



The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
Albuquerque, NM 87131-0001
Telephone (505) 277-0939
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Exam No. _____

570 ALTERNATIVE DISPUTE RESOLUTION
Spring Semester 2001-2002

Final Examination
Hughes
UNM School of Law

Professor Scott H.

Take-Home
Examination
Monday, April 29, 2002

THE DETAILS:

Due Date: **Friday, May 10, 2002 by 4:00 p.m.**
Place: **Janet Cox's Office**

THE DIRECTIONS:

Place your confidential exam number on every page. Do not otherwise identify yourself. As a suggestion, if your word processor can do footers, place your exam number in a footer and it will automatically appear on every page.

Please start each answer at the top of a new page, except for your answer to question 5(B) which may continue on the same page. Use only the front side of 8½ inch x 11 inch paper. Staple all pages together in the order of the questions. Number your answers to coincide with the number on the questions. Don't restate the questions. **Remember to keep a copy of your answers, just in case I lose an exam.**

For purposes of the exam questions, you will be responsible for incorporating all of the reading material (including the textual materials and all handouts), lectures, presentations in class, and the discussions.

You are not to consult with each other nor anyone else regarding the subject matter of the class, the content of these questions, or the preparation of your answers from **Monday, April 29 at 8:00 a.m.** until **Friday, May 10, 2002, at 4:00 p.m.** You may, however, ask me whether or not you are missing any of the handouts.

Deliver your stapled answers to Janet Cox's Office by the date and time specified above. **Do not be late. I reserve the right to penalize any late exam.** I do not need these questions back, just your answers.

If a page limit is given, your answer must be limited to the number of pages stated at the beginning of the question. Do not use the back of the page. Each answer should be typed, double spaced, and 12 pt. type. I will not accept handwritten answers. Be concise and edit your answers.

Yes, I understand that you might be tempted to narrow the margins, reduce the type size on your wordprocessor, or take other undeniably necessary steps in a last minute effort to get all of your pithy and cogent ideas onto the page allotment. If you have to, go ahead, but take it easy on me. I still have to read the answers and my eyesight isn't what it used to be.

1. 10 points - one page:

Develop an argument establishing that the decision of the Ninth Circuit in *Macaluso* (p. 195 of the Alfini text) is wrong.

2. 20 points - two pages:

Consider these two premises and conclusion:

Premises:

(1) Research shows us that negotiated solutions to any given conflict [outside of mediation] generally reflect the relative balance of power between the parties.

(2) The essential feature of mediation are:

[F]irst, a mediator has no preference for what the parties settlement terms shall be; second, a mediator has no authority to impose a binding decision on the parties; and third, parties do not reach complete agreement in mediation unless each party accepts every settlement term. (Source: p. 1, Alfini textbook).

Conclusion: Therefore, the mediator should have no obligation to balance the power between the parties or to act in any manner to ensure a fair agreement.

Critique the conclusion. Does the conclusion follow from the premises? If so, why? Does the conclusion not follow from the premise? If not, why not? I don't want wishy-washy here. Take a position and defend it. Your score will depend upon how well you delineate and articulate the issues and support your position (and not on the position you take).

3. 50 points - no page limit.

Starting with the "Harmony" articles (p. 112 - 173), through the lying and deception writings (p. 174 - end) and the gender and race readings (p. 1 - 32), and finishing with the arbitration cases (Waffle House, Hooters, & Gateway), write an essay drawing upon, substantiating, and defending the common themes, trends, or issues you see. Your score will depend upon how well you articulate and support your answer.

4. 20 points - two pages:

One of the frequent motives for adopting a court-annexed program for mediation is the clearing of cases from the court's docket. Is this an appropriate motive for a court to have? If a court does have clearing the docket as one of the driving forces behind the adoption of a court-annexed mediation program, what other issues may be implicated? Explain your answer by fully describing and exploring the issues which may be implicated. Do your answer to this question in an even handed, objective manner.

5. 40 points - four pages:

Mediation has many principles (neutrality, confidentiality, self-determination, reaching agreement, power balancing, to name a few), not all of which are equally realizable in every situation. In response to this statement, (1) create and describe a hypothetical situation in which two or more of these principles come into conflict, (2) detail the questions which arise from this hypothetical, (3) explore the ramifications of this conflict. It would be easy for you to craft a no-brainer (i.e. where a husband seeking custody of his children admits to the mediator about having an incestuous affair with one of his daughters). I am not looking for the easy question, but for a hypothetical that poses a difficult question, one upon which knowledgeable and thoughtful persons may reasonably differ. Your score will depend upon your ability to craft such a hypothetical and the degree to which you are able to detail the relevant questions, issues, and ramifications which arise therefrom.

6. 20 points - two pages:

Assume for a moment that the administrators of the Metro Court Mediation Division are thinking about handing this three paragraph statement to all parties in mediation prior to participating in a mediation:

A study of Metro Court has shown that minority claimants consistently received less money than whites and minority respondents consistently paid more than whites. This was true in both mediated cases and in cases taken to trial. However, the impact was greater in mediated cases than the cases which went to trial.

Further, this negative impact on claimants in mediation can be eliminated with two minority mediators. But, this negative impact can be eliminated with the combination of one minority mediator and one white mediator.

This impact of mediation on minorities was shown to exist over a large number of mediations, but may not predict the outcome in any given mediation.

Assuming for a moment that I have not misquoted the Metro Court Study, identify and explore the issues (and the potential ramifications) that you see implicated by (1) disclosing this information and (2) failing to disclose.