

Alternative Dispute Resolution (Law 860)

Professor Stephen Ware

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<https://sware.ku.edu/adr>

Course Description. This course introduces the student to arbitration, mediation, negotiation, and other methods for resolving disputes. In addition to serving as alternatives to the court system, these processes also play an increasingly important role in litigation and settlement. This is a survey course, which may include exercises to develop skills such as interviewing, counseling, and negotiation.

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 three-credit, in-person course is scheduled to meet in Room 107 on Wednesdays and Thursdays from 2:40 to 4:10. However, our class is not scheduled to meet October 8 or 9.

Bring to class. A laptop computer (or similar device) with Word and Excel. 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.

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. 150 points are available in this course:

- 2 from your questionnaire
- 130 from exercises and related written assignments
- 18 from your classroom performance

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.

This course has many graded assignments, some of which are simulation 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 remaining 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 on-time submission will be graded; any later 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.

Classroom performance. The "Learning Outcomes" part of this syllabus distinguishes learning the law from developing professional skills in using the law. You should learn most of the relevant law by reading and talking with classmates before coming to class, so class time not devoted to an exercise can focus on developing students' professional skills, particularly through students answering questions. The classroom performance part of the grade rewards students who frequently contribute well by answering in-class questions.

When I ask a question to the class, you should raise your hand and then, when I call on you, respond to the question. If you volunteer but I call on another student, you should keep volunteering. Generally, each student should answer at least two questions, after volunteering, each class session not occupied by a simulation exercise. You may be called on to answer questions in class even when you have not volunteered to answer those questions. But such "cold calling" is needed less when all students frequently volunteer to answer questions.

Attendance and lateness. 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. Other than the grading effect noted above, this sort of absence is no worry, and you do not need to contact me about it. Just borrow class notes from a classmate and then let me know if you have any questions about the material we covered. Similarly, you may be late to class or leave early once or twice for reasons like those listed above. Again, this is no worry and there is no need to contact me about it.

If you are going to miss class or be late or leave early more than a couple of times during the course that is a worry. If that happens, you should contact me to discuss how we can address the situation and keep you on track with the course and your classmates. 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 the final exam.

Talking with Me Outside of Class. I intend to be fully available to students 1:30-5:00 Tuesdays and Fridays. I will be available plenty of other times as well. You are always welcome to schedule an appointment, stop by my office (414C), call 785-864-9209, or email ware@ku.edu. Please do not be shy. Talking with students is an important part of my job, and I enjoy it.

Accommodations. Classroom and testing accommodations are available to eligible students registered with the Student Access Center. You may contact access@ku.edu or Associate Dean for Academic and Student Affairs, Leah Terranova, leah@ku.edu or 785-864-4357.

Required links. KU’s syllabus [policy](#) requires each syllabus to include these links:

- Explanation of instructional time expected for out-of-class student work per credit (see [Credit Hour Definition](#) policy)
- Statement on accommodations and/or information for students with disabilities (see or use):
 - KULC: [Student Access Center Syllabus Statement](#)
- Links to the following policies:
 - [Sexual Harassment](#)
 - [Nondiscrimination, Equal Opportunity, and Affirmative Action](#)
 - [KU Statement on Diversity and Inclusion](#)
 - Academic Misconduct
 - KULC: [Academic Misconduct \(USRR 2.7.1\)](#)
 - Change of Grade
 - KULC: [Change of Grade Policy](#) and [Change of Grade \(USRR 2.4.1\)](#) (i.e., grade appeal)
 - KULC: [Code of Student Rights and Responsibilities](#)
 - KULC: [Commercial Note-Taking](#)
 - KULC: [Mandatory Reporting](#)
 - KULC: [Racial and Ethnic Harassment Policy](#)

Class Session	Read and do
I. Introduction	
1. Thursday	Hornbook §§ 1.1 - 1.8
II. Arbitration	
2. Wednesday	Submit 1 st arbitration exercise Hornbook §§ 2.1 - 2.15, App. A
3. Thursday	Hornbook §§ 2.17 – 2.25 Do 2 nd arbitration exercise in class
4. Wednesday	Hornbook §§ 2.26 - 2.30 Do 3 rd arbitration exercise in class
5. Thursday	Hornbook §§ 2.31 - 2.35 AAA Commercial Arbitration Rules (no need to read Mediation Procedures) https://www.adr.org/Rules Do 4 th arbitration exercise in class
6. Wednesday	Hornbook §§ 2.36 - 2.42 Do 5 th arbitration exercise in class
7. Thursday	Hornbook §§ 2.43 - 2.49 Do 6 th arbitration exercise in class
8. Wednesday	Special reading I will provide
9. Thursday	Hornbook §§ 2.50 - 2.64 Do 7 th arbitration exercise in class
10. Wednesday	Do 8 th arbitration exercise during class
III. Negotiation	
11. Thursday	Hornbook §§ 3.1 - 3.22
12. Wednesday	Do 1 st negotiation exercise during class
13. Thursday	Hornbook §§ 3.23 - 3.32
Our Class does not meet Oct. 8-9	
14. Wednesday	Do 2 nd negotiation exercise during class
15. Thursday	Hornbook §§ 3.33 - 3.37
16. Wednesday	Do 3 rd negotiation exercise during class
17. Thursday	Hornbook §§ 3.38 - 3.42
18. Wednesday	Do 4 th negotiation exercise during class

IV. Mediation	
19. Thursday	Hornbook §§ 4.1 - 4.16 Do 1 st mediation exercise during class
20. Wednesday	Do 2 nd mediation exercise during class
21. Thursday	Hornbook §§ 4.17 - 4.26
22. Wednesday	Do 3 rd mediation exercise during class
23. Thursday	Hornbook §§ 4.27 - 4.30
24. Wednesday	Do 4 th mediation exercise during class
25. Thursday	Hornbook §§ 4.31 - 4.36, §§ 3.43 - 3.45 Do court-connected exercise during class

Negotiation and Mediation Exercises

For much 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. For Honor Code purposes, the exercises are like exams, so your communication is limited to the other student(s) grouped with you. Please be especially careful not to share with or overhear your other classmates doing the same exercise.

I will grade your negotiation or mediation exercise based on your written summary (discussed below) and the result of the exercise. For most exercises, a maximum of 4 points is possible for the summary. 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 may range from five to ten, depending on the exercise.*

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

Summaries of Negotiation and Mediation Exercises

Unless instructions for a particular exercise say otherwise, an exercise summary shall 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.

In your summary,

- 1) Start with the names and the roles of each participant in the exercise. For the rest of the summary, use student names rather than roles in describing what occurred during the exercise. State what each participant did, including the terms of any settlement offers. Be clear and concise.
- 2) When you state something important or surprising a participant did, try to explain why they did it. Stating your motivations may be easier, so also try to understand and articulate other participants' motivations for what they did. 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. In addition to discussing motivations on the ultimate question of whether to settle or not, discuss motivations for more specific tactics during the negotiation or mediation process.
- 3) Assess the success of what each participant did—both any particular tactics that worked especially well or badly, and the overall result of the exercise. 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.
- 4) Analyze all of the above using the concepts raised in the Hornbook and any other readings. Include at least two quotes from the Hornbook (with cites to the section of the book) in this analysis.

Do not divide your summary into these four parts. Instead weave all of the above into one chronological story.