

UIC JOHN MARSHALL LAW SCHOOL



SPRING 2020 SYLLABUS

JD-119-2 2020 FA: Arbitration Advocacy: Practical Skills and Training

General Information

Professor:

Steven Bierig - email arb438@comcast.net
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tel. 847-236-1003

Preferred contact method: Feel free to email or call. Email is best. I will pick up or respond as soon as possible

Class: Mondays, 6:00 pm – 8:00 pm, Room 1100 State Street

Office hours: I do not have an office on campus, but I am happy to meet with you at any time that is mutually convenient. I will also generally be in the classroom early and can usually stay late to discuss any issues with you.

Course Credit: 2 hours

Course Description

The objective of this Skills Course is to give you an overview of arbitration to help you decide if you would like to work in this field and to help you develop solid arbitration skills if you do so. Because my background is in labor arbitration, this class will have an emphasis on labor arbitration. This is meant to be a practical course. Together, I expect that we seek to work hard, have fun and learn as much about understanding, applying and analyzing the arbitration process. At the end of the course, you should be able to prepare for and advocate in an arbitration.

Specific goals include the following:

1. Students and teacher will have a challenging and fun learning experience.
2. Students will:
 - a. Demonstrate respect for students, staff, and faculty;
 - b. Develop an attitude of cooperation with students, faculty, lawyers, and arbitrators;
 - c. Develop on-going investment and monitoring of professional development;
 - d. Identify ethical issues involved in arbitration issues;
 - e. Demonstrate honesty, reliability, responsibility, judgment, self-motivation, hard work, and critical self-reflection.
3. Skills
 - a. Describe the difference between arbitration, mediation and other forms of dispute resolution;
 - b. Describe arbitration procedure and practice
 - c. Identify and describe areas of potential conflict between arbitration and other venues;
 - d. Describe the powers and responsibilities of the arbitrator and the roles of arbitrating parties.
 - e. Describe how to select an arbitration panel;
 - f. Prepare for an arbitration hearing;
 - g. Conduct an arbitration hearing.
 - h. Write a Post-Hearing Brief.
4. Legal Argument. Students will be able to make an effective legal argument by:
 - a. Identifying legal issues;
 - b. Identifying relevant facts and authority;
 - c. Supporting the client's position with relevant facts and authority; and
 - d. Distinguishing unfavorable facts and authority.
5. Legal Drafting. Students will draft arbitration documents that communicate clearly, are persuasive, and comply with applicable rules and law.

TEACHING AND LEARNING METHODS

I will use a variety of teaching/learning methods to achieve the goals of this course, to keep things interesting, and to accommodate various learning styles.

The methods include:

- A. Teacher and student presentation;
- B. Whole class, small group and team discussion and problem solving;
- C. Simulations - preparation of arbitration documents and participation in arbitration proceedings;
- D. Writing assignments; and

G. Other fun things.

ROLES

A. Teacher

1. Work to help students succeed in the course;
2. Share knowledge;
3. Model skills and values;
4. Provide feedback to students;
5. Lead in course and class design;
6. Lead in maintaining a positive, challenging learning environment;
7. Provide feedback to students;
8. Grade student performance; and
9. Other fun things.

B. Students

1. Work to achieve the goals of the course;
2. Actively contribute to maintaining a positive, respectful, challenging learning environment;
3. Share knowledge and insights;
4. Provide feedback to teacher and other students;
5. Cooperate and collaborate with other students working in teams; and
6. Other fun things.

PROFESSIONAL ENGAGEMENT IN LAW SCHOOL

As you may know, you are creating your professional reputation in the law. Please behave as the best attorneys do. This includes paying attention and responding to what others say as well as working with others to collectively learn the material. Please be prepared for class and to be ready to work. Please listen to others, avoid dominating discussion, take the initiative to improve your skills, take risks and be resourceful. Please seek help when you realize you need it or when recommended. Please show up every day on time and stay in class the whole time. If you have questions about this, please contact me.

At times, you will be working in teams. Everyone in the team has the responsibility of making sure that the team works together effectively and efficiently. If you perceive that there are any issues with regards to working in teams, please contact me as soon as possible. If you are unable to attend a class due to illness or other good reason, please notify me, and your team, in writing before class, if at all possible.

Absences will be dealt with in accordance with UIC John Marshall policies, (See Below) but please remember – you cannot expect a good grade if you don't attend classes. You are responsible for learning information and getting the handouts provided in class or

made available online. If you missed class, talk to classmates to learn what happened and get notes. After talking to classmates, if you have additional questions, talk to me.

When you are in class, please be prepared to participate in the discussion— and to engage. Being “prepared” means that you will have read and thought about the assigned materials, completed assigned work, and be ready to engage and discuss this work with others. You will not be penalized for asking what you might think are “stupid questions” or letting me know when you are confused. In class, you are each responsible for participating to an appropriate extent, i.e., neither being silent nor dominating the discussion, but doing your share of the talking. If you cannot prepare for a class, please notify me that you are unprepared at the beginning of class.

Professional engagement includes:

- Resourcefulness. If you have a problem, first try to figure out a way to solve it.
- Taking risks. For some of you, this means volunteering to speak in a class. For others, it is the risk of being silent and not leading a small group discussion. It may mean admitting that you are off track or that you need help with an aspect of the course.
- Behavior in class. Interrupting others, talking while whole class instruction or discussion is going on, or making disparaging remarks about other students is unacceptable. Encouraging and allowing others to talk is as important as your talking. Listening skills are an enormous aspect of effective lawyering.
- Attitude. Having a positive approach to working with others is important. You are welcome to voice your questions, concerns, and complaints about the course. You are asked to do so directly to me, in person. If you have a complaint, be prepared to offer a solution.
- Depth and thoughtfulness of your work. This includes in-class contributions and written assignments.
- Investing in your learning and growing from your mistakes. If you have received feedback on an assignment, try to understand it and use it. If one learning approach has not worked effectively, try another, and reflect on what works. Ask questions about material you don’t understand, and struggle with analyzing a problem before giving up. If you sense you are falling behind, based on exercises and class assignments, please ask for help.
- Effort and perseverance. This overlaps with some of the other categories but bears repeating. A student who does not give up, but keeps working to develop his or her skills, regardless of where he or she is, is acting professionally.
- Timeliness. All assignments must be completed on time.

The class involves interactive exercises and/or mock arbitration proceedings. Therefore, good communication and interpersonal skills will be expected. Attendance and participation are essential.

Academic Integrity:

As an academic community, UIC is committed to providing an environment in which research, learning, and scholarship can flourish and in which all endeavors are guided by academic and professional integrity. All members of the campus community—students, staff, faculty, and administrators—share the responsibility of insuring that these standards are upheld so that such an environment exists. Instances of academic misconduct by students are governed by law school policies on academic integrity and professional misconduct as well as by the UIC Student Disciplinary Policy. Additional information may be found at <https://www.jmls.edu/policy/>.

Disability Accommodations

The University of Illinois at Chicago is committed to maintaining a barrier-free environment so that individuals with disabilities can fully access programs, courses, services, and activities at UIC. Students with disabilities who require accommodations for full access and participation in UIC programs must be registered with the Disability Resource Center (DRC), <https://drc.uic.edu/>. Please contact DRC at (312) 413-2183 (voice) or (312) 413-0123 (TDD).

Other Policies

The law school's policies on attendance, class recordings, grading, academic grievances, and other matters may be found at <https://www.jmls.edu/policy/>.

UIC John Marshall Attendance Policy: The Board of Law Examiners in each state requires a certificate of attendance from the law schools attended by the applicant in order to take the bar examination. To execute this certificate faithfully, The UIC John Marshall must insist on regular class attendance. Therefore, students must attend scheduled classes. A student absent for more than 25-percent of the total number of class meetings will receive a grade of WF (withdraw-fail). The number of absences permitted may be reduced by your professor on written notice at the beginning of class.

The UIC John Marshall recognizes the diversity of religious practices of its students, faculty, and staff. Thus, in addition to the 25-percent allowed, students are excused for religious observances from two class sessions in each course enrolled in every semester. Students must notify the professor in writing in advance of the class that they will miss due to religious observance.

In truly exceptional circumstances, a student may petition in writing and state good cause why this policy should be waived. The waiver must be approved by the professor teaching the course with the concurrence of the CADR director and the Vice Dean for Academic Affairs. Consideration in granting the waiver will be given to the total number of classes missed, the subject matter of the course, what steps the students has taken to cover the

material missed during the absences, and the reasons given by the student for the absences. The granting of waivers is discretionary.

The professor will take attendance for each regularly scheduled class and may alert a student who is approaching the maximum number of absences. However, a professor's failure to alert a student who is at or near the maximum number of absences will not serve as an affirmative defense to a violation of the attendance policy. The student is required to independently keep track of his or her absences.

ABA Expected Workload Policy: For every credit hour earned, students are expected to spend 2 hours per week working outside of class. Out-of-class work may include such activities as reading, reviewing, outlining, studying, or otherwise working on materials and assignments for the course.

Required Text

Charles Loughran, *How to Prepare And Present a Labor Arbitration Case*, BNA 2nd Edition. ISBN No. 1-57018-562-X; 978-57018-562-5

Recommended References

Elkouri & Elkouri, *How Arbitration Works*; 8TH Ed.
American Arbitration Association website: www.adr.org
National Academy of Arbitrators website: www.naarb.org

Course Policies

Because of the interactive nature of the class, attendance and participation are mandatory. Class participation will be count for 10%. Students will be graded based on their performance on the final examination in the form of a mock arbitration (50% -- ½ each for your oral performance and your Post-Hearing Brief), and 4 simulation exercises (4x10% = 40%). Because of the limited number of students in the class, grading will not be on a curve.

Detailed Course Syllabus

Two-credit Course

Week 1: January 13, 2020

WELCOME!!!!

- Introduction of Students and Faculty

- General Introduction and Overview of Arbitration
- Discussion of Skills needed for Arbitration
- Discussion of Arbitration versus Litigation
- Viewing of “The Art and Science of Labor Arbitration”

JANUARY 20, 2020 – NO CLASS – MARTIN LUTHER KING DAY

Reading for Week 2: Chapter 1

Week 2: January 27, 2020

General Description of Arbitration in Alternative Dispute Resolution (“ADR”) context.

- Some History of Arbitration
- Types of Arbitration
- Overview of process
- Differences between Arbitration and Mediation
- Advantages and Disadvantages of Arbitration, Mediation and Court Adjudication
- Initiating the process

Preliminary Pre-Arbitration Considerations

- Stages of Arbitration Process

Reading for Week 3: Chapters 2, 3

Week 3: February 3, 2020

Preliminary Pre-Arbitration Considerations Continued

- Selecting Cases for Arbitration
- The Grievance Procedure
- Exploring Settlement

Reading for Week 4: Chapter 4

Week 4: February 10, 2020

Selecting the Arbitrator

- Why is this important?
- How is this done?
- Researching an Arbitrator
- The library

Scheduling the Hearing and other pre-hearing considerations

Reading for Week 5: Chapters 5, 6

Distribution & discussion of the final exam, assignment of roles.

Week 5: February 17, 2020

Preparing for Arbitration

- Assembling the Evidence
- Determining Facts
- Interviewing and Evaluating Witnesses
- Documents
- Exhibits

Formulating Arguments

- Researching cases
- Reviewing Authorities
- Deciding if you have a case!

Reading for Week 6: Chapters 7, 8

Week 6: February 24, 2020

THE FINAL COUNTDOWN!!!

- Selecting your witnesses
- Preparing your witnesses
- Theory of the Case

Preliminary Hearing Matters

- Discovery
- Court Reporters
- Stipulations
- Arrangements
- Site visits

- Prepare, Prepare, Prepare!!!!

Reading for Week 7: Chapters 9

Assignment for March 2, 2020 Class – prepare an opening statement

Week 7: March 2, 2020

THE HEARING – Part 1

- The Opening Statement
- Strategic Issues
- Sample Opening Statement
- Present Opening Statements

Reading for Week 8 - Chapters 10, 11

Assignment for Week 8 – prepare a Direct Examination

Week 8: March 9, 2020

Advocacy During Arbitration Hearing continued

- Direct Examination
- Evidentiary Rules
- Introducing Documents
- Expert Witnesses

Be prepared to conduct a direct examination of a witness

Reading for Week 9: Chapters 12, 13

Assignment for Week 9 – prepare a cross examination

Week 9: March 16, 2020

Advocacy During Arbitration Hearing continued

- Cross-Examination and all its interesting facets
- Impeachment
- Objections

Be Prepared to conduct a cross examination of a witness

Reading for Week 10: Chapters 14-16

Assignment for Week 10 – Prepare a Closing Argument

MARCH 23, 2020 – NO CLASS – SPRING BREAK!

Week 10: March 30, 2020

Advocacy During Arbitration Hearing continued

- Redirect and Recross Examinations
- Rebuttal
- Making sure you have concluded your case properly

Advocacy after an Arbitration Hearing

- Closing Arguments
- Post hearing Briefs
- How to choose
- How to write
- How not to write!

Be Prepared to give a closing argument

Week 11: April 6, 2020

- Arbitration Wrap Up
- Prep for Final Mock Trial
- Discussion of Post-Hearing Brief

Week 12: April 13, 2020

FINAL MOCK ARBITRATION

Finals Weeks:

POST HEARING BRIEF DUE MAY 8, 2020