

LECTURE OVERVIEW AND READING LIST

I. ADR and the Court System in the United States

This lecture provides an overview of how different alternative dispute resolution systems have been institutionalized into the American court systems. I will examine the different ways in which mediation is incorporated into court procedures or selected by parties at various stages. I also examine how parties contract out of the judicial system through arbitration. I then examine the costs and benefits of the institutionalization of ADR, and how it tends to replicate the systemic weaknesses of the American justice system.

Related reading:

1. Frank Sander & Stephen Goldberg, *Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure*, NEGOTIATION JOURNAL (1994).
2. Deborah Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement is Re-Shaping Our Legal System*, 108 PENN STATE LAW REVIEW 165 (2003-2004), available at <https://ideas.dickinsonlaw.psu.edu/dlr/vol1122/iss1/28/>.
3. Jennifer Reynolds, *Luck v. Justice: Consent Intervenes, But for Whom?* 14 PEPPERDINE DISPUTE RESOLUTION LAW JOURNAL 245 (2014), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2469344.
4. Samuel Estreicher, *Saturns for Rickshaws: The Stakes in the Debate over Predispute Employment Arbitration Agreements*, 16 OHIO STATE JOURNAL OF DISPUTE RESOLUTION (2001), available at <https://kb.osu.edu/handle/1811/80098>
5. Elizabeth Tippet & Bridget Schaaff, *How Concepcion and Italian Colors Affected Terms of Service Contracts in the Gig Economy*, 70 RUTGERS LAW REVIEW 459 (2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009913.

II. Adapting ADR to the Cultural Context

This lecture presents the case study of an arbitration system in Japan to illustrate how ADR can adapt to reflect cultural context and values over time. Following World War II, the Japanese insurance industry adopted an American arbitration model for consumer insurance disputes. However, the contemporary form of the Japanese insurance arbitration is quite different from, and in many ways superior to, the American model upon which it is based.

Related reading:

1. Jean Sternlight, *Tsunami: AT&T Mobility v. Concepcion Impedes Access to Justice*, 90 OREGON LAW REVIEW 703 (2012), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1924365.
2. Masaaki Imai, *KAIZEN: THE KEY TO JAPAN'S COMPETITIVE SUCCESS* (1986)

III. Dispute Systems Design

This lecture provides an overview of basic principles of dispute systems design. I examine different factors to consider in designing a dispute resolution system. I also apply these principles to different models of mediation and the contexts in which they have been used in the United States.

Related reading:

1. Nancy Rogers, Robert Bordone, Frank Sander, & Craig McEwan, *DISPUTE SYSTEMS DESIGN* (2nd Ed. 2019).
2. Cathy Constantino & Christina Sickles Merchant, *DESIGNING CONFLICT MANAGEMENT SYSTEMS: A GUIDE TO CREATING PRODUCTIVE AND HEALTHY ORGANIZATIONS* (1996).
3. Jennifer Reynolds, *The Activist Plus: Dispute Systems Design and Social Activism*, 13 *UNIVERSITY OF ST. THOMAS LAW JOURNAL* (2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3172872.

IV. Negotiation Theory and Practice

This lecture provides an overview of current negotiation theory, and practice, with a particular focus on negotiation teaching and pedagogy. I examine in particular a useful approach developed by Prof. Andrea Kupfer Schneider, which posits that negotiation skills reflect a combination of assertiveness, empathy, flexibility, social intuition, and ethicality. (I hope to include video of students demonstrating their skill progression over time.)

Related reading:

1. Andrea Kupfer Schneider, *Teaching a New Negotiation Skills Paradigm*, 39 *WASHINGTON UNIVERSITY JOURNAL OF LAW & POLICY* 13 (2012), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2151440.
2. *THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR* (Andrea Kupfer Schneider, Christopher Honeyman, Eds. 2006).
3. Roger Fisher, William Ury & Bruce Patton, *GETTING TO YES* (1991).
4. Robert Mnookin, Scott Peppet & Andrew Tulumello, *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS & DISPUTES* (2000).
5. Douglas Stone, Sheila Heen & Bruce Patton, *DIFFICULT CONVERSATIONS* (1999).
6. Gary Goodpaster, *A Primer on Competitive Bargaining*, 2 *JOURNAL OF DISPUTE RESOLUTION* 326 (1996), available at <https://scholarship.law.missouri.edu/jdr/vol1996/iss2/2/>.

V. The #MeToo Movement and Secrecy in ADR

I examine how the #MeToo movement exposed the downside of secrecy in the alternative dispute resolution context. I describe typical secrecy-related practices in contracts involving workplace harassment prior to the #MeToo movement, and the challenges state legislatures face in attempting to limit secrecy.

Related reading:

1. Elizabeth Tippet, *The Legal Implications of the MeToo Movement* 103 MINNESOTA LAW REVIEW 228 (2018) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3170764.
2. Owen Fiss, *Against Settlement*, 93 YALE LAW REVIEW 1073 (1984), available at https://digitalcommons.law.yale.edu/fss_papers/1215/.
3. Minna Kotkin, *Invisible Settlements, Invisible Discrimination*, 84 NORTH CAROLINA LAW REVIEW (2006), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=789605.
4. Carrie Menkel-Meadow, *Whose Dispute Is It Anyway?: A Philosophical and Democratic Defense of Settlement (In Some Cases)*, 83 GEORGETOWN LAW REVIEW 2663 (1994-1995), available at <https://scholarship.law.georgetown.edu/facpub/1767/>.