

# **Alternative Dispute Resolution**

Professor F. Peter Phillips  
New York Law School  
Spring, 2014  
Monday 7:50 pm - 9:30 pm  
Room W302

This course addresses dispute identification, management and resolution using methods other than litigation. The major units of the course are: the landscape of dispute resolution; negotiation; mediation; arbitration; hybrid dispute resolution processes; and conflict anticipation and management through contract drafting, systems design and other techniques. Emphasis will be on commercial dispute resolution, though domestic, employment and consumer applications will also be addressed. The focus will be on conflicts arising in the United States; international, cross-cultural and cross-border issues will be addressed only briefly.

Although the course will be of value to aspiring advocates, mediators and arbitrators, the aim of the course is to enable attorneys to counsel commercial clients on the most effective and appropriate ways to anticipate, manage and resolve commercial disputes by means other than litigation. The needs of the client will always be paramount. The core object of the course is to prepare the student to add value to the client through sophisticated counseling and skillful negotiation, drafting and other related skills. ADR processes will be examined from the perspective of arbitrators and mediators only insofar as such study will enhance skills in representing clients in ADR proceedings.

Active student participation, including classroom discussions, role plays and critiques, will be expected of each member of the class.

I can be contacted as follows:

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## Required Text:

- Folberg et al., *Resolving Disputes: Theory, Practice and Law* (2d ed. 2010).

## Class Assignments

### Class 1. 1-13-14 **Introduction and Course Overview**

Text pp. 1 – 37 (Chapters 1 & 2)

Landscape of Disputes  
Social and Legal Development of ADR  
Client-Centered Approaches to Dispute Management  
Introduction to Negotiation: Taking Control of Your Own Problems

### Class 2. 1-27-14 **Negotiation, Part I: Psychology and Styles**

Text pp. 39 – 93 (Chapters 3 & 4)

Subjectivity  
Notions of Fairness  
The Limits of Rationality  
Principles of Negotiation: Theory and Style

### Class 3. 2-10-14 **Negotiation, Part II: The Dance**

Text pp. 95 – 173 (Chapter 5)

The Stages of Negotiation  
Tools for Principled Negotiation  
Selected Problems

### Class 4. 2-17-14 **Negotiation, Part III: Impasse, Culture, Race, Ethics**

NOTE: 7:30 – 10:00

Text pp. 173 – 246 (Chapter 6, 7, 8)

Shadow Negotiation  
Culture: Respect Without Stereotype  
Disclosure, Deception, and Rule 4.1  
Conflicts of Interest  
Obligations of Client Control  
Coercion, Duress and Unconscionability  
Legal Significance of the Negotiation Process

### Class 5. 2-24-14 **Mediation, Part I: Overview, Cognitive Barriers, Client Representation**

Text pp. 249 – 375 (Chapters 9, 10 & 11)

NOTE: 7:30 – 10:00

Introduction to the Process  
Illustrations: the MIT and Microsoft Cases  
Mediation from the Mediator's Perspective  
Causes of Negotiation Impasse and Mediation's Value  
Salient Mediation Skills  
Managing the Threat of Impasse  
Representing Clients in Mediation

Class 6. 3-3-14 **Mediation, Part II: Representing Clients, Applications**

Text pp. 377 - 443 (Chapter 12 - 13)

Joint Meetings  
*Ex Parte* Sessions (Caucuses)  
Techniques for Breaking Impasse  
Family Disputes  
Employment Disputes  
Public Policy and Consensus-Building  
Intellectual Property Disputes  
Criminal Procedures and Restorative Justice  
Deal Mediation  
Online Mediation  
Disputes in Religious and Spiritual Communities

Class 7. 3-17-14 **Mediation, Part III: Policy, Ethics**

Text pp. 445 – 533 (Chapters 14 & 15)

Court-Connected Mediation  
The Downside of Private Dispute Resolution  
Dangers of Mediation: Concerns of Policy and Justice  
Mediation Ethics; Mediation and the Law  
Mediation Regulation  
Mid-Course Review

Class 8. 3-24-14 **Arbitration Part I: Overview of the Process**

Text: 537 – 609 (Chapters 16 & 17)

History of Arbitration

Arbitration and Litigation Compared  
Illustration of Applications of Arbitration  
Agreements, Procedures, Awards  
Med-Arb

Class 9. 3-31-14 **Arbitration, Part II: The Law**

Text pp. 611–17, [\*Amaprop Limited v. Indiabulls Financial Services Ltd.\*](#),  
620-30, [\*AT&T Mobility v. Concepcion\*](#), 653-56, 659-64, 675-90 (Chapter 18)

The Federal Arbitration Act  
State Arbitration Statutes  
Selected Principles of Arbitration Jurisprudence

Class 10. 4-7-14 **Arbitration, Part III: Fairness and Legislation**

Text pp. 695-704, 717-31 (Chapter 19)

Examples of Extending Arbitration Beyond Contract  
Notions of Substantive and Procedural Fairness, and Their Utility  
Due Process Protocols  
Current Legislative Initiatives

Class 11. 4-21-14 **Arbitration, Part IV: Miscellaneous Topics**

[\*Stolt-Neilson v. Animal Feeds\*](#); [BCM Blog Post on \*Sutter v. Oxford\*](#); [\*Rent-a-Center v. Jackson\*](#); [BCM Blog Post on Cornell Survey](#); [Abstract of Stipanowich Article](#)

Class Actions  
Severability and Arbitrability  
Trends in Use of Arbitration  
Guest Speakers TBA

Class 12. 4-25-14 **Managing Conflict and Adding Client Value**

Text pp. 735-62, 766-68, 775-81, 784-90 (Chapters 20, 21 & 22)

Varieties of Customized Dispute Resolution Processes  
Systems Design  
The Lawyer as an Evolving Professional

Class 13. 4-28-14 **Miscellaneous Topics**

Course Review  
Non-Legal Conflict Anticipation and Avoidance  
Conflict Transformation  
Conflict Anticipation and Management