

**EMPIRE COLLEGE SCHOOL OF LAW
ALTERNATIVE DISPUTE RESOLUTION**

SYLLABUS

(Summer 09—Nota Bene: A final syllabus will be circulated the first night of class)

- COURSE NUMBER:** C501
COURSE NAME: Alternative Dispute Resolution Survey (Law/Skills)
TERM: Summer Semester, 2009
- PROFESSOR:** Scott O'Brien
scotto@sonic.net 707-829-0522
- DATE/TIME:** Wednesdays; 4:00-6:00 p.m.
- UNITS:** 2 UNITS
- TEXTS:** Folberg, Golann, Kloppenberg & Stipanowich, *Resolving Disputes, Theory, Practice, and Law*, New York: Aspen Publishers, 2005

Fischer, Roger, Ertel, Danny, Getting Ready to Negotiate, The Getting to Yes Workbook, Penguin Books: New York, 1995
- GRADING:** Pass (credit)/Fail (no credit)
- GRADE DETERMINATION:** Students are expected to complete all reading and homework assignments and to participate in class, and must take a written final examination: course work will be weighted as follows:
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| Homework, including reading assignments and class participation, <i>excluding mediations simulations</i> | 20% |
| Participation in practice mediations as counsel/party . . . | 30% |
| Participation in practice mediations as mediator | 20% |
| Written final examination (covers all types of ADR including mediation; emphasis on judicial and contractual arbitration) | 30% |
- Scores may be reduced for poor attendance, poor preparation and/or failure to do homework assignments.
- Preparation, participation and homework, including reading assignments, are mandatory. Instructor may deduct up to 10 points from course score for lack of preparation or participation or failure to submit homework assignments.
- ATTENDANCE:** Regular and punctual attendance is essential for the successful completion of law school. Students should plan to attend every class. A minimum of 80 percent attendance is required (**12 of 15 classes**). Roll will be taken at each class.
- GOALS:** Alternative Dispute Resolution is a broad field. The purpose of this class is to provide students with an overview of all types of alternative dispute resolution, with emphasis on Judicial

Arbitration, Private Arbitration, and Mediation, with emphasis on the role of an advocate. The course will cover *Skills* as well as law. This course begins with Arbitration, an adjudicative process founded on the adversarial model of dispute resolution. Negotiation can be based on either a collaborative or an adversarial model. Mediation emphasizes different goals and values than the traditional adversarial model for litigation. The mediation segment of the course will provide students with an opportunity to participate in the mediation process as mediators, advocates, and clients. We will also cover other forms of alternative dispute resolution such as negotiation, neutral evaluation and settlement conferences. For approximately half of the class, a portion of each class session will be spent on *Skills* for negotiation and mediation. We will also look at elements of persuasion and ethics. You are not required to keep a class journal but it is recommended.

JOURNALS:

As future attorneys, you may find it helpful to make an entry in your journal for each class, summarizing the material, what you learned, and your responses to the very different approaches to alternative dispute resolution.

WEEKLY SCHEDULE ASSIGNMENTS

Reading Assignments listed below are to be read prior to class; suggested further reading lists are optional.

The class is divided into two major segments: I. Arbitration (Weeks 2 through 5) and II. Negotiation and Mediation (Weeks 8 through 12). The second hour of Weeks 2 through 6 will be devoted to *Skills* that will be employed in the Negotiation and Mediation segment.

NOTE: The course and syllabus has been extensively revised to add new material and to provide additional opportunities for skill development. A final course syllabus will be distributed at the first meeting of class. The texts for the course **will not** change.

- WEEK 1
May 6 **Introduction to Alternative Dispute Resolution**
Reading Assignment: Text, chapters 1, 2, and Chapter 22, section E (Reno, Janet)
- WEEK 2
May 13 **Introduction to Arbitration; the Arbitration Process**
Reading Assignment: Text Chapter 15; Skills: Text Chapter 10, sections A.1. and A.2.
Skills: Active Listening (Looping/Reframing)
- WEEK 3
May 20 **Judicial Arbitration (California)**
Reading Assignment: C.C.P. §§1141.10 through 1141.31; California Rules of Court, Rules 3.810-3.830; Skills: Workbook, Chapter 7
Skills: Communication: Preparing to Listen and Talk Effectively
- WEEK 4
May 27 **Federal Arbitration Act, California Arbitration Law and Procedure**
Reading Assignment: Text Chapter 15, selected portions of Chapters 16 and 17; C.C.P. §§1280 – 1293.1 (Enforcement of Arbitration Agreements); California Rules of Court, Rule 3.1330; *Moncharsh v. Heily & Blase* (1992) 3 Cal. 4th 1, Skills: Text Chapter 10, section B.1., Workbook, Chapter 8, Relationship 1.
Skills: People Issues

Specialized types of Arbitration

WEEK 5

June 3

Employment Contracts, Consumer Contracts, Commercial Arbitration, Medical Malpractice, International Arbitration, Fee Arbitration in California (handout).
Reading Assignment: Text Chapter 17; Skills: Text Chapter 10, sections A.3. and 4, Workbook, Chapter 4
Skills: Substantive Issues/Options/Alternatives

WEEK 6

June 10

Other Forms of Alternative Dispute Resolution

Settlement Conferences, Early Neutral Evaluation, Private Judging, On-line Dispute Resolution

Reading Assignment: Text, Chapter 19 and Chapter 22, section C.; Cal. Rules of Court, Rule 3.1380, Skills: Workbook Chapters 5 and 6.
Skills: The Best Alternative to a Negotiated Agreement; External Standards

WEEK 7

June 17

Negotiation

Reading Assignment: Text: Chapter 4, Skills, Workbook, Chapter 8, Relationship 2.
Skills: Building a Good Working Relationship

WEEK 8

June 24

Introduction to Mediation

Statutory Framework, Types of Mediation, Mediation Confidentiality, the Role of the Neutral, Stages of Mediation, Mediator Styles, Enforcement of Mediation Agreements

Reading Assignment: Text: Chapter 9, Reading Assignment: Text, Chapters 9 and 10; CCP 664.6, Evidence Code §§1115 – 1128; *Rojas v. Superior Court* (2004) 33 Cal.4th 407; *Foxgate Homeowner's Assn. v. Bramalea* (2001) 26 Cal. 4th 1; *Frei v. Davey* (2005) 124 Cal.App.4th 1506; Skills: Text Chapter 6
Skills: Gender and Cultural Considerations

WEEK 9

July 1

Mediation Advocacy

Reading Assignment: Text Chapter 11; Skills: Text Chapter 3
Skills: Cognitive Barriers

WEEK 10

July 8

Mediation

Gary Friedman from the Center for Understanding in Conflict and Center for Mediation in Law, and the Harvard Mediation Center will be our guest speaker at this session.

Ethics: Negotiators, Arbitrators, Mediators.

WEEK 11

July 15 Reading Assignment: Text, Selected Portions of Chapters 7 and 8; California Rules of Court, Rules 3.850-3.868; California Rules of Court, Appendix, Division VI, Ethics Standards for Neutral Arbitrators in Contractual Arbitration.

WEEK 12 Practice Mediations

July 22

WEEK 13 Practice Mediations

July 29

WEEK 14 Practice Mediations

August 5

WEEK 15-17 Final Examination (Date TBD)