



## **CRESTPOINT UNIVERSITY**

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### **Alternative Dispute Resolution**

#### **PLG-111**

#### **Syllabus and Course Guide**

The Crestpoint University Alternative Dispute Resolution course is a pre-recorded class. This means that all lectures will be made available at the outset of the class. The student should listen to all 15 lectures at his or her convenience. However, the student must interact with the school by taking a quiz or answering a discussion question each week.

All assignments and exams must be submitted by the course deadline. The deadline can be found on your progress report, which can be accessed on the Course Materials page or by clicking on the assignments and exams button on your student menu and then selecting this course.

If a student is having trouble completing the course, the student is strongly encouraged to contact his or her academic advisor or Academic Support ([academicsupport@crestpoint.edu](mailto:academicsupport@crestpoint.edu)).

#### **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:**

At the completion of this course, the student should 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.

## **READING ASSIGNMENTS:**

All reading assignments refer to the Crestpoint courseware, including the interactions attached to each subchapter. 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 “Documents and Slides” page 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 lectures 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.**

## School Virtual Library

All Crestpoint students are encouraged to take advantage of the Crestpoint virtual library, which can be accessed from the “course materials” page on the student menu or directly through this link: <https://crestpoint.edu/Students/VirtualLibrary.aspx>.

## WRITTEN ASSIGNMENTS:

At the outset of the course, two assignments will be posted on the “Assignments and Exams” page. The two assignments will cumulatively count for 30% of the student’s grade for the course.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the Crestpoint student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Each submitted assignment will be graded on the following scale:

4 - Excellent

3 - Good

2 – Satisfactory

1 – Poor

0 – Not acceptable (must resubmit)

(Half-points may also be awarded in assignment grading.)

Please see the “Assignment Grading Rubric” (the next page of this syllabus) for more detailed information about how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

For more information on assignments, please see the *Crestpoint Student Handbook*.

***To the extent possible, it is recommended that students complete the assignments as the course proceeds rather than waiting until after the course ends.***

## Assignment Grading Rubric

Factor	4 (Excellent)	3(Good)	2(Satisfactory)	1 (Poor)	0 (no credit)
<b>Thoroughness</b>	Answers all questions in the exercise completely and in the appropriate order.	Answers all questions in the exercise but not completely and/or not on the appropriate order.	Answers most of the questions in the exercise but not completely and/or not in the appropriate order.	Does not answer many of the questions in the exercise but does make some reasonable effort to do so.	Makes little or no reasonable effort to answer the questions posed in the assignment.
<b>Demonstrates Understanding of the Assignment and has come to an appropriate conclusion</b>	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the student comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported by the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
<b>Documentation/ Legal research (note: for assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)</b>	Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.	Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.	Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.	Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.	Student has not cited any legal authorities or has cited authorities that are irrelevant.
<b>Organization</b>	Essay is organized very well; the reader can clearly understand where the essay is going at all points and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.	Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.	Essay shows some level of organization but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.	Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.	Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.
<b>Critical Thinking and Analysis</b>	Shows excellent critical thinking and analysis. The student is able to apply the cited law to the facts of the given case in a clear and convincing manner.	Shows good critical thinking and analysis. The student's points are well argued and well supported.	Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.	Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.	Shows no effort at critical thinking or analysis. The student's points make no sense.

Credit may also be taken off for poor spelling or grammar.

## Weekly Discussions

At the outset of the course, a weekly discussion question will be posted on the “Assignments and Exams” page. The 6 discussions will cumulatively count for 30% of the student’s grade for the course. These assignments have a due date specified in the assignment and in the assignment title. Answers submitted after the due date will incur a grade penalty.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the Crestpoint student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Weekly discussions will be graded on the same 0-4 scale as the research assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

*To the extent possible, it is highly recommended and encouraged that students stay as current as possible with the weekly and submit them in a manner that allows you to practice as you learn the material. Submitting the weekly discussion beyond the given deadlines will result in a grade penalty.*

### **EXAMINATIONS:**

Examinations will be posted on the Crestpoint website when indicated on the syllabus of the course. The examinations consist multiple choice and “short essay” questions. The 2 examinations will cumulatively count for 40% of the student’s course grade.

Examinations are non-cumulative; they cover only the material that was covered since the previous examination. The instructor will provide specific information regarding the content of each examination, as the examination time approaches.

All examinations are timed. A student may begin the examination any time after it is posted to the Crestpoint website. Once begun, the examination must be completed within 4 hours.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each examination question, full credit will be awarded if the student:

- 1) Correctly identifies the legal issue(s) presented by the question
- 2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student’s answer comes to an “incorrect” conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)

3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

***Please note that, even if not directly stated in the question, you must give reasons for your answers to open ended questions. One word answers such as “yes” or “no” or answers that merely restate the question without explaining the answer given will not be credited.***

The following factors are generally NOT taken into account in grading examinations:

Legal research: Although research is a key component of assignments, examinations are graded on the student’s knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student’s answer): Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would rather see the students spend their time spotting legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

For more information on examinations, please see the *Crestpoint Student Handbook*.

***To the extent possible, it is recommended that students complete the exams as the course proceeds rather than waiting until after the course ends.***

## **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 on assignments, examinations and research projects is expected to be their own work. Quoting other sources as part of analyzing a subject is desirable and necessary in many cases. However, when other sources are quoted or used, they must be properly attributed to the original sources. This applies to direct quotes of sources and to

paraphrasing other sources or using ideas obtained from other sources even if the exact text is not used.

Plagiarism means using the materials of others without appropriately citing the source and is an academic offense.

Under the Crestpoint plagiarism policy, a student may not, as part of any assignment or exam submission:

- 1) Quote any text from any other source without:
  - a) putting quotation marks around the quoted material;
  - AND
  - b) appropriately citing the source of the quote.
- 2) Pass off the work of another as his or her own, even if the student does not directly quote from the other source.

Please note that the Crestpoint plagiarism policy does not mean that you cannot quote language from the courseware, textbook or slides as part of an answer to a question on an exam. These are resources that are meant to be used on an exam when applied in an appropriate manner. However, quoting any source *without attribution* is plagiarism.

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. **Any student who uploads a sample assignment or exam answer to a publicly available website or database shall be disciplined in a manner to be determined by the school Dean, up to and including expulsion from the college.**

### **Policy on the use of Artificial Intelligence in the completion of academic assessments**

AI (artificial intelligence) resources such as ChatGPT and Bard can be useful in a number of ways. However, it can also be abused, as students may be tempted to use AI-generated content in place of the work needed to build the skills necessary to complete their academic programs.

Students are expected to submit substantially their own work product. To the extent student assessments are copied and pasted from AI platforms, they must be framed by quotation marks or block quotes with appropriate citations, just as though they were citing any other Internet source. Submitting work copied from AI sources without attribution is plagiarism and will be dealt with accordingly.

Submitting content generated by AI with proper quoting and attribution is not plagiarism. However, heavy use of AI-generated content in an assessment may show lack of original work and grading will reflect that. At the grader's discretion, assignments composed substantially of AI-generated content will be awarded little or no academic credit.

For more information regarding the Plagiarism Policy, penalties and due process rights where plagiarism is alleged, please see the Crestpoint Plagiarism Policy at:

<https://crestpoint.edu/pages/PlagiarismPolicy.pdf>

## **WEEKLY INTERACTION REQUIREMENT**

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least once during each week, either:

1) Submit at least one assignment

OR

2) Take at least one examination

OR

3) Answer a weekly “interaction” question or questions that will be posted on the “Assignments and Exams” page.

The weekly “interaction” question(s) will be straightforward and will cover material covered in class each week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

## **COURSE GRADES**

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



## **Lecture and reading assignments schedule**

### **CLASS 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

Suggested links:

<https://lawshelf.com/videos/entry/introduction-to-alternative-dispute-resolution>

<https://lawshelf.com/videos/entry/alternative-dispute-resolution-mediation>

<https://lawshelf.com/videos/entry/arbitration-as-a-form-of-alternative-dispute-resolution>

## **CLASS 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

## **CLASS 3: (Assignment/ Lexis walkthrough)**

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 manner in which 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.

## **CLASS 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

## **CLASS 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

## **CLASS 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

## CLASS 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. Chesny, 473 U.S. 1 (1985)

## CLASS 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

**The midterm examination will be posted at this point.**

## CLASS 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

## CLASS 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

**Assignment # 1 Part 1 can be completed at this point.**

## CLASS 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

## CLASS 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



## CLASS 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

#### Suggested videos:

<https://lawshelf.com/videos/entry/confirmation-of-an-arbitration-award>

## CLASS 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 on the message board

### Cases and Statutes:

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

## CLASS 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)

**Assignments # 1 and # 2 can be completed at this point.**

**The final examination will be posted at this point.**