

Dalhousie University
Law School

Professor Carol Aylward
Room 321 Weldon Law Building
Telephone: 494-7123
Email: carol.aylward@dal.ca

ALTERNATIVE DISPUTE RESOLUTION
(Course 2113.01)
(3 Credit Course)

Class Syllabus (Winter Term 2011)

CLASS TIMES:

One and one half (1 ½) hour class twice a week
Class will meet on **Tuesdays and Thursdays from 1-2:30 in room 429**

OFFICE HOURS:

3-4 Tuesdays: Office 321

COURSE DESCRIPTION:

This seminar class will provide students with an opportunity to learn about and develop conflict management skills. The class will provide students with an opportunity to consider the theory and practice of various dispute resolution techniques, such as negotiation, mediation and arbitration. The class will involve skills development exercises and discussion of topical readings on the subject of dispute resolution processes (Dalhousie Law School calendar). Law school courses generally focus on litigation as a model for resolving legal disputes, yet only a fraction of disputes actually go to trial. Alternative Dispute Resolution (ADR) is a non-adversarial way of resolving conflict. It is about solving problems rather than imposing solutions through an adjudicative process. It can also yield creative and far-reaching solutions to issues of systemic discrimination.

COURSE OBJECTIVES:

- 1) Develop an understanding of the types of conflict in society and increase students understanding of alternative dispute resolution theory and practice including negotiation, mediation and arbitration.
- 2) To increase awareness of the advantages and disadvantages of various dispute resolution processes and discuss and develop resolution skills and techniques that may be used in a variety of legal, administrative or other proceedings.

3) Develop an understanding of the role of context in resolving disputes including, but not limited to, how differences in culture, gender, race, and personal styles affect bargaining dynamics and outcomes.

4) Develop an understanding of ethical considerations

TEACHING METHOD:

The Course will include lecture, discussion, role-play and simulation exercises. Class problems, role-plays and simulation exercises will usually be pre-assigned; others will be developed in class. Attendance is part of the evaluation method. Thorough preparation of the assigned materials is essential for rigorous class discussions and effective simulations. Simulations, role-plays and other exercises are an integral part of the course. Because time is scarce, it is essential for students to read the material prior to class. Students may earn, or lose, points on the final grade through consistent, intelligent contributions to class discussions and simulations, or the lack thereof.

REQUIRED TEXT:

S.B. Goldberg, F.E.A. Sander, N.H. Rogers, S.R. Cole, **Dispute Resolution: Negotiation, Mediation and Other Processes** (Fifth Edition, Aspen Publishers, N.Y., N.Y., 2007). This text is available at the Dalhousie Bookstore. Used copies (Fourth Edition) are **NOT** recommended.

OPTIONAL READING: ON RESERVE:

Andrew J. Pirie, *Alternative Dispute Resolution: Skills, Science, and the Law* (Toronto, Irwin Law, 2000)

Julie MacFarlane ed., *Rethinking Disputes: The Mediation Alternative* (Emond Montgomery, 1997)

Richard H. McLaren & John P. Sanderson, *Innovative Dispute Resolution – The Alternative* (Carswell Thomson Professional Publishing, 1995)

Stephen Goldberg, *Dispute Resolution: Negotiation, Mediation, and other Processes*, (Aspen Law & Business, 2007)

HANDOUTS:

Handouts may be distributed either in class or through the Law School Materials Room. Simulation/Problem and Exercise material will also be distributed from time to time.

EVALUATION & GRADING:

There are two components to the evaluation scheme for this course: 1) **written assignments** and 2) **class participation**. There are **three written assignments** (see below for details). Class participation is broken down into two parts: 1) General class participation and 2) (a class presentation (see below for details).)

WRITTEN ASSIGNMENTS: 60%

1) Short Comment (15%)

Each student is to submit a short written analysis of a dispute resolution process which is of interest to you. The example you choose may involve a dispute which has received public attention or it may be a private/personal one; it may be of a legal or non-legal nature. Your short comment piece should set out a description of the dispute under consideration and proceed to discuss and evaluate the nature of the process (es) which have been used to resolve or attempt to resolve it. This short comment is to be **no more than 1500 words in length. No outside research is permissible.**

The first written assignment is due at the start of class on **Tuesday, February 1, 2011.**

2) Response to Question in Text: (10%)

The Course text *Dispute Resolution: Negotiation, Mediation and Other Processes* (Fifth Edition), sets out a number of questions designed to elicit student thought on the material and/or to engender class discussion. The second written assignment requires students to write a response/analysis to any of the questions posed in the text. The question for this assignment is self-selected.

This written assignment is to be **no less than 1000 words in length.**

The second written assignment is due at the start of class on **Thursday, March 10, 2011.**

3) An Analysis of ADR in a Legal Context: (35%)

Each student is required to write an analysis of the use of an alternative dispute resolution method (other than adjudication) in a context which is legal in nature and covers a specific area of the law such as human rights, criminal law, labour, environmental, etc. Outside research is permitted for this written assignment. The focus however, is theoretical and should discuss/analyze the actual or potential use of alternative dispute resolution techniques in the area of law chosen by the student. This piece may or may not be related to your class presentation assignment. The third written assignment is to be **not less than 3500 words in length and no more than 4000 words in length.**

This third and final written assignment is due (and is to be handed into the reception desk) no later than **4 p.m. on Monday April 4, 2011 (the last day of classes for all years)**.

CLASS PARTICIPATION: (Two Parts) 40%

1) General Class Participation: 20%

This course uses a participation-based model of learning. Many of the in-class exercises will involve pre-class preparation and students will be expected to have read assigned readings prior to class. The simulations will require students to work in groupings of two or more and the success of the simulations will depend on preparation and attendance; if you are unable to attend class for personal or emergency reasons please notify me by email (with reasons) **well in advance of the scheduled class unless there is an emergency situation**. Attendance will be taken at the beginning of every class.

2) Class Presentation: 20%

All students are expected to do a class presentation based on your second written assignment (i.e. each student is to provide a written response or analysis of any one of the questions posed in the text) (tentative scheduling below). Although these students will lead the way, all others must be prepared to participate in the discussion.

DEADLINE EXTENSIONS/ACCOMODATION:

Students with Special Needs/Requests for Accommodation

Students seeking special accommodation with regard to any aspect of course evaluation, including exam deferrals and extensions to deadlines, must make an application to the Studies Committee as soon possible and no later than the date on which the exam is to be written or the paper or other assignment is to be submitted.

Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information about requests for accommodation and about the Studies Committee process. Students wishing to discuss arrangements for classroom assistance should see Professor Sheila Wildeman, the law faculty advisor to students with disabilities.

You are strongly encouraged to complete the paper in advance of the deadline to avoid conflicts with the examination schedule and unexpected problems that are not acceptable to the Studies Committee as a valid excuse.

PLAGIARISM:

All students in this course must read the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website, and

the Law School policy on plagiarism, as set out in the law school regulations, available online at http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/index.php

Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

CLASS SCHEDULE

(Tentative)

Week One

Tuesday, January 4

- Introductions
- Distribute & Review Syllabus
- Assign Reading: **Text**, Part I, Chapter 1, pp. 3-14
- Discussion groups on Dispute Resolution

Thursday, January 6

- Introduction to ADR
- Negotiation Exercise *Win as Much as You Can*
- Assign Reading: **Text**, Part II, Chapter 2, pp. 17-66

Week Two:

Tuesday, January 11

- Basic Skills: Questioning, Listening, Observing

Thursday, January 13

- Negotiation I
- Role-Play Exercise (**assign roles for negotiation exercise** *Bakra Beverage*)
- Assign Reading: **Text**, Part II, pp. 66-89

Week Three

Tuesday, January 18

- Negotiation II
- **Read Handout:** 1) Alberta Code of Professional Conduct, excerpt Ch. 11, *The Lawyer as Negotiator*
- Students check on-line for text, if any, of Provincial Code of Conduct in (your potential) jurisdiction regarding regulations dealing with the lawyers conduct as negotiator (or mediator)
- **Assignment for this class: Prepare Questions: Text** pp. 61 #2.6 p. 67-68 #'s 2.7 & 2.8, 2.9, 2.10, 2.11 & 2.12; and p. 69 #2.13; and p. 80-81 #'s 2.14, 2.15 (substitute the N.S. Ethics Code), 2.16, 2.17 & 2.18

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Thursday, January 20

- Negotiation III
- In-class Negotiation Exercise *Bakra Beverage* (Roles assigned in the January 14th class)
- Debrief negotiation exercise

Week Four

Tuesday, January 25

- Complete in-class Negotiation Exercise
- Complete debriefing of Negotiation Exercise
- **Assign Reading: Text**, Part II, Chapter 3, Mediation, pp. 107-161

Thursday, January 27

- Mediation I
- **Prepare Questions: Text**, p. 137 # 3.2 and p. 143 # 3.11
- **Assign Reading: Text**, pp. 161-207
- Distribute instructions and detailed confidential instructions for Mediation exercise in this class – *Neighbourhood Care Inc.*

Week Five

Tuesday, February 1

- Mediation Exercise: *Neighbourhood Care Inc.*

Thursday, February 3

- First written Assignment “**Short Comment**” piece **due** at the beginning of this class
- Continue questions and exercises from last class

Week Six

Tuesday, February 8

- Mediation context: gender, race, culture
- In-class exercise **Text**, p. 206 #312

Thursday, February 10

- Continue discussion on context
- Negotiation Exercise: *Axis Affair*

Week Seven

Tuesday, February 15

- Arbitration
- Assign **Text**, Chapter 4, pp. 213-219
- **In-class: Text**, Question 4.1 p. 219

Thursday, February 17

- Designing Dispute Resolution Systems
- Read **Text**, Part II, Chapter 5, pp. 321-333
- **In-Class: Text**, p. 335, Question 5.12
- **Second Written Assignment:** Each student is to provide a written response or analysis of any one of the question posed in the text – **due beginning of class March 4**

STUDY BREAK – FEBRUARY 21-25

Week Eight

Tuesday, March 1

- Dispute Resolution in the Justice System
- Read **Text**, pp. 389-439
- Assign Multi-Party Case Study *Ukraine's Orange Revolution*

Thursday, March 3

- Multi-Party Negotiation Case Study: *Ukraine's Orange Revolution*

WEEKS NINE; TEN; ELEVEN AND TWELVE

CLASS PRESENTATIONS

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|--------------------|---------------------|
| Tuesday, March 8 | (two presentations) |
| Thursday, March 10 | (two presentations) |
| Tuesday, March 15 | (two presentations) |
| Thursday, March 17 | (two presentations) |
| Tuesday, March 22 | (two presentations) |
| Thursday, March 24 | (two presentations) |
| Tuesday, March 29 | (two presentations) |
| Thursday, March 31 | (two presentations) |

Last Day of Class April 4

Third Written Assignment *an Analysis of ADR in a Legal Context* is due no later than 4 p.m. on Monday April 4, 2011 (the last day of classes for all years).