

Alternative Dispute Resolution

Law 219.001 (3 credits)

Fall 2019

Tuesdays 3:10-6:10 pm

No course prerequisites

Professor Sam Jackson

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(No office hours, but available by appointment)

Required Text: Jay Folberg, Dwight Golann, et al., *Resolving Disputes: Theory, Practice & Law* (3rd ed. 2016).

Recommended: Roger Fisher, et al, *Getting to Yes* (3d ed. 2011).

J. Anderson Little, *Making Money Talk* (2007).

Alternative Dispute Resolution in North Carolina (E. Manley ed.) (2d ed. 2012).

Stephen J. Ware, *Alternative Dispute Resolution* (3rd ed. 2016).

Course objectives. This course examines the various alternatives to adjudication that lawyers use to help clients resolve civil disputes, including negotiation, mediation, collaborative practice, arbitration, private and public hybrids and other innovative processes. Students will learn about the theoretical basis, legal framework and practical operation of each process. The course will also address process design, effective advocacy in ADR settings, ethical and policy issues relevant to each process, and the relationship of ADR processes to the court system.

Course policies. We will spend a significant part of each class engaged in role play simulations and other activities. Class attendance, therefore, is *required*. I monitor class attendance by checking a printed roll sheet. Absence or lateness will have a significant negative effect on your grade (excused absences are limited to religious observances, or medical or family emergencies). If you expect to miss a class, you must notify me prior to the class you will miss. Before each role play, you may receive some “confidential information.” Please do not discuss the “confidential information” with your classmates, except during the simulation with your assigned counterpart(s). Students are also expected to do the readings assigned for each class.

Electronic devices. Students may not use laptops, tablets, wireless phones, and other such devices during class, unless the instructor expressly grants permission.

Written papers. The written papers should be typed, double-spaced, with one inch margins. I prefer that you submit each paper, in Word or pdf format, on this course’s Sakai site in the appropriate drop box. Alternatively, you may email it to me. If you turn your assignment in late, there will be a significant negative effect on your grade. Each paper must be your own independent work and must be work that you prepared solely for this course. The Honor Code is in effect in this class. I am committed to treating Honor Code violations seriously and encourage all students to become familiar with its terms set out at <http://instrument.unc.edu>. If you have questions, it is your responsibility to ask me about the Code's application. All written work must be submitted with a statement that you have complied with the requirements of the Honor Code in all aspects of the submitted work.

Grades. Grades will be based on (1) class participation and application of skills (20% of grade); (2) three short assignments (two assignment prep sheets) and a negotiated and annotated dispute resolution provision, the latter due on **November 25, 2019** (20% of grade); and (3) a final paper, responding to assigned questions, due on **December 6, 2019** (60% of grade).

Fall 2019 Schedule

Class	Topics & readings in <i>Resolving Disputes</i> (3rd ed. 2016).	
8/27	Overview; negotiation process. 1-10 (ADR processes); 25-31, 95-96 (negotiation); 109-117 (information); 193-94 (Rule 4.1).	
9/3	Positional bargaining; case value. 61-67 (competitive bargaining); 145-51 (case value); 122-27 (offers and concessions); 132-44 (power, commitment, deadlines); 156-59 (closure).	
9/10	Problem solving negotiation; client counseling. 18-21 (counseling); 67-76 (problem solving negotiation); 81-82 (differences); 127-29 (trades); 160-67 (logrolling, contingencies, etc.).	
9/17	Culture; introduction to mediation. 178-88 (culture); 206-11 (legal impediments); 253-56 (mediation process); 271-76 (goals); 276-82 (approaches to mediation).	Due: prep sheet #1.
9/24	Mediation values and skills. 525-29 (mediator standards of conduct); 303-7 (skills and listening); 308-10 (reframing); 311-13 (interests and options); 318-22 (emotion); 152-56, 324-25 (apology) 327-34 (cognitive biases); Douglas Stone & Sheila Heen, "Bone Chips to Dinosaurs," <i>Handbook of Dispute Resolution</i> 151-160 (Michael Moffitt & Robert Bordone, eds. 2005) (Reserve & Sakai). <i>Supplemental source:</i> N. C. Revised Standards of Professional Conduct for Mediators (Sakai).	
10/1	Confidentiality; mediation process. 313-17 (positional bargaining); 335-49 (merits obstacles, evaluation); 529-36 (mediator ethics); 483-91 (confidentiality); 503-5 (uniform mediation act); 514-17 (settlement). <i>skim:</i> N.C. Gen. Stat. § 7A-38.1 (Sakai).	Due: prep sheet # 2.
10/8	Mediation process; role of advocate. 365-72 (advocate's initiation of process); 374-80 (advocate's planning); 381-89 (opening session); 390-95 (caucus); 397-411 (bargaining in mediation); 505-07 (pre-dispute mediation provisions).	
10/15	Court-connected programs; family mediation and other processes. 449-54, 456-59 (court programs); 507-13 (mandates); 517-20 (credentialing); 464-68, 472-76 (power dynamics, domestic violence); 413-14, 419-22 (family mediation); John Lande, "The Revolution in Family Law Dispute Resolution," 24 <i>J. Am. Acad. Matrim. Law</i> 411, 420-22, 438-440, 442-444 (2012) (family law processes) (Sakai). <i>Supplemental sources:</i> N.C. Gen. Stat. §§ 50-13.1 (custody mediation) (Sakai).	
10/22	Collaborative process; arbitration; dispute resolution provisions. 213-16 (collaborative process); 796-99 (other processes); 816-18 (stepped processes); 544-55 (arbitration); 573-88 (arbitration agreements). <i>Supplemental sources:</i> N.C. Gen. Stat. §§ 50-71 et seq. (collaborative law).	
10/29	Arbitration process. 595-98 (disclosure); 603-25 (arbitration process); <i>Skim:</i> AAA "Hypothetical Case Documents," pp. 14-38, 41-43, 61-66 (Sakai).	
11/5	Legal framework for arbitration. 629-38 (Federal Arbitration Act; state law); 638-41, 644-47 (arbitrability); 647-49, 758-64 (separability); 657-69 (preemption); 743-44 (unconscionability); 764-72 (class action waivers); 650-51, 720-23, 773-79 (federal claims).	
11/12	Review; fairness and integrity of the arbitration process. 675-80, 692-98, 700-05 (vacatur); 727-35 (fairness); 744-47 (judicial supervision); 751-58 (legislative responses).	
11/19	Mixed processes. 625-27, 783-95 (mixed processes).	Due: Annotated provision, on November 25, 2019 by noon.
Due: Final paper on Friday December 6, 2019 by 9 pm.		