

ACADEMIC COURSE SYLLABUS

COURSE TITLE:	ALTERNATIVE DISPUTE RESOLUTION (ADR) SURVEY
COURSE NUMBER:	LAW E502-3
PROFESSOR(S) NAME:	VALERIE J. HIGGINS, J.D, LL.M.
PROFESSOR CONTACT INFO:	TELEPHONE (415) 250-9438 E-MAIL: LawHiggins@comcast.net
SCHEDULE:	Summer 2017, WEDNESDAY EVENINGS, 6:00-9:00 PM, room # 103
UNITS:	3 units
COURSE TYPE:	Elective
PREREQUISITES:	Completion of LAW 1401 (Introduction to Law) and LAW 1402 (Legal Research and Writing or equivalent) and Civil Procedure (co-enrollment in Civil Procedure is acceptable)
COREQUISITES:	None
TEXTS AND MATERIALS: (Identification of any texts, materials and references used throughout the course.)	<p><i>Principles of Alternate Dispute Resolution, Third Edition</i>, 2016, by Stephen J. Ware, Thompson/West-West Academic, ISBN: 978-1-63459-574-2.</p> <p><i>Getting to Yes</i>, 2011, by Roger Fisher and William Ury, Penguin Publishing Group, ISBN 9780-14-311875-6. *pdf version of book may be downloaded from the internet without charge by Googling the book or the instructor will make a pdf copy available to students.</p> <p>Handout Materials:</p> <ul style="list-style-type: none"> • Hypothetical Settlement Conference case: Evidence Packet <i>Williams v Klein¹ & Allen</i>, et. al and related cases • Hypothetical Arbitration case: Evidence Packet: <i>Barker v Palsgraf and Yalebridge University</i> • Hypothetical cases used by permission of Cecilia Arnold, Professor Law, retired, and Kathleen Friedrich, Professor of law, Civil Practice Seminars, University of the Pacific, McGeorge School of Law <p>Materials to be downloaded by students:</p> <ul style="list-style-type: none"> • Power Point lectures notes • Statutes and Rules of Court as assigned <p>Lecture notes from Power Point presentations will be available from Empire College and students shall bring copies of lecture notes to each class session. Empire College will also provide handouts and written assignments as assigned in the Course Schedule. Designated statutes and rules of court will be accessed by students from Westlaw as assigned.</p>
COURSE DESCRIPTION:	The purpose of this course is to give students an understanding of various dispute resolution processes, which have come to be described under the umbrella term “alternative dispute resolution.” Primary emphasis is on arbitration and mediation techniques in the context of those fields most familiar to practicing lawyers. Comparisons are made to standard civil litigation methods as a way to evaluate the advantages and disadvantages of each process, much as a lawyer would want to do in advising a client.

	<p>As time permits, consideration is also given to the general question of the role of the law in shaping and promoting these dispute resolution techniques.</p>
<p>COURSE OBJECTIVES / ANTICIPATED LEARNING OUTCOMES: (Description of what students will be expected to know and be able to do at the end of the course. What skills or knowledge will be gained by the end of the course.)</p>	<p>Learning Objectives and Course Content</p> <p>This one semester course is structured as practical instruction to future lawyers of the essentials of professional conduct, competent representation, effective oral and written communication in objective and persuasive style, monetary evaluation of cases, and legal and critical analysis of evidence involved with evaluation, negotiation and resolution of cases at Arbitration Hearings, Settlement Conferences, Mediations, and informal negotiations of general civil cases. In addition, students will learn adversarial techniques of direct and cross-examination, persuasive summary of case in oral and written format. Students will draft a professional quality Settlement Conference Statement and an Arbitration Hearing Statement which will serve as practical exemplars which may be used in the practice of law after matriculation. At the conclusion of the curriculum, students will possess the professional skills to competently represent clients at Settlement Conferences, Mediations and Arbitration Hearings, and will be proficient in negotiating and settling cases to conclusion.</p> <p>Students generally can expect to spend a minimum of two hours/per hour of instruction time on assigned readings and briefing cases. For example, a 3-hour class would require at least 6 hours of outside preparation time per week.</p>
<p>FORMAT OVERVIEW / METHOD OF INSTRUCTION (Description of how the course will be taught, including breakdown of lecture, practicum, etc.)</p>	<p>This one semester course is structured as practical instruction to future lawyers of the essentials of professional conduct, competent representation, effective oral and written communication in objective and persuasive style, monetary evaluation of cases, and legal and critical analysis of evidence involved with evaluation, negotiation and resolution of cases at Arbitration Hearings, Settlement Conferences, Mediations, and informal negotiations of general civil cases. In addition, students will learn adversarial techniques of direct and cross-examination, persuasive summary of case in oral and written format. Students will draft a professional quality Settlement Conference Statement and an Arbitration Hearing Statement which will serve as practical exemplars which may be used in the practice of law after matriculation. At the conclusion of the curriculum, students will possess the professional skills to competently represent clients at Settlement Conferences, Mediations and Arbitration Hearings, and will be proficient in negotiating and settling cases to conclusion.</p>
<p>EXAMS:</p>	<p>Course Specific: The course will encompass two practical skills examinations. The Midterm Examination will consist of student participation (completion of written component and oral presentation as assigned) in a mock mandatory Settlement Conference on June 14, 2017 in week 7. The Final Examination will consist of student participation (completion of written component and oral presentation as assigned) in a Judicial Arbitration Hearing on August 9, 2017.</p>

	<p>Final Exams:</p> <p>Exams begin promptly at 6 p.m. Take-home exams and papers must be submitted to the Law School office by 6 p.m. on the due date, unless otherwise noted. All students must take examinations as scheduled. It is recognized that in special circumstances and due to emergencies, it may be necessary to schedule delayed examinations. An emergency is defined as a serious illness or injury to the student or a member of his or her immediate family. Special Circumstances are defined as other situations that, in the opinion of the Dean, are sufficient to warrant delay in taking examinations. <u>Any student taking delayed examinations <i>must have the prior written approval of the Dean.</i></u> No examination may be taken <u>prior</u> to the day of the regularly scheduled examination. If delayed examinations are approved by the Dean, <u>a fee of \$75 will be charged for each such exam taken.</u> Failure to complete an exam is not sufficient reason for a late or retake exam.</p>
<p>GRADING / ASSESSMENT CRITERIA:</p>	<p>Empire College uses the following grading system for electives: <u>Pass/Fail:</u> 65 - 100 - P Pass/Credit 64 and Below - F Fail/No Credit (Only numeric grades in Required courses are used to calculate grade point average.)</p> <p>Assignments and Grading Students are expected to complete all reading and homework assignments and to participate in class. Preparation, participation and homework, including reading assignments, are mandatory. Instructor may deduct up to 10 points from course score for lack of preparation or participation or failure to submit homework assignments.</p> <p>Course work will be weighted as follows:</p> <ul style="list-style-type: none"> • Seven written assignments 50% • Role playing and participation in mock Settlement Conference including written component 25% • Role playing and participation in mock Arbitration Hearing including written component 25% • The course will be graded Pass/Fail. <p>Course Expectations</p> <ul style="list-style-type: none"> • Regular attendance at scheduled class sessions • Active participation in class discussions and activities • Preparation prior to class: reading, assignments, research • Notify the Instructor prior to class if you will be absent • Respect and courtesy to the instructor and to other student colleagues.
<p>ATTENDANCE:</p>	<p>Regular and punctual attendance is essential for the successful completion of law school. Students should plan to attend every class. A minimum of 80 percent attendance is required. Roll will be taken at each class. Make-up classes will be scheduled if needed.</p>

Weekly assignments and dates below are specific to course when it was last taught.

ASSIGNMENTS:	Reading Assignments listed below are to be read <u>prior</u> to class; suggested further reading lists are optional. Weekly assignments
Week 1: MAY 3	Preliminary Preparation for Alternate Dispute Resolution Sign up for a Settlement Conference role Sign up for an Arbitration role Exchange contact information with all class colleagues <u>Handout Materials:</u> Hypothetical Settlement Conference case: Evidence Packet, <i>Williams v Klein & Allen</i>, et. al and related cases “<i>ADR Methods & Techniques</i>” <u>Lecture:</u> Preliminary Preparation for Alternate Dispute Resolution <u>Reading Assignment:</u> Ware text p.1-14 & 353-358 & 380-382 <u>Learning Objectives:</u> Students will become familiar with the terms and processes involved with Alternate Dispute Resolution and will distinguish between adversarial and collaborative processes. They will learn the opportunities for settlement and resolution in the course of a civil case, and will discover the factual, evidentiary, and monetary preparation necessary to prepare a case for resolution.
Week 2: MAY 10	Monetary Valuation of a Case: Modern Damages Assignment #1 is Due: Preliminary Preparation for Negotiation & Settlement <u>Handout Materials:</u> <u>Lecture:</u> Monetary Valuation of a Case <u>Reading Assignment:</u> Ware text: p.275-297 & 311-352 <u>Learning Objectives:</u> Students will learn the character of special/economic and general/non-economic damages, the types of damages remedies available, to identify and corroborate economic damages, loss of earning capacity, the significance of pain and suffering and the methods of calculating general damages.
Week 3: MAY 17	Monetary Valuation of a Case: Settlement Range, Demand, Offer Assignment #2 is Due: Preliminary Preparation for Negotiation & Settlement <u>Handout Materials:</u> Settlement Conference Statement - <i>Exemplar</i> Negotiation & Settlement Negotiation & Settlement Checklist Negotiation Preparation Form

	<p>Post-Negotiation Evaluation Checklist <u>Lecture:</u> Monetary Valuation of Case</p> <p><u>Reading Assignment:</u> Fisher & Ury: introduction, ch. 1 & 2</p> <p><u>Learning Objectives:</u> Students will learn to create a monetary range of case and to calculate an opening offer and demand. They will gain knowledge of the methods of negotiation.</p>
	<p>Drafting a Settlement Conference or Mediation Statement Assignment #3 is Due: Draft Version of Settlement Conference Statement</p> <p><u>Handout Materials:</u> <u>Lecture:</u> Drafting a Settlement Conference or Mediation Statement</p> <p><u>From Westlaw:</u> <i>ROC</i>² 3.1380, 3.800 <i>CCP</i> 1775 - 1775.12</p> <p><u>Reading Assignment:</u> Ware text p.296-309 & 385-427</p> <p><u>Learning Objectives:</u> Students will comprehend the required content of a settlement conference and mediation statement and learn to draft such statements in legal format.</p>
<p>Week 5: MAY 31</p>	<p>Special Topics in Arbitration, Mediation, Negotiation & Settlement Final version of Settlement Conference Statement is Due (graded as component of Midterm Examination)</p> <p><u>Handout Materials:</u> <u>Lecture:</u> Special Topics in Arbitration, Mediation, Negotiation & Settlement Release of All Claims Request for Trial de Novo Appointment of Guardian ad Litem Petition for Compromise of Minor's Claim Good Faith Settlement How to Draft a Settlement Agreement</p> <p><u>From Westlaw:</u> <i>CCP</i> 998, 877 & 877.6, 372, 664.6, 1987 Form CIV-010 (Obtain Form CIV-010 at http://www.courts.ca.gov/documents/civ010.pdf), <i>California Rules of Court</i> 3.800-3.826 & 3.850-3.872; 3.1382, 3.1385 <i>CC</i> 1431.2 <i>FRCP</i> 68</p>

² (ROC) California Rules of Court
Empire College School of Law – ADR Survey

	<p><u>Reading Assignment:</u> Ware text p. 358-380</p> <p><u>Learning Objectives:</u> Students will comprehend liens, offers to compromise in federal and state jurisdictions, Good Faith Settlements pursuant to CCP 877.6 & ROC 3.1382, Proposition 51 issues according to CC 1431.2, the requirements of appointing a Guardian ad Litem for minors and incompetent parties, Compromise of a minor’s claim, court enforcement of a settlement agreement (CCP 664.6), request for Trial de Novo in California Superior Court (CCP 1141-1141,21) how to draft a Settlement Agreement, and the duty to notify upon settlement, ROC 3.1385.</p>
<p>Week 6: JUNE 7</p>	<p>Appearance at Settlement Conference or Mediation</p> <p><u>From Westlaw:</u> CCP 1141-1141.21,1775-1775.15 ROC 3.800-3.830, 3.852-3.859, 3.850-3.872; 3.835-3.860</p> <p><u>Handout Materials:</u> <u>Lecture:</u> Appearance at Settlement Conference and Mediation</p> <p><u>Reading Assignment:</u> Ware text p. 428-464</p> <p><u>Learning Objectives:</u> Students will understand the preparation necessary for Settlement Conference or Mediation including settlement authority, attendance by parties, attorney preparation, applicable Rules of Court, and professional protocol at Settlement Conferences and Mediations.</p>
<p>Week 7: JUNE 14</p>	<p>Mock Settlement Conference, Judge presiding – Midterm Examination</p> <ul style="list-style-type: none"> • Attorneys for Defendant • Attorneys for Plaintiff • All students as co-counsel, parties, claims representatives & participants <p><u>Learning Objectives:</u> Students will participate as Attorneys for parties and claim representatives for defendants in a Mandatory Settlement Conference before a civil judge. Students will determine opening offer and demand, monetary range of case and will conduct settlement negotiations on the case with the advice and guidance of practicing attorneys.</p>
<p>Week 8: JUNE 21</p>	<p>Arbitration</p> <p><u>Handout Materials:</u> Hypothetical Arbitration case Evidence Packet: <i>Barker v Palsgraf</i> <i>and Yalebridge University</i> <u>Lecture:</u> Arbitration Notice of Appointment of Arbitrator & Instructions to Judicial Arbitrators Letter scheduling Arbitration Hearing <i>Exemplar:</i> Notice of Intention to</p>

	<p>Introduce Documentary Evidence at Arbitration Hearing Notice to Appear Sample Contractual Arbitration Clauses</p> <p><u>From Westlaw:</u> <i>CCP</i> 1141-1141.21, 1775-1775.15; 1280-1288.8; 1295; 170.1 & 170.6 <i>ROC</i> 3.800-3.830, 3.852-3.859, 3.850-3.872; 3.835-3.860 <i>CC</i> 3294-3295</p> <p><u>Reading Assignment:</u> Ware text p. 15-32</p> <p><u>Learning Objectives:</u> Students will learn the rules which govern Arbitrations and will distinguish between Judicial and contractual arbitrations including Uninsured Motorists, credit card common counts and medical liability cases. They will discover the factual, evidentiary, and monetary groundwork necessary to prepare a case for Arbitration.</p>
<p>Week 9: JUNE 28</p>	<p>Drafting an Arbitration Hearing Statement Assignment #4 is due: Preliminary Preparation for Arbitration Hearing</p> <p><u>Handout Materials:</u> <u>Lecture:</u> Drafting an Arbitration Hearing Statement <i>Exemplar</i>-Arbitration Hearing Statement</p> <p><u>Reading Assignment:</u> Ware text p.464-472</p>
<p>Week 10: JULY 5</p>	<p>Adversarial skills at Arbitration Hearing: Direct Examination Assignment #5 is due: Notice of Intention to Introduce Documentary Evidence at Arbitration Hearing & Notice to Appear</p> <p><u>Handout Materials:</u> <u>Lecture:</u> Adversarial skills at Arbitration Hearing</p> <p><u>From Westlaw:</u> <i>Evidence Code</i> 776 <i>CCP</i> 1987</p> <p><u>Reading Assignment:</u> Fisher & Ury text, chapters 3 & 4</p> <p><u>Learning Objectives:</u> Students will learn the adversarial techniques of direct examination, Notice to Appear to opposing party, and Notice of Intention to Introduce Documentary Evidence at Arbitration hearing.</p>
<p>Week 11: JULY 12</p>	<p>Adversarial Skills at Arbitration Hearing: Cross-Examination Assignment #6 is Due – Direct Examination – written submission & oral presentation Guest Speaker</p>

	<p><u>Reading Assignment:</u> Ware text p. 137-142</p> <p><u>Learning Objectives:</u> Students will learn the adversarial techniques of cross-examination at Arbitration Hearing.</p>
Week 12: JULY 19	<p>Contractual Arbitrations Assignment #7 is Due: Cross Examination - written submission & oral presentation</p> <p><u>Handout Materials:</u> <u>Lecture:</u> Arbitration</p> <p><u>Reading Assignment:</u> Ware text p. 33-99</p> <p><u>Learning Objectives:</u> Students will learn the specifics of contractual arbitrations, the source of an arbitrator's jurisdiction, areas of law subject to contractual arbitration, binding and non-binding arbitration awards.</p>
Week 13: JULY 26	<p>Appearance at Arbitration Hearing Final Version of Arbitration Hearing Statement is Due (graded as component of Final Examination)</p> <p><u>Handout Materials:</u> <u>Lecture:</u> Appearance at Arbitration Hearing</p> <p><u>Learning Objectives:</u> Students will learn the professional protocol involved with competent representation of a client and presentation of a case to an arbitrator at Arbitration Hearing.</p>
Week 14: AUG 2	<p>No class session – Preparation time for oral mock judicial arbitration hearing during exam period.</p>
Week 15: Exam date - AUG 9	<p>Mock Judicial Arbitration Hearing, VJH presiding as Arbitrator Final Examination - Students represent clients at Arbitration Hearing according to roles previously assigned</p> <p><u>Learning Objectives:</u> Students will participate as Attorneys for Plaintiff and Defendants in a mock Judicial Arbitration Hearing before the instructor serving as an Arbitrator. Students will present opening statements, submit documentary evidence, directly examine their clients, cross-examine opposing parties, submit monetary evaluation of their case and that of opposing parties, submit an Arbitration Hearing Statement for the party represented and will summarize the case in persuasive style.</p>

Syllabus is subject to change.