

Course Outline

COURSE: LAWS 3903 A – Dispute Resolution

TERM: Fall 2009

CLASS: **Day & Time:** Mondays, 2:35-5:25
Room: Please check with Carleton Central for current room location

INSTRUCTOR: Derek Bianchi Melchin
(CONTRACT)

CONTACT: **Office:** Loeb C476
Office Hrs: By appointment
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"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 16, 2009 for December examinations** and **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

The aim of this course is to help students become familiar with a broad spectrum of dispute resolution processes currently available in North American society, from negotiation, to mediation, to various types of non-binding evaluative processes. We will also examine a variety of context-specific applications of dispute-resolution processes, including restorative justice models, consensus-building processes, as well as issues related to cultural diversity, process design, and evaluation. By the end of this course, students should be able to assess the applicability of different types of DR processes to different kinds of disputes and conflicts, as well as to discuss some of the more significant theoretical, practical, and ethical questions that have been raised about each approach.

The course will involve lectures, class discussion, small group activities, and case studies. Students will be expected to have read each week's required readings in advance of class and come prepared to offer informed and analytical interventions.

REQUIRED TEXTS

A course reader containing all required texts for this course can be purchased at Octopus Books, located at 116 Third Avenue (at the corner of Third Avenue and Bank Street in the Glebe).

EVALUATION

All components must be completed in order to get a passing grade.

Mid-Term Exam	(October 19, in-class)	40%
Final Exam	(December, date TBA)	60%

SCHEDULESept 14 **Introduction**Sept 21 **Approaches to Conflict and Dispute Resolution**

Pruitt, Dean, and Sung Hee Kim, *Social Conflict: Escalation, Stalemate, and Settlement*, 3rd ed. (New York: McGraw-Hill, 2004), chapters 1, pp. 3-14.

“How Does the Legal System Understand Conflict?” excerpts from various authors, in Julie Macfarlane et al., eds., *Dispute Resolution: Readings and Case Studies*, 2nd ed. (Toronto: Emond Montgomery, 2003), pp. 68-87.

Ury, William L., Jeanne M. Brett, and Stephen B. Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* (San Francisco: Jossey-Bass, 1988), chapter 1, pp. 3-19.

Fisher, Roger, and William Ury, with Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 2nd ed. (New York: Penguin, 1990), chapter 3, pp. 40-57.

“A Continuum of Dispute Resolution Processes,” in *Dispute Resolution: Readings and Case Studies*, pp. 104-6.

Sept 28 **Negotiation**

Lax, D. A., and J. K. Sebenius, *The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain* (excerpts), in *Dispute Resolution: Readings and Case Studies*, pp. 128-39.

Lewicki, Roy J., Bruce Barry, and David M. Saunders, *Essentials of Negotiation*, 4th ed. (New York: McGraw-Hill Irwin, 2007), chapter 3, pp. 58-84.

Fisher, Roger, and William Ury, with Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 2nd ed. (New York: Penguin, 1990), chapter 7, pp. 107-28.

Manwaring, John, “The Dionne Negotiation” and “The Sale of Hunting, Inc.,” in *Dispute Resolution: Readings and Case Studies*, pp. 111-15.

Oct 5 **Mediation I: Interest-Based Approaches**

Macfarlane, Julie, “The Mediation Alternative,” in Julie Macfarlane, ed., *Rethinking Disputes: The Mediation Alternative* (Toronto: Emond Montgomery, 1997), pp. 1-21.

Mayer, Bernard, *The Dynamics of Conflict Resolution* (San Francisco: Jossey-Bass, 2000), chapter 9, pp. 189-213.

Waldman, Ellen, “Identifying the Role of Social Norms in Mediation” (excerpt), in *Dispute Resolution: Readings and Case Studies*, pp. 305-14.

Macfarlane, Julie, “A Partnership Dispute” and “A Landlord-Tenant Dispute,” in *Dispute Resolution: Readings and Case Studies*, pp. 315-17.

Oct 12 **NO CLASS (Thanksgiving Holiday)**Oct 19 **Evaluative and Hybrid Processes**

Zweibel, Ellen, “Hybrid Processes: Using Evaluation to Build Consensus” (excerpt), in *Dispute Resolution: Readings and Case Studies*, pp. 557-60.

Elliot, David C., “Med/Arb: Fraught with Danger or Ripe with Opportunity?” *Alberta Law Review* 34 (1995): 163-79.

Williams, Andrea, “Model Procedures for Sexual Harassment Claims,” *Arbitration Journal* 48 (1993): 66-75.

Klitgaard, Thomas J., and William E. Mussman III, “High Technology Disputes: The Minitrial as an Emerging Solution,” *Santa Clara Computer and High-Technology Law Journal* 8 (1992): 1-18.

Shannon, Brian D., “Another Alternative: The Use of Moderated Settlement Conferences to Resolve ADA Disputes Involving Persons with Mental Disabilities,” *Ohio State Journal on Dispute Resolution* 12 (1996): 147-58.

Oct 26 MID-TERM EXAM**Nov 2 Mediation II: The 'Insight' Approach**

Picard, Cheryl A., and Kenneth Melchin, "Insight Mediation: A Learning-Centered Mediation Model," *Negotiation Journal* 23:1 (2007), 35-53.

Picard et al., *The Art and Science of Mediation* (Toronto: Emond Montgomery, 2004), chapter 6 (excerpt), pp. 173-85.

Mediation Video Transcript (photocopy)

Watch mediation video (in class)

Nov 9 Restorative Justice

Law Commission of Canada, *Transforming Relationships through Participatory Justice* (Ottawa: Law Commission of Canada, 2003), chapters 1 and 2 (excerpts), pp. 1-5, 15-62, available online at <http://dsp-psd.pwgsc.gc.ca/Collection/JL2-22-2003E.pdf>

Berzins, Lorraine, "The Story of a Hostage-Taking" (photocopy)

Melchin, Kenneth, "Insight, Conflict, and Justice," paper presented at the Lonergan Workshop (Boston College, June 2005).

Nov 16 Consensus-Building Processes

Cormick, Gerald, et al., *Building Consensus for a Sustainable Future: Putting Principles into Practice* (Ottawa: National Roundtable on the Environment and the Economy, 1996), introduction, chapters 1, 2, and 8, and Appendix 2, pp. 3-34, 79-86, and 128-30, available online at <http://www.nrtee-trnee.com/eng/publications/building-consensus/NRTEE-building-consensus.pdf>

Hughes, Michael A., with John Forester and Irene Weiser, "Facilitating Statewide HIV/AIDS Policies in Colorado," in Lawrence Susskind, Sarah McKearnan, and Jennifer Thomas-Larmer, eds., *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement* (Thousand Oaks, CA: SAGE, 1999), pp. 1011-30.

Nov 23 Culture and Conflict Resolution

Avruch, Kevin, and Peter Black, "Conflict Resolution in Intercultural Settings: Problems and Prospects," in Dennis J. D. Sandole and Hugo van der Merwe, eds., *Conflict Resolution Theory and Practice: Integration and Application* (New York: Manchester University Press, 1993), pp. 131-45.

Abu-Nimer, Mohammed, "Conflict Resolution Approaches: Western and Middle Eastern Lessons and Possibilities," *American Journal of Economics and Sociology* 55.1 (1996): 35-52.

Feuerverger, Grace, *Oasis of Dreams: Teaching and Learning Peace in a Jewish-Palestinian Village in Israel* (New York: RoutledgeFalmer, 2001), chapter 4 and chapter 6 (excerpt), pp. 85-113, 152-58.

Nov 30 Designing Dispute Resolution Systems

Ury, William L., Jeanne M. Brett, and Stephen B. Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* (San Francisco: Jossey-Bass, 1988), chapters 2 and 3, pp. 20-64.

Cormick, Gerald, et al., *Building Consensus for a Sustainable Future: Putting Principles into Practice* (Ottawa: National Roundtable on the Environment and the Economy, 1996), chapters 3 and 4, 35-49, available online at <http://www.nrtee-trnee.com/eng/publications/building-consensus/NRTEE-building-consensus.pdf>

Dec 7 Review Class

Dale, Norman. "Cross-Cultural Community-Based Planning: Negotiating the Future of Haida Gwaii." In *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement*, ed. Lawrence Susskind, Sarah McKearnan, and Jennifer Thomas-Larmer, 923-50. Thousand Oaks, CA: SAGE, 1999.