



The University of New Mexico

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570 INTRODUCTION TO ALTERNATIVE DISPUTE RESOLUTION
Fall Semester 2004

Final Examination
UNM School of Law

Professor Scott H. Hughes
Take-Home Examination
Wednesday, December 8, 2004

DUE DATE: Saturday, December 18, 2004 by Noon

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 questions with subparts that can be placed on the same page. Use only the front side of 8½ inch x 11 inch paper. Each answer should be typed, double spaced, and 12 pt. type. I will not accept handwritten answers. **Be concise and edit your answers.**

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.

Each question has a maximum number of points available. This will give you some idea of the relative weighting of each question.

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 **Wednesday, December 8, at 8:00 a.m. until Saturday, December 18, at Noon.**

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 the grade on any late exam.** I do not need these questions back, just your answers.

The Questions:

Questions worth 2 ½ points apiece:

1. What is Pareto Optimality?
2. Define anchoring in negotiation.
3. What does the acronym ZOPA stand for?

4. Define night baseball arbitration.

Questions worth 5 points apiece:

5. Why might it be important for arbitrators to write a reasoned opinion rather than issue a naked award?
6. What is the current state law in New Mexico concerning pre-dispute arbitration clauses for consumers?

For questions numbered 7 through 10, respond in relationship to this paragraph (each question is worth five points):

With regards to confidentiality in mediation, should a mediator be called to testify in court in each of the following circumstances? Take a position and defend it. You will not be graded on your position, but on how you marshal your argument. You may use the uniform mediation act and any other materials as the basis for your answer.

7. The parties reach an agreement in mediation, but do not write anything down. Later, one of the parties refuses to honor the agreement. The other sues to enforce it and subpoenas the mediator to testify about the terms of the agreement.
8. The parties reach a written agreement in mediation that both parties sign before leaving the mediation room. Later, one of the parties feels that she was defrauded and files suit to overturn the agreement. The other party asserts that the agreement is perfectly valid and, therefore, subpoenas the mediator to testify about the mediation proceedings.
9. During the mediation of a divorce, one of the spouse makes an admission about the ownership of some assets that may affect the distribution of the marital estate. The parties fail to settle and the dissolution goes to trial. The attorney for the other spouse subpoenas the mediator to testify about this admission.
10. During a victim-offender mediation involving a juvenile for aggravated battery, the victim makes a statement that may tend to exculpate the offender. The defense attorney subpoenas the mediator to testify about this statement made during the mediation.

Questions worth ten points apiece:

11. What concerns or problems, if any, do you see with a court-annexed ADR program that requires all "Smaller" cases – those with less than \$100,000 at issue – to go to non-binding arbitration before the matter can be certified as ready for trial? Explain your answer.
12. What are the potential positive and negative aspects of using a mediator who employs an evaluative style?
13. Define arbitrability.
14. You have been assigned by your senior partner to negotiate the settlement of a civil case. When you first walk into the negotiations, the attorney representing the other

side says, "I was just trained in the integrative and interest-based negotiation method of Roger Fisher at Harvard. Because of my training, I am going to shorten the negotiation and my offer that I am about to make will be my best and final offer." What do you think about this statement and how would you respond?

Questions worth fifteen points apiece:

15. Critique this statement: "To say that the modern ADR movement in the West is an evolutionary improvement over adjudicatory systems is nothing more than political & cultural hegemony."
16. Should the parties to a mediation be required to bargain in good faith? Defend your answer.