

# Law 337 Dispute Resolution: Theory and Practice

Fall 2010

Professor Andrew Pirie

## Course Description and Outline

### Course Particulars

Pre-requisite/co-requisite:	First year law complete
Unit value:	1.5 units
Hours per Week:	3.0 hrs
Term offered:	Fall 2010
Class hours:	Mon; Wed; 3:30-5:00pm
Location:	Room 152 Fraser Building
Instructor:	Professor Andrew Pirie Rm 223 Fraser Building telephone: 721-8179 (office)  e-mail: <a href="mailto:apirie@uvic.ca">apirie@uvic.ca</a>

The following pages contain a detailed description of the classes in Law 337 Dispute Resolution: Theory and Practice.

Each page contains information about topics to be covered, major learning objectives, and required readings.

The **Readings** refer to

Andrew J Pirie, *Alternative Dispute Resolution: Skills, Science, and the Law* (Irwin Law: Toronto, 2000). This book is available from the University bookstore.

**Date: September 8, 13**

**Topic - Introduction to Alternative Dispute Resolution: The Practice of ADR**

### **Learning Objectives**

After these classes, you should be able to

1. identify reasons for legal interest in ADR
2. review the historical, contextual, and multidisciplinary influences on ADR
3. list the major critiques made of ADR
4. explain the modern meaning of alternative dispute resolution
5. begin to analyze practical legal disputes and identify how this analysis can influence disputing processes and outcomes using ADR concepts

These objectives form the educational foundation for anyone studying the ADR field. How you understand the varied elements of alternative dispute resolution and its critiques determines how you will apply ADR to practical disputing situations.

### **Readings**

**Chapter 1-The Meaning of Alternative Dispute Resolution**

**Date: September 15, 20, 22**

**Topic - Key Concepts in ADR**

### **Learning Objectives**

After these classes, you should be able to

1. describe and differentiate the varied terminologies of ADR such as adversarial thinking and the ethic of care, dispute resolution and dispute processing, conflicts and disputes, constructive and destructive conflict, the main ways in which disputes are prevented, managed, and otherwise handled, causes of conflict, conflict styles and other conflict behavior, and specific ADR practices such as med-arb, confidential listening, JDR, and rent-a-judge
2. analyze a fact situation or other presentation of a dispute using ADR key concepts and advise what these concepts mean for the processing of the dispute in question, what interventions will be helpful/unhelpful, and potential disputing outcomes.

These objectives begin to demonstrate how broad the ADR field is, and that being able to work with ADR's key concepts allows lawyers and others to analyze disputing situations in order to make constructive decisions about what actions to take.

### **Readings**

**Chapter 2-Key Concepts in ADR**

**Date: September 27, 29, October 4, 6**

**Topic - Legal Negotiation: Theories and Practices**

### **Learning Objectives**

After these classes, you should be able to

1. articulate full definitions of the main negotiation theories, set out their various stages, and a lawyer's ethical responsibilities in negotiation
2. describe 25 important and common negotiation techniques
3. break down power in a negotiation
4. given a video, other presentation of a legal negotiation, or actual live negotiation, be able to analyze the process using ADR key concepts and negotiation theories and practices learned and offer or implement suggested improvements for the negotiation.

These objectives should enable you to have an even greater sense of negotiation's importance and dynamics, enabling you to better plan for and execute your own negotiations, legal or otherwise.

### **Readings**

**Chapter 3-Negotiation: We Can Work It Out**

**Date: October 13, 18, 20, 25**

Topic - **Mediation**

### **Learning Objectives**

After these classes, you should be able to

1. define the term mediation and identify its key characteristics
2. describe the relationship between mediation and the ADR field,
3. describe the various ways in which mediation is practiced and present 25 examples of mediator skills
4. given a dramatization of a mediation process, apply your mediation theory and practice notes to explain the process and provide possible improvements to it,
5. engage as a mediator in a practical legal dispute applying specific mediation theories, practices, and ethics, ADR key concepts, and negotiation theories and practices

Despite the great variability in what makes up mediation, these objectives provide you with a solid conceptual and practical understanding of what makes up mediation's theories and practices as well as an introduction to the skills mediators actually use in mediating disputes including a lawyer mediator's ethical responsibilities.

### **Readings**

Chapter 4-**Mediation: The Science and the Skills**

**Date: October 27**

**Topic - The Law of ADR**

### **Learning Objectives**

By the end of these classes, you should be able to

1. find and brief several discrete cases making up the law of ADR (ie Toronto Truck Centre Ltd. v. Volvo Trucks Canada (1998), 163 [D.L.R.](#) (4<sup>th</sup>) 740 (Ont. Gen. Div.)
2. apply research skills to research effectively the law of ADR
3. discover how ADR has been institutionalized into common law and statute law

### **Readings**

**Chapter 8-The Law of ADR**

**Date: November 1**

**Topic-Culture and Conflict**

**Learning Objectives**

By the end of these classes, you should be able to

1. define culture and conflict
2. describe the influences of culture on the meaning of alternative dispute resolution and vice versa
3. critique ADR generally and the mediation model from the perspective of culture

These objectives illustrate the enormous roles that the concept of culture has on our understanding of ADR and the new approaches to dispute resolution that culture broadly defined encourages.

**Readings**

**Chapter 7-ADR and Culture**

**Date November 3, 8, 10**

**Topic-ADR Guests: Changing the Meaning of ADR**

### **Learning Objectives**

By the end of these classes, you should be able to

1. identify the ways in which ADR is applied in a range of legal settings/subject matters,
2. have a greater understanding of the guests' work in ADR and the influence of this work on the meaning of ADR
3. integrate lessons learned from these guests into your own understanding of ADR

These objectives highlight the ways in which ADR is applied in a range of legal settings/subject matters and focus on some recent and innovative developments in ADR. They provide further opportunities to enhance your analytical abilities by applying these developments to disputing scenarios.

### **Readings**

Chapter 6 - **ADR in Practice**

**Date November 15 (in class test), 17, 22, 24, 29, December 1**

**Topic - Proficiency in ADR, an ADR Simulation, and course conclusion**

### **Learning Objectives**

By the end of these classes, the course will be completed and you should be able to

1. demonstrate proficiency in the learning objectives covered to date in the course by way of an in-class test
2. in the context of a multi-party dispute in which you are involved as legal counsel, analyze the dispute using ADR concepts learned, evaluate whether opportunities exist for constructive conflict, evaluate the strengths and challenges apparent in your own approaches to dispute resolving and in the disputing approach of others, and ultimately effectively participate in processing of the dispute.

### **Readings**

Review materials

