

**Alternative Dispute Resolution (Law 860)**  
**Professor Stephen Ware**  
**Fall 2024**

**Learning Outcomes.** This is an experiential course. It integrates negotiation theory, legal doctrine, professional skills, and legal ethics, while enabling students to perform several important professional skills on multiple occasions throughout the semester. Successfully completing this course will advance students' knowledge about the law and concepts of Alternative Dispute Resolution—especially the arbitration, negotiation, and mediation of disputes. Students will have many opportunities to use this knowledge throughout the course in performing a wide variety of skills, including negotiation, mediation, drafting, legal analysis and reasoning, legal research, problem-solving, and written and oral communication—all in an environment designed to heighten students' awareness of professional and ethical responsibilities to clients and the legal system. Students will also have many opportunities for written and oral self-evaluation, with an eye toward continuously improving their skills.

**When and Where our Class Meets.** Our course is scheduled for 2:40-4:10 on Mondays and Wednesdays in Room 203. In addition, our class is scheduled to meet Friday Jan. 26 from 12:30 to 1:25 in 203. Our class will not meet Feb. 19. On March 4, our class will not meet as a group, but you and a classmate will be working together on this course.

**Talking with Me.** Mondays and Wednesdays, I intend to be fully available to students. I will be available plenty of other times as well, and you are always welcome to schedule an appointment or stop by my office (414C), call 785-864-9209, or email [ware@ku.edu](mailto:ware@ku.edu). Please do not be shy. Talking with students is an important part of my job, and I enjoy it.

**Required Reading.** You are responsible for doing the reading listed on this syllabus and for coming to class prepared to discuss the reading. The required book is a Concise Hornbook, STEPHEN J. WARE, PRINCIPLES OF ALTERNATIVE DISPUTE RESOLUTION (4th ed. West 2023). You may use the free version of this book through your subscription to West Academic Study Aids or buy the print or e-book. To access the free version, create an account at <https://subscription.westacademic.com/> using your KU email. Once signed in, the book will be available at <https://subscription.westacademic.com/Book/Detail/28096>. Although I believe this will be free and reliably accessible throughout the semester, no guarantees.

**Grading and deadlines.** This course has no exam. It has twelve graded exercises. Failure to participate in an exercise (for any reason) results in no points for that exercise. Missing or arriving late to class (for any reason) typically prevents participation in the exercise. For Honor Code purposes, a graded exercise is like an exam, so it is your responsibility to avoid receiving any help from anyone except as expressly authorized by my instructions for that exercise. The final pages of this syllabus contain more information about the graded exercises.

In calculating final grades for this course, I will not consider each student's lowest exercise score. So, missing one exercise (and thus getting no points for it), in some sense, does not hurt your final grade. Nevertheless, a student who misses an exercise has the option of writing a paper, on an ADR topic I choose, as a make-up. The paper must be at least 5 pages, single-spaced, with one-inch margins and at least 30 footnotes. Although the makeup paper has as many points available as the missed exercise, I intend that the amount of work for the paper, and the rigor of its grading, will discourage students from missing exercises. Other than this makeup procedure, you must complete all of an exercise, including related written assignments, on time to receive any credit for it. Only your initial submission will be graded; any follow-up will be for learning, not grading. I may show what you submit to the entire class so please consider that lack of privacy in deciding what to send me.

You can earn up to 8 points on each graded exercise, except for the 7<sup>th</sup> exercise on which you can earn up to 20 points. You can earn another 8 points through your contributions to class discussion. In sum, 116 points are initially available for the course but, as noted above, I will deduct (not consider) each student's lowest exercise score, so roughly 108 points are actually possible. But no student has ever earned even remotely close to the total possible number of points, and I convert total points into letter grades for the course by complying with KU Law policy recommending that the average of grades in a course be in the range 3.2-3.4.

**Students generally contribute to class discussion by answering, rather than asking, questions.** Some college class sessions are called "lectures" and to the extent students speak in such classes, they often do so by asking questions, which the professor answers. This is not how I believe most law school class time should be spent because I believe law students develop lawyering skills less by absorbing lectures than by answering questions. So, the classroom performance part of the course grade rewards students who frequently volunteer (raise their hands) to answer my questions and then do so well. I generally try to ensure that every student in this course answers at least one of my questions in each day's class discussion,<sup>1</sup> so students who volunteer to answer questions less frequently are more likely to be called on when they have not volunteered.

To put it another way, students should learn most of the relevant knowledge by reading before class, so we can use our class time primarily to develop students' skills in using that knowledge and only incidentally to fill any gaps in students' knowledge. In contrast, if you still have questions after class, then please ask them, whether right after class or later by email, voice call, or meeting. I welcome student questions and am happy to take as long as we need to try to answer them. Just not until after the relevant class session.

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<sup>1</sup> If you are unable to prepare for a particular class, no worries if you tell me ahead of class ("May I have a pass today?") and you have been volunteering good contributions to our class discussion throughout the semester. By contrast, if you have gone a class or two without volunteering and are unable to prepare for a particular class, please contact me privately to discuss the situation.

Students can learn a lot from each other, perhaps especially in an experiential course, like this one, centered on simulation exercises. So, please volunteer your thoughts in reply to your classmates. Class discussion tends to improve as it includes more voices and viewpoints.

**Attendance and lateness.** As noted above, failure to participate in an exercise (for any reason) results in no points for that exercise and missing or arriving late to class (for any reason) typically prevents participation in the exercise. In addition, accreditation standards governing the Law School say that “[a] law school shall require regular and punctual class attendance.” Perfection is not required, so you may miss a class or two because you have transportation problems, a job interview, illness, a death in the family, or something similar. Similarly, you may be late or leave early once or twice for reasons like those listed above.

By contrast, if you are going to miss class or be late or leave early more than a couple of times during the course, you should contact me to discuss. If you miss some or all of a class session three or more times, I may send you an email warning. If after I do that, you miss some or all of a class session two more times, I may exclude you from remaining graded exercises.

**Computers and other electronics in class.** Subject to exceptions I will announce, you may use a computer in class, but only for working on this course. Audio or video recording of class is prohibited without my written permission.

**Accommodations.** Classroom and testing accommodations are available to eligible students registered with the Student Access Center. If you believe you may qualify for accommodations, please reach out to [access@ku.edu](mailto:access@ku.edu) or to Dean Leah Terranova, [leaht@ku.edu](mailto:leaht@ku.edu), who serves as the accommodation’s liaison for the law school.

**Lunch.** I like to have lunch with students. We can go across the street to the DeBruce Center Cafe, and within limits the Law School will buy our lunches. I find that these lunches work best with groups of two or three students at a time. If you would like to do this, please send me an email suggesting a day or two that works for all the students in the group at 11:45 (to beat the crowd) and please copy the other student(s) on that email message.

<b>CLASS</b>	<b>ASSIGNMENT</b>
<b>I. INTRODUCTION</b>	
1.	Hornbook §§ 1.1 - 1.8 1 <sup>st</sup> exercise assigned
<b>II. ARBITRATION</b>	
2.	1 <sup>st</sup> exercise due one hour before class Hornbook §§ 2.1 - 2.3, 2.65 - 2.66
3.	Hornbook §§ 2.4 - 2.25, App. A (Fed. Arbitration Act) 2 <sup>nd</sup> exercise assigned
4. 12:30 Jan. 26	2 <sup>nd</sup> exercise due one hour before class
5.	Hornbook §§ 2.26 - 2.42 AAA Commercial Arbitration Rules (no need to read Mediation Procedures) <a href="https://www.adr.org/Rules">https://www.adr.org/Rules</a> 3 <sup>rd</sup> exercise assigned
6.	3 <sup>rd</sup> exercise due one hour before class Hornbook §§ 2.43 - 2.49
7.	Hornbook §§ 2.50 - 2.64 4 <sup>th</sup> exercise assigned
8.	4 <sup>th</sup> exercise due one hour before class
<b>III. NEGOTIATION</b>	
9	Hornbook §§ 3.1 - 3.22. Do 5 <sup>th</sup> exercise during class
10.	Summary of 5 <sup>th</sup> exercise due an hour before class
Feb. 19 our class does not meet	
11.	Hornbook §§ 3.23 - 3.32 Do 6 <sup>th</sup> exercise during class
12.	Summary of 6 <sup>th</sup> exercise due an hour before class
13.	Hornbook §§ 3.33 - 3.37 7 <sup>th</sup> exercise and Negotiation Plan assigned
14. March 4	Negotiation Plan due an hour before class. Our class does not meet as a group, but you and your counterpart do 7 <sup>th</sup> exercise during class time and if you choose longer.
15.	Hornbook §§ 3.38 - 3.42 7 <sup>th</sup> exercise agreement and summary due an hour before class. 8 <sup>th</sup> exercise assigned.
<b>Spring break</b>	
16.	8 <sup>th</sup> exercise due an hour before class

<b>IV. MEDIATION AND OTHER PROCESSES IN AID OF NEGOTIATION</b>	
17.	Hornbook §§ 4.1 - 4.16 Do 9 <sup>th</sup> exercise during class
18.	Summary of 9 <sup>th</sup> exercise due an hour before class
19.	Hornbook §§ 4.17 - 4.26 Do 10 <sup>th</sup> exercise during class
20.	Summary of 10 <sup>th</sup> exercise due an hour before class
21.	Hornbook §§ 4.27 - 4.30 Do 11 <sup>th</sup> exercise during class
22.	Summary of 11 <sup>th</sup> exercise due an hour before class
23.	Hornbook §§ 4.31 - 4.36, §§ 3.43 - 3.45 12 <sup>th</sup> exercise assigned
24.	12 <sup>th</sup> exercise due an hour before class Student presentations
25.	Student presentations

## Exercises

At the start of the semester, you will do arbitration exercises. These exercises may involve lawyering skills such as research, analysis, interviewing, counseling, and drafting. I will grade them according to criteria found on the instructions for each individual exercise.

For most of the semester, you will do negotiation and mediation exercises. Many of the negotiation exercises involve two students randomly paired, such as by pulling names from a hat. Many of the mediation exercises involve groups of three students, so hopefully every student will have the chance to be a mediator. In some negotiation and mediation exercises, you will play a role in a hypothetical situation and receive a document with hypothetical facts. In some exercises, all participants may receive the same document. In other exercises, students in one role in the exercise may get a different document from students in another role. You may choose whether to share any or all of your document's information with the other student(s) with whom you are doing the exercise. You may not share or otherwise communicate with anyone other than the student(s) with whom you are doing the exercise. You must be especially careful not to share with or overhear your other classmates doing the same exercise. For Honor Code purposes, the exercises are like exams, so your communication is limited to the other student(s) grouped with you.

After a negotiation and mediation exercise, your assignment will often include completing a written summary of the exercise. Instructions for the summaries are on the last page of this syllabus.

I will grade your negotiation or mediation exercise based on your written summary and the result of the exercise. For most exercises, a maximum of 8 points is possible: 4 for the summary and 4 for the result of the exercise. The "result of the exercise" is whether you reached an agreement and, if so, the terms of that agreement. *The more the agreement advances the interests of you or your client, the more points you get.*

If you do not reach an agreement, your "result" points are determined by the roll of two dice in front of the class:

Dice	Plaintiff's/Prosecution's Points	Defendant's Points
2-4	0	4
5-6	1	3
7	2	2
8-9	3	1
10-12	4	0

I will treat partial or contingent agreements as "no agreement" so if you reach a partial or contingent agreement your result points will be determined by a roll of the dice, as above.

As the table shows, the total result points for the two negotiating students from a dice roll add up to four. By contrast, if students reach an agreement, the total result points for the two negotiating students will typically exceed four. That is to mimic the fact that settlement of legal disputes tends to be quick, cheap, and customizable compared to “rolling the dice” at trial or other adjudication, which tends to be more slow, expensive, and blunt. In other words, settling a case typically increases, compared to rolling the dice, the total value available to the disputing parties.

In a mediation exercise, the mediator’s “result” points, are the total of the other two students’ result points divided by two and rounded up.

Instead of or in addition to the summary, other graded written assignments may accompany some negotiation and mediation exercises.

As noted on a previous page, in calculating final grades for this course, I will not consider each student’s lowest exercise score. For a negotiation or mediation exercise, your “exercise score” is your result score plus your summary score.

## Summaries of Negotiation and Mediation Exercises

Each exercise summary must be a Word document of more than one and less than two single-spaced typed pages. Submit your summary along with a pdf (not jpg or other file type) of any agreement you signed in the exercise. The summary's filename must include your name. Failure to follow any of these instructions or late submission of a summary may be reflected in its grade.

The summary should:

- 1) Start with your name and the role you played in the exercise, such as, "plaintiff's lawyer." For the remainder of the summary, however, do not refer to yourself in the third person, *e.g.*, "plaintiff's lawyer offered to settle for \$50,000." Instead, say, "I offered to settle for \$50,000."
- 2) State what occurred during the exercise. State what each participant did, including the terms of any settlement offers. Be clear and concise.
- 3) Speculate why each participant in the exercise did what he or she did. While stating your own motivations may be easier, trying to understand the other participants' motivations is important. Rather than stating the obvious, *e.g.*, "Defendant started with a low offer because paying a lot of money was not in Defendant's interests," address more subtle or ambiguous actions of the participants. Rather than discussing motivations on the ultimate question of whether to settle or not, discuss motivations for more specific tactics during the negotiation or mediation process.
- 4) Assess the success or lack of success of what each participant did. In assessing each participant's success, discuss both whether the overall result of the exercise advanced a party's interests and whether particular behavior during the exercise, such as negotiation tactics, worked well. In discussing the overall result, do not use bland generalities like "The settlement was a success for Plaintiff because he got a significant amount of money and a success for Defendant because it avoided a costly and risky trial." Instead, predict what would have happened had the parties not settled—including the results of further litigation—and then compare that prediction to the settlement you reached. If you did not reach agreement, compare that prediction to the offers that were made (and not accepted) during the exercise.
- 5) Analyze all of the above using the concepts raised in the Hornbook and any other readings.
- 6) Integrate Points 2-5 into one coherent story. Do not separate your statement of something that occurred (#2) from your speculation about why it occurred (#3), its success (#4), or its relation to the course's concepts (#5). Weave that all together in each of your paragraphs.