of outcomes of negotiations and mediations but rather on the process: your ability to think creatively and come up with good and wise solutions in your problem solving. Your preparation, commitment, insight and improvement in the course will count towards your final grade.

Grade breakdown:	Race Horse negotiation (observed and critiqued):	10%
	Negotiation Report on a negotiation of your choice:	10%
	Mediation Report on a mediation of your choice:	10%
	Class participation:	15%
	Final paper due last day of classes:	55%

4. Confidentiality:

Many of the problems depend on confidential instructions. It is important that you not share instructions about a problem until the debrief session. Your honesty, integrity and ethical conduct will not only be counted as part of your grade but will also influence how you are seen by your peers.

5. TWEN :

The syllabus, articles and other information will be posted on the TWEN (Westlaw) site for this course.

Course Schedule: The syllabus is subject to change to accommodate class progress and interest, and to permit guest speakers.

M Aug 31 st	Goals and objectives. Outline of the course. Mapping the landscape of dispute resolution processes. Personal dispute resolution experiences analyzed. “Win As Much As You Can.” (Exercise No. 1) Cooperation and claiming in negotiation. -Read <u>Getting to Yes</u> and DR pp 17-87.
W Sept. 2 nd	Overview of negotiation theory, distributive and integrative bargaining, reservation prices, BATNA’s, aspirations, opening offers and counters, the pattern of concessions. The value of information. Opportunities to create mutual gain. -Handout roles for Race Horse Negotiation (Exercise No. 2) and sign up for negotiation time.
Sept 3rd or Sept 8 th :	Each duo will sign up for a half hour to do the Race Horse Negotiation. The negotiation itself should be completed within 10-15 minutes. Instructions are on TWEN. Negotiations will be conducted in the

conference room opposite Suite 1020 (10th floor) and will be observed and critiqued by me.

- W Sept. 9th Race Horse Negotiation video. Positional vs. principled bargaining. The theory and practice of “Getting to Yes”.
– Handout roles for Camel Trails (Exercise No. 3). See TWEN for preparation.
- M Sept. 14th In class negotiation of Camel Trails and debrief. The conflict—analyzing parties, issues and negotiation procedures. Identifying and clarifying interests; probing for hidden interests and value creation.
– Handout roles for Eazy’s Garage (Exercise No. 4)
- W Sept 16th In class negotiation of Eazy’s Garage. Debrief of Eazy’s Garage. Addressing legitimacy and key persuasion criteria. BATNA and WATNA and reality testing.
– Read Len Leritz, “Negotiating with Problem People”
- M Sept 21st Further debrief of Eazy’s Garage. Communication styles, strategic choices. Dealing with the hard bargainer -- beyond GTY. Bullies we have known. Dirty tricks and how to counter them. Negotiation tactics.
– Handout roles for The Partnership (Exercise No. 5)
- W Sept 23rd In class negotiation of The Partnership. Communication and relationships in negotiation. Power in negotiation -- where it comes from, how to enhance it.
– Handout roles for Olive Trees (Exercise No. 6)
– Read DR pp. 572-578, Rubin and Sander and Notes
– Read “Women at the Bargaining Table: Pitfalls and Prospects”, 25 Negotiation Journal 233 (2009), see TWEN
- M Sept 28th No class Yom Kippur
- W Sept 30th In class negotiation of Olive Trees. The influence of culture and gender in negotiation. .
– Read “Three Ethical Issues in Negotiation” by Lax and Sebenius
– Review DR pp. 70-80 (White, Model Rules, and Shell)
– Handout roles for DONS Negotiation (Exercise No. 7) **Lawyers please meet with your clients outside of class to prepare for the negotiation on Monday. You must meet with your clients prior to Monday.** Lawyers please review MR 1.2; 1.6; 4.1; 8.4 and definitions before Monday (see TWEN)
- M Oct 5th In class lawyer negotiation of DONS. –clients to be observers

Review Meltsner and Schrag, DR pp 17-22; Ury, DR pp. 34-40, White, DR pp. 40-42. Clients to review MR 1.2; 1.6; 4.1; 8.4 and definitions.

- W Oct 7th Debrief DONS, Ethical issues in negotiation.
-Read “Get things Done Through Coalitions” by Margo Vanover
-Handout roles for FG & T Tower (General instructions, DR pp.101-103, Exercise No. 8)
- T Oct 13th Monday schedule.
In class negotiation of FG & T Tower
This is a multi-party negotiation and will take 90 minutes
- W Oct 14th Debrief of FG & T Tower, strategic negotiation analysis, inventing options for mutual gain, coalition building.
-Read DR chapter 3, read pp. 107-158, skim pp. 158-183, and read pp. 183-197 (this is a long reading, for the next two classes)
- M Oct 19th Negotiation wrap up with The Sluggers Come Home Video—discussion of preparing first offers, anchors, flinches, frames, breaking impasse, nibbles and post-settlement agreement.
- W Oct 21st Understanding how the mediation process works, stages in the process, mediation skills (relationship oriented, process-oriented and substance-oriented); types of mediators; the one-text procedure
-Handout The Neighborhood Spat (Exercise No. 9, DR p. 197)
- M Oct 26th In class mediation of The Neighborhood Spat and debrief with video. Mediator communication (active listening, open-ended questions); rapport building; establishing credibility and confidence; ways to reduce hostility.
-Handout Little v. Jenks (Exercise No. 10, DR p. 200)
-Read “Ten Principles of Mediation Ethics” by David Hoffman (see TWEN)
- W Oct 28th Fishbowl mediation of Little v. Jenks; discussion of mediation.
-Handout of The Red Devil Dog Lease (Exercise No. 11, DR p. 199)
-Read “Power Imbalances in Mediation: Questioning Some Common Assumptions,” by Jordi Agusti-Panareda. (see TWEN)
- M. Nov 2nd Guest Speaker

- W Nov. 4th In class mediation of The Red Devil Dog Lease and debrief with video; the role of mediator with power imbalance; process-oriented and substance-oriented behaviors.
- Handout Barry v. Knight and Santara v. Kessel (Exercise No. 12, DR pp. 199-200)
- M Nov 9th Mediate Barry and Santara and debrief.
- W Nov 11th The role of the mediator; Mediation Case Law videos and discussion
-Read DR pp. 213-253
- M Nov 16th Arbitration: Arbitration process; legal issues in arbitration; arbitration of statutory claims.
-Read DR pp. 253-297
- W Nov 18th Problems in arbitration; mandatory pre-dispute arbitration agreements; employment arbitration; arbitration ethics; international arbitration.
-Read DR 301-350; 578-585
- M Nov 23rd Hybrids, diagnosis and design and international examples of dispute resolution systems.
-Read DR 402-426; 441-462
- W Nov 25th No class, Thanksgiving recess.
- M Nov 30th Mandatory participation and pressure to settle. Confidentiality and fairness in ADR.
- W Dec 2nd Last class. Final report/problem is due at the Registrar's Office.