



## **CRESTPOINT UNIVERSITY**

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### **PLG-111 Alternative Dispute Resolution Syllabus and Course Guide**

The Alternative Dispute Resolution course is a time-based course built into the Crestpoint learning management system. The course is divided into modules, each of which contains readings and/or video lessons. Each module also contains one or more assessments. Students should aim to complete one module per week and should not work too far ahead or fall too far behind.

All course assessments must be submitted by the course deadline. The deadline can be found by clicking on the Course Name, then Progress Report. Generally, the course deadline is approximately 4 weeks after the last day of the course.

If you are having trouble completing the course, the student is strongly encouraged to contact his or her academic advisor or [Academic Support](#).

#### **Course Description:**

There exists a common misconception that lawyers and legal assistants do most of their work in court. More and more often, attorneys and their clients are seeking ways to reconcile differences without spending the time and money involved in a lawsuit. This course will provide students with a working knowledge of the basic theories underlying negotiation, arbitration, and mediation. Students will learn the important distinguishing characteristics of each of these "alternative" approaches to resolving disputes and will also learn how to address the ethical and legal issues which may arise in pursuit of these remedies.

In addition to covering current theory on these topics, much of the course will be dedicated to hypothetical scenarios and court cases concerning arbitration. Another portion will center on contracts involved in mediation. Thus, students will complete this class familiar with the general workings of these processes both from a theoretical perspective and from a practical perspective.

## **Course Objectives:**

Upon completion of this course, students will be able to:

- Analyze the advantages and disadvantages of negotiation in a particular situation versus taking the dispute to a court of law.
- Assist in strategically determining a client's negotiation position, in terms of the strength and weaknesses of that client's case.
- Explain how one can generally avoid dangers which arise during negotiation.
- Analyze ethical issues which may arise in negotiation.
- Explain what a mediator does and does not do.
- Analyze the meaning, and effect, of mediation agreements and how they affect the parties' future rights.
- Explain the advantages and disadvantages of arbitration and assist in making the determination of whether arbitration is appropriate in a particular case.
- Research and apply the state and federal laws which govern arbitration.
- Take the steps necessary to initiate an arbitration proceeding.
- Explain the form and functions of high-low arbitration and how it operates differently from traditional arbitration.

## **Textbook:**

All reading assignments refer to the Crestpoint courseware, Cases and/or statutes that are specifically mentioned in the syllabus are required reading. The texts of these cases and/or statutes may be accessed directly from the courseware. In addition to the assigned courseware and cases, students should familiarize themselves with the various legal documents listed for each lecture. These documents can be found on the Course Materials, under this course's materials, on the Crestpoint student website. Some, but not all, of these documents will be discussed in class. Reading assignments for each class should be completed prior to the class.

**In addition to the courseware's electronic form, you may also view/print out a PDF version of the courseware that includes:**

- 1) The courseware**
- 2) All lecture slides**
- 3) Handout for class 14**
- 4) Selected Provisions from the Federal Arbitration Act**
- 5) Selected Provisions from the Uniform Arbitration Act**

**See the course materials page for the link.**

## **Weekly Interaction Requirement**

To ensure that all students are involved, participating, and in compliance within the course, each student should complete one assessment each week. Students who do not fulfill the requirement within a given

week will be sent reminder emails. Students who fail to interact in multiple weeks may be subject to academic and financial aid consequences, in accordance with Crestpoint's Satisfactory Academic Policy and other school policies.

## **Course Structure**

After logging into your Crestpoint student account, locate your enrolled course by scrolling down and clicking on the course name. Your course will expand, and you will find eight modules, each corresponding to one week of the course. Lectures, slides, documents, assignments, discussions, and exams for each week are organized within the respective module.

## **Assessments**

Assessments may be in the form of discussion questions, assignments, and/or exams.

Exams are graded on a scale of 0-100 and must be done in 2-4 hours, depending on the exam. The start exam page indicates the length of time for each exam. Discussions and assignments should be completed in accordance with the assignment instructions. Assignment information can be found at the end of the course syllabus.

Please see the Grading Policy under School Links for specific details regarding the grading of assessments.

## **Crestpoint Academic Advisor**

Each Crestpoint student is assigned an academic advisor upon enrollment. Your academic advisor is a resource that can and should be drawn on if you need academic assistance. This includes advice on studying, help with assignments, general academic questions, etc. You should have received an email from your academic advisor upon enrollment. If you have not received such an email or do not know who your academic advisor is, please contact Anne Lewis at [anne@crestpoint.edu](mailto:anne@crestpoint.edu).

## **Crestpoint Plagiarism Policy**

All work done by Crestpoint students is expected to be their own work. In addition, Crestpoint students may not share their completed work, answer keys, or sample answers which they have obtained by any method with any other student. Students may NOT upload any sample answer (whether written by themselves or any other person) to any publicly available website or database.

Students are requested and encouraged to please review the [Academic Integrity and AI Use Policy](#). Students are responsible for complying with its terms.

## **Course Grades**

Grades are issued on a classical A through F scale based on the grades scored on the assessments, per this syllabus.

## Lesson Schedule

### Module 1

#### Lecture 1

In this first class, we will discuss the history of the alternative dispute resolution movement in the United States and the extent to which solutions alternative to litigation can save time and money for all parties involved, including taxpayers. We will outline the three main alternative dispute resolution categories (negotiation, arbitration, and mediation), each of which will be handled in far greater depth in classes to come.

#### **Courseware Reading:**

Chapter 1: Introduction to Forms of Alternative Dispute Resolution

- A. Overview of Alternate Dispute Resolution
- B. History of Alternate Dispute Resolution
- C. Negotiation Overview
- D. Mediation Overview
- E. Arbitration Overview

#### **Documents for Review:**

Dispute Resolution Policy

#### Lecture 2

With this class we begin our in-depth coverage of negotiation as an alternative to litigation. We will examine how parties can use negotiation as a viable alternative to litigation or other means of addressing the issues. Central to Class 2 will be our discussion of the two main negotiating postures (adversarial versus problem-solving).

#### **Courseware Reading:**

Chapter 2: Negotiation Positioning-Problem Solvers Cooperate, Adversaries Compete

- A. Negotiation Generally
- B. Adversarial Positioning & Distributive Bargaining

#### **Complete Weekly Discussion 1**

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## **Module 2**

### **Lecture 3**

This class will consist of a Lexis tutorial/ assignment walkthrough. The instructor will use a research assignment from a past or current course to demonstrate the way an assignment should be researched and composed.

The instructor will walk the students through the various Lexis databases and explain to students how to most efficiently use the Lexis system to complete research assignments. Various general aspects of navigating Lexis, including Shepardizing, seeking and finding appropriate search databases, getting a document by citation, etc., may be explored.

The instructor will also discuss how to most effectively plan, outline, organize and draft research assignments. Model answers and/or past student submissions may be used to illustrate what a “4” assignment looks like and how to compose one.

### **Lecture 4**

This class will focus on cooperative negotiations. Even though cooperative negotiations can sound simple enough, they can be some of the trickiest to execute. We will discuss some of the things to be aware of in the course of a cooperative negotiation and to always remember that negotiation is, at its heart, a zero-sum game, and how important it is not to lose sight of this fact. We will look at the classic problem of the “prisoner’s dilemma” to illustrate how complex negotiations can be.

#### **Courseware Reading:**

Chapter 2: Negotiation Positioning-Problem Solvers Cooperate, Adversaries Compete

- C. Cooperative Negotiators
- D. Cooperative Negotiation & The Prisoner’s Dilemma

## **Complete Weekly Discussion 2**

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## **Module 3**

### **Lecture 5**

Our foray into negotiation continues by examining the ethics involved in negotiation. We will look tonight at the ethical responsibilities owed by an attorney representing a party in a negotiation proceeding to one’s client. We will look at the duty to zealously represent one’s client and the impact that duty has on a negotiation proceeding.

### **Courseware Reading:**

Chapter 3: The Legal Professional as a Negotiator- Ethical Considerations

- A. Model Rules of Professional Conduct
- B. Negotiator's Duties to Client - Model Rule 1.4
- C. Negotiator's Duties to Client - Model Rule 2.1

### **Cases and Statutes:**

- [Model Rule of Professional Conduct 5.3](#)
- [Model Rule of Professional Conduct 2.1](#)

## **Lecture 6**

In this class, we will continue our discussion of the ethics involved in negotiation. We will look at the duties owed by an attorney involved in a negotiation proceeding to other parties involved in the proceedings. This will include a discussion of the rules regarding contact with opposing parties and when and to what extent it is okay to lie (or "stretch the truth") during a negotiation.

### **Courseware Reading:**

Chapter 3: The Legal Professional as a Negotiator- Ethical Considerations

- D. Negotiator's Duties to Others – Model Rule 4.1
- E. Negotiator's Duties to Others – Model Rule 4.2
- F. Negotiator's Duties to Others – Model Rule 4.3

### **Cases and Statutes:**

- [Model Rule of Professional Conduct 4.1](#)
- [Model Rule of Professional Conduct 4.2](#)
- [Model Rule of Professional Conduct 4.3](#)

## **Complete Weekly Discussion 3**

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## **Module 4**

### **Lecture 7**

Our foray into negotiation continues by examining the role which negotiation plays in situations unrelated to any dispute. We will distinguish the role of negotiation in deal-making situations from its role in disputes and discuss how we can use our understanding of the former to gain an edge in disputes. Next, we will continue our discussion of negotiation by discussing settlement agreements. We will discuss various considerations that go into such agreements.

**Courseware Reading:**

Chapter 4: Negotiating Deals Absent Disputes, Settlement Agreements & Special Settlements

- A. Making Deals Cooperatively and Competitively
- B. Drafting a Valid Settlement Agreement

**Cases and Statutes:**

- *Mallory v. Eyrich*, 922 F.2d 1273 (6th Cir. 1991)
- *Marek v. Chesney*, 473 U.S. 1 (1985)

**Lecture 8**

We will devote this class to settlement agreements. We will look at a settlement agreement and discuss the important provisions in it. We will discuss the importance of common settlement provisions and the requirements for making them enforceable. We will also look at certain uncommon settlement agreement provisions and discuss when and under what circumstances they might be desirable.

**Courseware reading:**

Chapter 4: Negotiating Deals Absent Disputes, Settlement Agreements & Special Settlements

- C. Special Settlement Agreements

**Document for Review:**

- Sample Settlement Agreement

**Complete Weekly Discussion 4**

**The Midterm Exam can be taken at this point**

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**Module 5****Lecture 9**

In this class, we will begin our work on mediation. We will discuss the relative advantages and disadvantages of mediation *vis a vis* commencing with litigation as soon as a dispute arises. We will also discuss how mediation is initiated and the extent to which contracts that call for mediation can be enforced (including the “good faith” mediation requirements, etc.)

### **Courseware Reading:**

Chapter 5: Mediation: How It Works

- A. Mediation– What It Is and What It Is Not
- B. Advantages and Disadvantages of Mediation

### **Documents for Review:**

- Request for Mediation
- Agreement for Optional Mediation

### **Lecture 10**

In this class we will focus on mediation structure, i.e., how the mediation proceeding is held. In addition, we will discuss the all-important question as to how one becomes a mediator, including private mediators and court appointed mediators. Finally, we will discuss the extent to which and the circumstances surrounding which a mediated agreement can later be challenged in court on the grounds that the proceeding was unfair, etc.

### **Courseware Reading:**

Chapter 5: Mediation: How It Works

- C. Mediation Structure

### **Cases and Statutes:**

- *Harrison v. Nissan Motor Corp. in U.S.A.*, 111 F.3d 343 (3rd Cir. 1997)
- *United States v. Bankers Ins. Co.*, 245 F.3d 315 (4th Cir. 2001)

### **Documents for Review:**

- Civil Mediator Application
- Domestic Relations Mediator Application

### **Complete Weekly Discussion 5**

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## **Module 6**

### **Lecture 11**

To continue our discussion on mediation, we will turn to the real world and the practical application of what we have been discussing. An unenforceable contract does no one any good. Therefore, we will cover issues related to enforceability of agreements to mediate and mediation settlements.

**Courseware Reading:**

## Chapter 6: Mediation: Case Studies

- A. Hypothetical Mediation Scenario
- B. The Clergy Cases & Meddlesome Mediators
- C. The Foxgate Case – Good Faith & Confidentiality

**Cases and Statutes:**

- *Travelers Casualty & Surety Co. v. Superior Court*, 126 Cal. App. 4th 1131 (2005)
- *Foxgate Homeowners' Association Inc. v. Bramalea California Inc.*, 26 Cal. 4th 1 (Cal. 2001)

**Documents for Review:**

- Mediation Status Report
- Motion to Remove a case from Mediation

**Lecture 12**

In this class, we will begin the largest area in our study of alternate dispute resolution: the field of arbitration. We will discuss arbitration agreements in contracts and other manners in which people choose to submit their disputes to an arbitrator. We will also discuss the arbitration process and the jurisdiction and authority that arbitration panels have and the limits to that authority. In addition, we will discuss legislation passed (mostly on the state level) that impacts arbitrators and their awards.

**Courseware Reading:**

## Chapter 7: Arbitration

- A. Arbitration's History Prior to the Twentieth Century
- B. The Rise of Arbitration Legislation

**Cases and Statutes:**

- *Textile Workers Union v. Lincoln Mills of Alabama*, 353 U.S. 448 (1957)
- *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52 (2003)

**Documents for Review:**

- Arbitration Agreement
- Demand for Arbitration

**Complete Weekly Discussion 6**

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## **Module 7**

### **Lecture 13**

Tonight, we will continue our study of arbitration. We will compare arbitration to other alternatives of dispute resolution, including mediation and litigation. We will also examine when and how courts will enforce arbitration awards, including the procedural steps necessary to enforce an arbitration award. We will finish the class by discussing other forms of arbitration, such as “high-low arbitration” and “court-annexed arbitration.”

#### **Courseware Reading:**

Chapter 7: Arbitration

- C. Arbitration vs. Mediation
- D. Arbitration vs. Litigation
- E. High-Low Arbitration
- F. Court-Annexed Arbitration

#### **Cases and Statutes:**

- *Raytheon Co. v. Automated Business Sys.*, 882 F. 2d 6 (1st Cir. 1989)
- *Bonar v. Dean Witter Reynolds, Inc.* 835 F.2d 1378 (11th Cir. 1988)
- *In re Smith Case*, 381 Pa. 223 (1955)

#### **Documents for Review:**

- Binding Arbitration Award
- Judgment on Arbitration Award

### **Lecture 14**

We will spend tonight’s class discussing the very important question of to what extent a court can, should and will review an arbitration award. The courts have struck a delicate balance between preventing the courts from being used as appellate courts for every arbitration decision (thereby discouraging arbitration) on the one hand and making an arbitrator’s decision always absolute (risking unfairness). We will discuss various fact patterns that straddle this border and discuss the standards to which courts hold arbitrators in terms of fairness and accuracy in applying the law.

#### **Reading:**

Handout to be posted to the module

#### **Cases and Statutes:**

- *In re Smith Case*, 381 Pa. 223 (1955)

## **Module 8**

### **Lecture 15**

We will conclude the course by looking at various actual arbitration cases that have occurred in the recent past. We will discuss the various practical, strategic and ethical issues that arose in those cases and how they demonstrate pitfalls that should be carefully avoided by legal professionals involved in alternate dispute resolution cases.

#### **Courseware Reading:**

Chapter 8: Arbitration: Case Studies

A. Arbitration: Case Studies

#### **Cases and Statutes:**

- *Ting v. AT&T*, 319 F.3d 1126 (6th Cir. 2003)
- *Iberia Credit Bureau, Inc. v. Cingular Wireless LLC*, 379 F.3d 159 (5th Cir. 2004)
- *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444 (2003)

### **Complete Assignments 1 and 2**

**The Final Exam can be taken at this point**

#### **Course Assignments**

##### **Assignment 1:**

**This assignment has two parts. Be sure to complete each one.**

##### **Part 1: Based on classes 9 and 10**

Humpty and Dumpty, residents of Miami, FL, had a nasty incident involving a wall, a fall, and a broken egg, in which both parties got hurt. Humpty and Dumpty ended up suing each other in Florida state court. After a few months of nasty motion practice, Humpty comes to your office and tells you that he's heard of this wonderful thing called mediation, under which he and Dumpty could be helped to reach a settlement. He has a few questions for you about mediation, all under Florida law:

- 1) Can he ask the court to order the parties to mediation if Dumpty refuses to go? If so, under what circumstances will the court do so?
- 2) Who can serve as the mediator (what are the qualifications) if the court directs the mediation?
- 3) If Dumpty doesn't show up to the mediation proceeding, what can the court do to "convince" Dumpty to grace the proceeding with his presence?

- 4) If the mediation fails, will the mediator be able to tell the judge what went wrong and how the case might be settled?

Please answer these questions and cite appropriate Florida law in support of each answer. Each answer must be based on Florida statutes and Florida Rules of Civil Procedure. Case law is not required, but you must use the relevant Florida statutes and/or civil rules.

**This is NOT an IRAC-based essay question. You may answer each question in one paragraph. However, please properly support your statements.**

## **Part 2**

The Covid-19 Pandemic was a time of unprecedented upheaval in the world, and legal proceedings were no exception. Many courthouses were closed, and travel became incredibly difficult. As a result, parties increasingly turned to virtual ADR as a way to conduct legal proceedings safely.

While many legal institutions have since returned to in-person operations, virtual and hybrid ADR models remain widely used in arbitration, mediation, and settlement conferences. Courts, arbitral institutions, and professional organizations continue to refine best practices for online dispute resolution, raising important questions about efficiency, fairness, access to justice, and due process.

Please address these specific issues related to alternative dispute during and after the global pandemic. Create the discussion answers from reputable cited sources such as the American Bar Association, official ADR websites, Lexis Legal News Hub, etc. **Do not use unreliable web sources such as Wikipedia which can be edited by anyone at any time.**

1. Describe 3 advantages of using virtual dispute resolution. Consider factors such as efficiency, cost, access to justice, scheduling flexibility, or cross-jurisdictional participation.
2. Describe 3 potential pitfalls or concerns of using dispute resolution. Consider factors such as confidentiality, technology access, credibility assessments, procedural fairness, cybersecurity, or enforceability.
3. Find 2 resources that help choose an appropriate arbitrator or mediator. Briefly explain briefly how each resource helps parties evaluate qualifications, subject-matter expertise, or neutrality.
4. Based on current sources, discuss whether virtual arbitration and mediation have continued beyond the pandemic and in what contexts they are most used today. Then, provide your own reasoned analysis of whether virtual ADR should remain a standard option going forward, considering both efficiency and fairness concerns. (This is not a yes/no question. This question requires using cited sources as to *showing* whether the practice has continued beyond the pandemic time frame and then your opinion and reasoning as to if it should continue do so.)

## **Assignment 2: (based on Class 15)**

Amelia lives just outside of Wichita, Kansas. She is employed as a Nurse at General Hospital. Amelia believes that General owes her \$45,000 in overtime pay. The hospital does not believe she is entitled to the money. The employment contract between Amelia and General stipulates that all disputes will be handled through arbitration.

In July, Merrill is appointed as arbitrator for the case. He holds an initial hearing in August, where he makes some preliminary rulings. He also schedules a follow-up conference to “consider whether further discovery or preliminary matters need to be undertaken.”

General does not respond with any additional information.

On September 1, Amelia's lawyer has a phone call with Merrill.

On September 8, Merrill states that the case will be open for an additional 30 days for parties to submit additional information. Neither party submits information.

On October 8, Merrill decides that General owes Amelia the full \$45,000.

General’s lawyer is very upset with this decision, and shouts that “Kansas doesn’t even allow this kind of thing to be arbitrated anyway!” Moreover, he believes it was “incredibly unfair for the arbitrator to have that phone call with Amelia’s lawyers.”

Subsequently, General Hospital files a motion to vacate the arbitrator’s ruling.

Please research Kansas law regarding arbitration, and whether arbitration is favored in this context. Additionally, please discuss whether the arbitrator’s decision should be upheld.

**Please write an IRAC formatted legal memo to answer the question and be sure to properly cite your cases and statutes.**