

Athabasca University CRJS 489/LGST 489/HSRV 487

Alternative Dispute Resolution

Detailed Syllabus and Assessment Information

Required Text: Macfarlane, J. (Ed.). (2003). *Dispute resolution: Readings and case studies* (2nd ed.). Toronto: Emond Montgomery Publications Limited; or Macfarlane, J. (Ed.). (2011). *Dispute resolution: Readings and case studies* (3rd ed.). Toronto: Emond Montgomery Publications Limited. (Both may be used.)

Unit 1

Unit 1 sets the stage for a detailed look at dispute resolution by introducing the major models for understanding conflict and its consequences. Conflict can be understood as the basis of disputes and claims. Therefore, this unit examines different theories of how we view and react to conflict; how conflict is transformed into disputes and legal claims; and how we try to resolve conflict in whatever form it takes. The major focus is on determining how the legal system currently understands and attempts to resolve conflicts that have been transformed into lawsuits, which then provides the basis for a comparison with “alternative” processes.

Learning Objectives

When you have completed Unit 1, you should be able to achieve the following learning objectives.

1. Identify and discuss various ways of perceiving and understanding conflict.
2. Describe how culture and gender differences affect our understanding of, and reaction to, conflict.
3. Discuss the course of conflict, from escalation to de-escalation and resolution.
4. Describe the Canadian legal system’s current view of conflict that has taken the form of a lawsuit.

Unit 2

Unit 2 provides a general introduction to alternative dispute resolution: the attempt to define ADR, its historical background, its current resurgence, and why it is gaining popularity. This unit introduces the most popular forms and uses of ADR, with a particular focus on its use in several professions. An ongoing topic of the course is also introduced in Unit 2, namely, the use of ADR methods versus traditional methods of dispute resolution.

Learning Objectives

When you have completed Unit 2, you should be able to achieve the following learning objectives.

1. Define alternative dispute resolution's different forms (e.g., mediation, negotiation, neutral evaluation).
2. Describe some of the ideas and theories that have contributed to the emergence of ADR.
3. Explain the purposes and uses of ADR.
4. Compare and reconcile the use of ADR in relation to more traditional forms of dispute resolution, particularly within the legal system.
5. Describe how ADR is being incorporated into lawyering, policing and other professional practices.

Unit 3

Unit 3 begins the discussion on negotiation by providing a broad definition of negotiation and describing various types of negotiation. It also explores the essence of negotiation and the principles behind it. As you read this unit, examine your own style of negotiating: Do you negotiate to get as much as possible for yourself, or do you sacrifice for the happiness of others? Do you want everyone to get an equal share, or do you want everyone to get the most possible?

Learning Objectives

When you have completed Unit 3, you should be able to achieve the following learning objectives.

1. Define "negotiation" in general.
2. Define and compare "integrative," (or win-win), "distributive" (or win-lose), and "principled" negotiation.
3. Describe and discuss the theories behind the different types of negotiations.
4. Analyze negotiation structure and dynamics using the concepts of aspiration, goal, reserve level, settlement zone, and BATNA.

Unit 4

Unit 4 introduces skills and techniques used in negotiation. It addresses the steps required in preparing for negotiation, skills used in negotiation itself, and the qualifications of a “good” negotiator. Unit 4 describes how to gain and use power to negotiate one’s goals, and provides examples to evaluate your own negotiating skills.

Learning Objectives

When you have completed Unit 4, you should be able to achieve the following learning objectives.

1. Describe the steps in preparing for negotiation, and explain why they are important.
2. Describe the skills needed in negotiation, and start to practise them.
3. Identify and explain the sources of power available in negotiation.
4. Explain the concepts of positions and interests in negotiation theory.
5. Describe various kinds of negotiation formats and the “type” of negotiator required for each.

Unit 5

Unit 5 explores the use of negotiation skills in specific contexts, including within police work involving crisis negotiations. This unit also examines concerns and issues pertaining to how negotiations may be practised differently—or whether they work at all—within intercultural situations or for women. Do negotiations sometimes fail because in our society our underlying ideologies make wrong assumptions and judgments about gender and culture? For example, do paternalistic or racist ideologies affect how gender and cultural minority issues are examined (or ignored) in negotiation contexts?

Learning Objectives

When you have completed Unit 5, you should be able to achieve the following learning objectives.

1. Describe ways in which negotiations are used in real-life situations.
2. Explain the use of negotiation skills in resolving a crisis situation.
3. Describe how negotiation skills and styles may differ according to gender and culture.
4. Identify and explain the kinds of ideologies that may contribute to confusion and biases in negotiations.
5. Identify and explain the systemic inequities that create difficulties for women and cultural minorities.

6. Describe some ways of considering gender and cultural differences and inequities in a negotiation.
7. Identify and explain the ethical requirements of a negotiator.

Unit 6

Unit 6 begins with an attempt to define “mediation” in its various forms, styles, and strategies by pointing out the commonalities among these elements. This unit discusses the role of the mediator, the requirement to be neutral, and other critical issues in mediation. Unit 6 also discusses the principles behind the use of mediation in the legal system and why mediation is considered an “alternative.”

Learning Objectives

When you have completed Unit 6, you should be able to achieve the following learning objectives.

1. Define “mediation,” and describe its role in the legal system.
2. Describe the role of the mediator and some of the skills required for acting in that role.
3. Explain the difference between mediation and negotiation.
4. Discuss the possible effects of mediation on the Canadian legal system and on our views of justice.
5. Explain how a mediator views conflict.
6. Identify and describe various mediation models and mediators’ styles.
7. Describe how the mediator’s style affects mediation.
8. Identify and explain some critical issues in mediation.
9. Identify and describe the sources of power in a mediator.
10. Identify and describe the forms of power that need to be monitored in mediation.

Unit 7

The primary focus of Unit 7 is on the mediation process and mediation skills. This unit outlines guidelines for conducting a mediation and the steps to be taken in preparing for and performing dispute resolution. It also provides tips for efficient and effective mediation, and describes the skills required to mediate a dispute.

Learning Objectives

When you have completed Unit 7, you should be able to achieve the following learning objectives.

1. Describe a process for facilitative mediation.
2. Identify some common steps found in the mediation process.
3. Describe required skills to be used by a mediator.
4. Perform listening and questioning skills used by a mediator.
5. Explain and critique the use of caucuses in mediation.

Unit 8

Unit 8 examines the use of mediation in several areas, including family disputes, where it is now common, criminal matters, and public policy and administrative proceedings. This unit also discusses issues of race, culture, and gender with respect to their possible effects on the mediation process. Finally, Unit 8 outlines the ethical requirements of the mediator.

Learning Objectives

When you have completed Unit 8, you should be able to achieve the following learning objectives.

1. Describe various ways in which mediation is used in real-life situations.
2. Describe, in detail, the use of mediation and the required process for mediation in family disputes and in juvenile crime situations.
3. Explain how mediation may be affected by, and how it can be altered to accommodate, issues of gender and culture.
4. Outline the ethical requirements of a mediator.
5. Identify the ethical issues in victim-offender mediation (VOM).
6. List and explain the principles of consensus-building decision making.
7. Describe the impact of culture in mediation.

Unit 9

Unit 9 introduces new, more creative processes that have been tailored to meet the unique needs of participants, the particular circumstances of disputes, and the specific obstacles presented. The primary focus is on ADR processes that involve a third-party neutral evaluator, such as the mini-trial and judicial settlement conferences, and the use of an ombudsperson. This unit defines the role of a neutral evaluator, and describes the process used in each method considered.

Learning Objectives

When you have completed Unit 9, you should be able to achieve the following learning objectives.

1. Describe some hybrid ADR processes currently available.
2. Describe the role and identify the qualities of a neutral evaluator.
3. Describe the different processes used in each of the various hybrid models.
4. Describe the role of an ombudsperson and identify some elements of the processes used by an ombudsperson.

Unit 10

This unit provides some background to the practice of resolving disputes using the technology of the Internet. It surveys some of the current methods of online dispute resolution (ODR) and raises issues regarding its advantages and disadvantages.

Learning Objectives

When you have completed Unit 10, you should be able to achieve the following learning objectives.

1. Describe what is meant by online dispute resolution.
2. Identify and describe some of the current types and methods of ODR in use.
3. Identify and explain some advantages and disadvantages of ODR.

Unit 11

Unit 11 focuses on what has been learned about the design of suitable ADR processes and systems. It also explores the issue of how to evaluate the success of ADR initiatives, and how to determine which ADR method is appropriate in a given dispute and its context. Within the discussion of the pros and cons of ADR, issues of culture and gender are again raised with the concern about whether a process can be designed to accommodate everyone. You will find yourself needing to answer the question of whether alternative dispute resolution is a good alternative.

Learning Objectives

When you have completed Unit 11, you should be able to achieve the following learning objectives.

1. Identify and describe the elements to be considered in designing an appropriate dispute resolution process.
2. Describe specific problems and concerns relating to culture and gender in attempts to design appropriate dispute resolution processes.
3. Describe some methods of evaluating dispute resolution processes and systems.
4. Describe some measures of the effectiveness of alternative dispute resolution processes and their effects on the legal system.

Unit 12

Unit 12 considers the current trends of ADR in Canada and elsewhere, and where it appears to be headed in the foreseeable future. This final unit also suggests ideas about the future effects of ADR on the legal system, on justice, and on society.

Learning Objectives

When you have completed Unit 12, you should be able to achieve the following learning objectives.

1. Describe some current and future trends in ADR.
2. Explain how the Canadian legal system has changed and continues to change with the advancement of ADR.
3. Describe the effect of ADR on societal views of “justice.”
4. Explain your views on the appropriateness of ADR in the Canadian legal system.

Assessment in Alternative Dispute Resolution

To receive credit for *Alternative Dispute Resolution*, you must complete all course assignments, achieve a grade of at least 50% on the final exam, and achieve an overall course grade of at least 50%.

The weightings for each assessment item are as follows:

Activity	Credit Weight	Date Due
Assignment 1 written response	10% of final grade	End of Unit 4
Assignment 2 written response	10% of final grade	End of Unit 8
Assignment 3 written response	10% of final grade	End of Unit 12
Assignment 4 oral presentation	10% of final grade	End of Unit 8
Assignment 5 oral response	10% of final grade	End of Unit 8

Final Examination	50% of final grade	End of all Units
Total	100% of final grade	

Assignments 1 -3

You are required to submit **three** written responses. You may answer any one question arising from each of the following unit clusters:

- Units 1 to 4
- Units 5 to 8
- Units 9 to 12

All responses should be completed by the time you finish studying Unit 12.

Write your responses in the online forums for the discussion questions of your choice. Help on formatting and sending forum responses is available from the [Moodle Training site](#).

Your tutor will read and mark your responses and send the marks with their feedback to you using Internal Mail on this website. Other students in the course will be able to read your responses, and you are encouraged to read theirs.

Written responses should be between 500 and 750 words each.

Example question: "Think of an occasion when you consciously decided not to pursue a potential grievance. What were your reasons? What would have stimulated you to pursue it? Using the ideas and terminology of this unit, describe the conflict you experienced."

Assignment 4

For Assignment 4, put yourself in the place of a mediator who is starting the first mediation session with two disputing parties. As part of your opening remarks, explain the intent and process of mediation, and your role as a mediator, and try to create a safe and supportive environment for the parties. Record what you would say. (Hint: try not to read a prepared script.)

The maximum recording length for this assignment is **5 minutes**.

Assignment 5

For Assignment 5, put yourself in the place of a mediator who is hearing an opening statement (or “story”) from one of the disputing parties. As part of the mediation process, summarize or “repeat back” the statement you hear using the techniques and skills you have learned about in this course. Include at least one reframe. Record your response to the statement you hear.

The time limit indicated for this assignment is **11 minutes** which includes listening to the story and recording your summary.

Final Exam

The final examination is worth **50%** of your total course mark. It is a closed book exam written in person (not online) over 3 hours. By arrangement with the University it may be written anywhere in the world. Part A of the exam comprises 15 multiple choice and true/false questions (2 marks each) similar to those in the self-study quizzes. This part covers the whole course. Part B comprises 6 questions (5 marks each) that are drawn from the learning objectives listed for the units in the course. Each question is to be answered in a paragraph. Part C requires you to prepare a written analysis and comments on one of the five scenarios given in the textbook on pages 613-614 of the second edition or on pages 516-518 in the third edition (40 marks). See [exam procedures](#) for information on how to book your exam and other questions you may have.