

Fall 1995 Alternative Dispute Resolution Final

ALTERNATIVE DISPUTE RESOLUTION EXAMINATION

Fall 1995 - Course # 5013
Professor Kilpatrick

Instructions (read carefully)

1. PLACE YOUR EXAMINATION NUMBER ON YOUR EXAM ANSWER.
2. THE EXAM IS "OPEN BOOK.";
3. READ EACH QUESTION CAREFULLY BEFORE YOU BEGIN.
4. THERE ARE TWO QUESTIONS ON THIS EXAM (3 pages, including this cover sheet). THE FIRST QUESTION HAS A PAGE LIMIT OF FIVE (5) PAGES. THE SECOND QUESTION HAS A PAGE LIMIT OF THREE (3) PAGES. (The page references are to 8-1/2 x 11-sized paper and 12-point type; adjust accordingly if you use Blue Books.)
5. YOU MAY USE PEN AND BLUE BOOK(S) OR TYPE YOUR EXAM.

- IF YOU USE BLUE BOOKS, (a) NUMBER EACH ONE, e.g., "Book 1 of 2"

(b) WRITE ON ONLY ONE SIDE OF THE PAGE AND DOUBLE-SPACE;

(c) PUT ONLY ONE ANSWER IN EACH BOOK.

- IF YOU ARE TYPING, DOUBLE-SPACE AND USE NORMAL (at least one inch) MARGINS ON THE TOP, BOTTOM, AND SIDES.

6. EACH ANSWER MUST BE SELF-CONTAINED (No "incorporation by reference").

7. DO NOT DISCUSS THE EXAM QUESTIONS OR YOUR ANSWERS WITH ANYONE. RETURN THE EXAM QUESTIONS WITH YOUR ANSWER IN CLASS ON THURSDAY, DECEMBER 7.

GOOD LUCK ON YOUR OTHER EXAMS AND HAVE A GOOD HOLIDAY BREAK.

Question One

You work for the University of Arkansas's legal department. A potential lawsuit has been threatened by Jack Armstrong, a cheerleader for the State University of Hoboken (not located in Arkansas), to recover damages for injuries he suffered during a volleyball game between Hoboken and UA last year. At the end of the half-time entertainment, the cheerleaders were entertaining the crowd with one of their choreographed acrobatic routines. In the routine, Jack was the top figure in a pyramid of six cheerleaders (three levels high).

As the Arkansas team returned to the floor, it passed very close to the group of cheerleaders. The pyramid broke apart at that moment and Jack fell, tearing a knee ligament. Jack's attorneys claim that the Arkansas players acted deliberately or negligently to disrupt the routine, causing the injury. The Arkansas players deny the claim, saying that the cheerleaders' pyramid was unsteady and happened to fall just as the team passed by. Jack's attorneys are

demanding \$75,000 in medical and emotional damages. Other than brief, informal telephone conversations with the two Arkansas players who are still registered students, there has been no investigation.

Since your supervisor knows that you took a course in ADR in law school, she has asked you to draft a memo comparing and evaluating the following alternative methods for resolving the dispute: 1) trial; 2) negotiation; 3) private arbitration; (4) private mediation. In your memo, list and discuss the pros and cons of each alternative as they relate to the known facts, and then make a recommendation as to what should be done.

You need not follow any special memorandum format, but be sure to organize your answer in parts (1), (2), (3), and (4) in accordance with the format of the question.

###

Question Two

The Arkansas Alternative Dispute Resolution Commission has decided to hold public hearings to garner suggestions on where it should begin its work. As one of the small percentage of attorneys in the state who has any formal education in the subject, you have been asked to make a brief oral presentation to the Commission, responding to the following question:

"The Commission's mandate from the Legislature is broad, and limited state resources are available. Given this context, in what direction do you believe the Commission should concentrate its efforts to increase the use of alternative dispute resolution processes during the first year."

You are requested to submit a three-page statement of your position, with supporting arguments, in advance of the oral presentation.

Please draft the statement.

###

Pros

TRIAL ARBITRATION

announces and applies choice of applicable norms
public norms
3PN expertise
uses precedent
deterrence/control
process provides
tailors remedy to situation
uniformity
parties control forum
independence
(can level field) binding/closure
("eff" day in court)
binding/closure
(day in court) enforceability

enforceability privacy

public

expeditious (fast)

& Cons

expensive no public norms

requires lawyers who no precedent

control (ptys don't)

no uniformity

limited range of remedies

possible lack of quality

lack of substantive

expertise

delay

time-consuming

redefines or narrows

issues

polarizes, disruptive

(bad for relationships)

Pros

MEDIATION NEGOTIATION

privacy privacy

parties control process parties control process

3PN w/o authority to ptys/ptys reps perform

impose agrmt

reflects concerns/priorities

reflects concerns/ of ptys

priorities of ptys

preserves continuing

preserves continuing relations

relations

potential for integrative

potential for integrative solutions

solutions /can be distributive

process educates disputants/ process educates disputants/

inf discovery inf discovery

high rate of compliance high rate of compliance

if agrmt if agrmt

& Cons

voluntary (can't compel voluntary (can't compel

particip/agrmt particip/agrmt)

weak closure (no day in ct) weak closure (no day in ct)

no due process safeguards no due process safeguards

(imbal/power) (imbal/power)

reflects imbalance in reflects imbalance in

skills (negot) skills (negot)

lacks enforceability lacks enforceability
(contract law) (contract law)

outcome need not outcome need not
be principled be principled

no appln/devpmt of no appln/devpmt of
public norms public norms

Spring 1995 Alternative Dispute Resolution Final

ALTERNATIVE DISPUTE RESOLUTION EXAMINATION

Spring 1995 - Course # 5013
Professor Kilpatrick

Instructions (read carefully)

1. PLACE YOUR EXAMINATION NUMBER ON YOUR EXAM ANSWER.
2. THE EXAM IS "OPEN BOOK."
3. READ EACH QUESTION CAREFULLY BEFORE YOU BEGIN.
4. THERE ARE TWO QUESTIONS ON THIS EXAM (3 pages, including this cover sheet). THE FIRST QUESTION HAS A PAGE LIMIT OF FIVE (5) PAGES. THE SECOND QUESTION HAS A PAGE LIMIT OF TWO-AND-A-HALF (2.5) PAGES. (The page references are to 8-1/2 x 11-sized paper and 12-point type; adjust accordingly if you use Blue Books.)
5. YOU MAY USE PEN AND BLUE BOOK(S) OR TYPE YOUR EXAM.
 - IF YOU USE BLUE BOOKS,
 - (a) NUMBER EACH ONE, e.g., "Book 1 of 2;"
 - (b) WRITE ON ONLY ONE SIDE OF THE PAGE AND DOUBLE-SPACE;
 - (c) PUT ONLY ONE ANSWER IN EACH BOOK.
 - IF YOU ARE TYPING, DOUBLE-SPACE AND USE NORMAL (at least one inch) MARGINS ON THE TOP, BOTTOM, AND SIDES.
6. EACH ANSWER MUST BE SELF-CONTAINED (No "incorporation by reference").
7. DO NOT DISCUSS THE EXAM QUESTIONS OR YOUR ANSWERS WITH ANYONE. RETURN THE EXAM QUESTIONS WITH YOUR ANSWER IN CLASS ON THURSDAY, APRIL 27.
8. YOU ARE "ON YOUR HONOR" TO SPEND NO MORE THAN THREE HOURS IN RESPONDING TO THIS EXAM.

GOOD LUCK AND HAVE A GOOD SUMMER.

Question One

You work for a lawyer in Fayetteville who has a general practice. The lawyer asks for your help in dealing with a lawsuit recently filed against a business client, Kilpatrick's Engineering Systems (KES). The plaintiff

is Schultz Beer Co., a micro-brewery begun by a new resident who retired to the area from Milwaukee.

Schultz claims a breach of contract by KES, which supplied Schultz with a water filtration system. The system did not work as anticipated because of the presence in the water of small pieces of debris, such as bottle caps.

Schultz claims that KES representatives were aware of the condition of the water, and KES says they were not. Without getting into technicalities, the lawyer explains that the case involves difficult factual issues as well as legal issues on which the law is not clear. She says that she cannot get a good idea of the litigation risks to KES until there is further investigation and discovery.

Schultz claims that it suffered losses exceeding \$50,000 as a result of the breach, and is asking for that amount in its complaint.

KES has been in business in Fayetteville for more than 20 years. This is the fifth complaint it has received about one of its systems in the past five years. (The other complaints were resolved without formal suit or an attorney's involvement, but Kilpatrick and Schultz wound up in a shouting match when they tried to discuss the problems with the filtration system.) KES believes that it did nothing wrong and does not want to be seen as a "soft touch" by either Schultz or the community. On the other hand, it is concerned about its reputation.

The plaintiff's lawyer has written to your boss and proposed the use of binding arbitration. Since your boss knows you took an ADR course in law school, she asks you to write a memorandum covering the nature and advantages and disadvantages of various ADR procedures in the context of this case.

Please prepare the memorandum, discussing (a) binding arbitration, (b) mediation, and (c) court-annexed, non-binding, arbitration (recently adopted in the state courts pursuant to the work of the ADR Commission and applicable to cases alleging damages of less than \$100,000). In addition to describing the pros and cons of these mechanisms, please list other information you believe would be needed from the client to fully respond to the partner's request.

You need not follow any special memorandum format, but be sure to organize your answer in parts (a), (b), and (c) in accordance with the format of the question.

###

Question Two

You are a clerk for a federal district judge. She has been presiding over a case involving complex questions of fact and law which, if tried, will require four weeks of the judge's time.

The judge has heard about summary jury trials at a Circuit Judges' Conference. At the end of a frustrating settlement conference, the judge announced that she would require the parties to participate in a summary jury trial. The lawyers for both sides expressed their unfamiliarity with the summary jury trial, and the judge suggested they read the article by Judge Lambros (excerpted in our

textbook, Dispute Resolution and Lawyers).

After reading the article, the lawyers returned for a continuation of the conference. They told the judge that they would prefer a mini-trial because it offered more flexibility in terms of presenting expert testimony directly. The judge did not have time to respond, because she had to leave quickly for the airport and she did not know what the lawyers meant by a mini-trial. As you drove her to the airport, the judge asked you to prepare a memorandum comparing and contrasting the summary jury trial and the mini-trial and dealing with when one is more useful than the other. She wants you to include your suggestions as to how she should respond to the lawyers' preference for a mini-trial.

Please write the memorandum.

###