



# ALTERNATIVE DISPUTE RESOLUTION



Dr. Jessica Bregant

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5326: Alternative Dispute Resolution Survey  
Fall 2022 ❖ MW 4:00-5:30pm

**Instructor**

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**Office Location:** BLB 142 (for now!)

**Office Hours:** TBA

And by appointment

**Welcome!**

The goal of this course is to familiarize you with some of the key processes, strategies, and legal frameworks that underlie the most common forms of ADR. It is a skills-based course, which means that you will have the space to actually employ the skills you are learning in simulations and exercises throughout course. I look forward to getting to know you all!

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## I. Logistics

### Required Text

Riskin et. al, Dispute Resolution and Lawyers: Cases and Materials (6th Ed.)

- ❖ The textbook should be purchasable through the campus bookstore(s); please let me know if you have trouble obtaining it (see also Basic Needs, below). You may also be able to get copies online (ISBN:978-1-63460-314-0).
- ❖ Unfortunately, there are some fairly significant updates between the 5th edition and the 6th edition; this is good news, because the 5th edition was getting pretty dated, but I know it also means fewer used copies will be available. **I will be using the 6th edition, and all assignments will be given using 6th edition page numbers.** I strongly encourage you to use the 6th edition as well, but if you opt to use an earlier edition, you are responsible for identifying any differences in page assignments or content.

### Course Description

The vast majority of day-to-day disputes are resolved (formally and informally) without litigation. This survey course focuses on introducing students to some of the most common processes involved in so-called “alternative” dispute resolution, including negotiation, mediation, and arbitration. In addition to the legal foundations of these processes, the course emphasizes psychological insights and practical strategies for lawyers.

A core component of this course is simulation exercises, in which students get the chance to try out techniques and strategies for themselves. To ensure that all students get the most out of these exercises, a large part of the course grade is based on students’ preparation for and participation in every class session. Missing class without prior notice, or missing several classes even with prior notice, will make it difficult to successfully complete the course. The remainder of the course grade will be based on short written assignments and a final exam.

There are no prerequisites for this course.

*IMPORTANT: Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible by email to the class.*

## II. Course Policies

### Participation

Your participation is the most important element of this class! Full participation means not only engaging fully with the materials and simulations, but coming to class fully prepared to do so.

*Simulation Exercises.* It is vitally important that you prepare for all of the exercises. If you are not prepared, you will not benefit from the chance to practice your skills. More importantly, however, you will be denying your classmates the chance to practice *their* skills; the exercises depend on all parties being prepared. If something happens and you cannot prepare before class, please let me know as soon as you can so I can reassign your simulation partner(s) to someone who is prepared. **Trying to muddle through without preparation is not acceptable, and it will result in a grade penalty.** If you are paired with someone who is unprepared, let me know.

*Class Discussion and Readings.* You are responsible for the assigned reading for every class session. I will cold call during class discussions if necessary, but I hope that we can have a rigorous discussion without that. As with everything else, if you need to be excused from the discussion because you are unprepared, please let me know.

*Attendance.* I expect you to be fully present -- physically and mentally -- for every class (see also the below info on Zoom Policies). Your classmates and I will be counting on you for the exercises and the discussions. If you need to miss class for any reason, please let me know in advance. If you already know you will need to miss more than 3 class sessions, please talk to me now. Failing to notify me in advance of class will result in a grade penalty except under extraordinary circumstances.

### Zoom Policies (if the class is all or partly online)

*Cameras.* This class is heavily participatory, and you will need to have your camera on for every simulation. In general, I expect your camera to be on for every class session. I know that things happen, and you are of course welcome to turn off your camera if you need to, but I'd like the default state to be cameras on, please. If this is going to present a problem for you, please let me know as soon as possible.

There are two main reasons for this policy. First and most importantly, your experiences in simulations are already going to be fairly different over Zoom than they would be if we could meet in person. To help you get the most out of the exercises, it's important that we do our best to simulate the in-person experience the best that you can. Second, it is very difficult to lead a discussion in a sea of black squares. I'd consider it a personal favor if you could keep your cameras on as much as possible.

*Backgrounds, etc.* Virtual backgrounds are permitted -- encouraged, even! Just ensure that your background is classroom appropriate, minimally distracting, and does not change too often during a single class period (such changes can themselves be very distracting). I'd love to see thematic backgrounds for the negotiation exercises!

Otherwise, please treat the Zoom as much like a physical classroom as possible. Eating and drinking are fine, but try to avoid getting up and moving around frequently. I will record each class session and post the video to for anyone who misses a class, but no other recordings or photographs are allowed unless you have the explicit permission of the person being recorded. Please respect the privacy of your classmates.

*Pets, kids, and other distractions.* As you all know by now, many of us are sharing "classroom" space with loved ones big and small. Please don't worry about it if your loved one inserts themselves into class! Most of us, myself included, want to see your pets and children. Obviously, this has limits, and I may ask you to turn off your camera in extreme situations, but in general, consider seeing adorable creatures one of the unexpected bonuses of life on Zoom. I will also probably ask you to introduce your "guests"--if you would prefer that I not do that, just send me a quick email or chat in the Zoom.

My own elderly cat, Fritz, has handled the quarantine by becoming increasingly needy and vocal. If I teach from home, you will almost certainly see and hear him in every class period at least once (and probably several times). He likes to do laps around my computer and meow loudly until I let him lay on my hands. For a variety of reasons, including a partner who also works from home, I have no way to prevent Fritz from doing this during class. I apologize in advance for the inevitable distraction he will occasionally cause, but I hope his presence will be reinforce my claim to understand that these things happen!

### **Late Assignments**

Late assignments will receive no credit. Reflection reports are due on the course site by 11:59 pm Central on the due date. Other assignments are due at the beginning of class on the due date.

### **Integrity**

As future lawyers, maintaining your integrity is especially important. You are, of course, bound by the [Code of Honor](#) at all times. In the simulations and exercises we do, you are also bound to uphold the "spirit" of the exercise.

*Good Faith Participation.* I expect you to engage in the simulations seriously and attempt to represent the “role” you are assigned. These exercises are, by definition, somewhat artificial, but they have been designed to allow you to practice your skills and experience common issues first-hand. In general, you may add or create facts that add to the realism of the exercise, but you may not add or create substantive facts that strengthen your bargaining position.

*Confidential Role Information.* When an exercise includes confidential information, you are expected to keep that information to yourself and discuss it only with others in your role. If you think you have received the wrong role information (the course site does not always do what I expect), please let me know ASAP. During the simulations, while you may (at your discretion) disclose any information you wish to your counterparts, you may not share the actual documents with one another.

### **Course Site**

I will use the course site for the course to post important announcements, confidential role information for exercises, and other information. You will also use the course site to turn in your reflections. You are responsible for staying up-to-date on the site (through email notifications or some other way). If you have trouble accessing the course page, let me know!

### III. Assignments & Grading

#### Grade Breakdown

30% - Participation & Preparation

40% - Final Exam

30% - Reflections, Mediation Memo & Other Assignments

#### Reflections

You will write 4 short reflection reports during the semester. Each one roughly corresponds to a major “unit” of the class. These written assignments are meant to give you a chance to synthesize across exercises and think about what you have learned. You should *not* recap what happened in class discussion or in exercises, except as necessary to make your point. You can assume that the reader (me) is familiar with those things. You *should* formulate some concrete prescriptions for yourself (or for another attorney addressing a similar situation). For each reflection, I will provide a list of questions that you can use as a starting point, but you do not have to address all of the questions in your report.

Each report should be no more than 1200 words, and it should include a word count at the top. Neither the word count nor the text of any questions you include count against the 1200-word limit. The rubric I will use is below.

Element	Points
<b>Topic(s)</b> Topics are relevant to the skills you are developing in class and useful enough to be applicable to other situations.	4
<b>Insight</b> Reflections are thoughtful and insightful, going beyond what was discussed in class.	12
<b>Prescriptions</b> Prescriptions are concrete and actionable, and there are a sufficient number (based on the topics/insights).	8
<b>Concision</b> Report is within the word limit and does not overly recap or summarize class discussion or exercises.	3
<b>Mechanics</b> Report is sensibly organized and formatted, with evidence of proofreading (i.e., no major spelling or grammatical errors).	3

## **Final Exam**

There will be a written final exam during the exam period. The exam will include multiple choice questions, short answers, and a few longer essay questions, and it will be open book and open note. I will provide more information about the content later in the semester.

## **Exercises & Simulations**

Your *performance* during the exercises and simulations will not be graded, although I will try to observe you as often as I can during the semester and provide feedback. You will also provide feedback to one another after every exercise. When we debrief the exercises in class, you will be able to compare your outcomes to those of your classmates, but relative performance in the exercises will not affect your grade.

NOTE: As discussed above, your *preparation* for the simulations is graded; it is a large part of your participation grade. For some exercises, there may be a worksheet or questionnaire to complete ahead of class. Where applicable, those will also count toward your participation grade.

## **Mediation Memorandum**

You will serve as the mediator in at least one simulation during the semester. When you serve as mediator, your responsibilities will include drafting a memorandum of agreement that details any agreement(s) that the parties came to during your session.<sup>1</sup> Once you have drafted the memo, you must get the parties (or the parties' representatives) to sign off on it before you turn it in. You may do this a number of ways: (1) print the memo and have both parties actually sign it before handing it in to me in person; (2) get an "okay" from both parties *before* emailing the completed agreement to me with both parties copied on the email -- the parties should let me know if they have not previously approved such an agreement; (3) forward to me an email chain including approvals from both parties. Basically, I am flexible on this, but you must have approval from the parties *before* you "file" the memo with me.

*All mediation memos are due by the last day of class.*

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<sup>1</sup> If you serve as mediator more than once, you need only submit one memo. If the parties do not reach an agreement, the memorandum should be a status report detailing the sticking points and any areas of common ground.



## IV. Additional Notes & Policies

### Basic Needs Policy

Your safety and wellbeing is more important than anything going on in class. Please feel free to reach out to me if you need to talk.

Any student who faces challenges securing their food or housing or personal safety is urged to contact the Dean of Students for support. Furthermore, please notify me if you are comfortable in doing so. This will enable me to provide any resources that I can.

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let’s Talk” program, a drop-in consultation service at convenient locations and hours around campus. [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html)

### Accommodations

The UHLC Policy on Academic Accommodation can be found [in the Student Handbook](#) (§II.Q):

Students with disabilities needing modification to existing academic requirements should contact the Center for Students with Disabilities (“CSD”). Modifications that do not fundamentally alter the nature of the program and are not unduly burdensome will be considered. For more information, please visit: <https://uh.edu/csd/>

UHLC is committed to ensuring that all students with disabilities are reasonably accommodated and are able to compete on a level playing field with all other law students. Accordingly, UHLC works closely with CSD to provide accommodations on law school exams, as deemed appropriate and necessary by CSD. UHLC recommends contacting CSD to begin the accommodations process at least one month prior to the start of the semester to ensure that students are timely accommodated.

If you need other kinds of help or accommodation, please come talk with me as soon as possible.

## **Discrimination & Sexual Misconduct Policy**

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system's [Anti-Discrimination Policy SAM 01.D.07](#) and [Sexual Misconduct Policy SAM 01.D.08](#):

- <http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf> (antidiscrimination)
- <http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf> (sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

## **Additional Policies**

The following UHLC policies may also apply to our course, depending on whether we meet in person or via Zoom (or both).

### Attendance via Zoom (for Zoom classes)

This class will be taught via this Zoom. The link will be emailed to the students directly.

- You must be logged in with a computer (not a phone) with your video camera turned on and microphone muted (note: the class will be set up to mute you automatically upon entry). Video must stay on for the entire class.
- You must identify yourself with your first and last name in the Zoom videoconferencing software.
- You must present yourself professionally in the video stream, both in attire and in conduct.

### Recording of Class (all classes)

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Center for Students with DisABILITIES. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other

person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

### Face Covering Policy

To reduce the spread of COVID-19, please consider wearing a mask for all face-to-face interactions.

### Required Daily Health Self-Assessment (required for face-to-face)

Your (physical) presence in class each session means that you have completed a daily self-assessment of your health/exposure and you: 1) Are NOT exhibiting any Coronavirus Symptoms; 2) Have NOT tested positive for COVID-19; and 3) Have NOT knowingly been exposed to someone with COVID-19 or suspected/presumed COVID-19. If you are experiencing any COVID-19 symptoms that are not clearly related to a pre-existing medical condition, do not come to class. Please see [COVID-19 Diagnosis/Symptoms Protocols](#) for what to do if you experience symptoms and [Potential Exposure to Coronavirus](#) for what to do if you have potentially been exposed to COVID-19.

### **Names & Pronouns**

Chosen names and pronouns (including non-binary ones such as they/them/their) *must* be respected in my classroom. If you would prefer to use a name that is different than what appears in the registrar's list for the course, just let me know. Similarly, please feel free to let me know your pronouns.