

***Online Dispute Resolution:
Using Technology in Dispute Resolution***

September 13-15, and September 27-29, 2013

NOTE: A copy of the course syllabus, a set of ODR resources, and a link to the class textbook can be found on the class web site. For instructions on accessing the site, contact the instructor.

Instructor:

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General Course Description:

The term "online dispute resolution" (ODR) is the product of an observation that was made in the mid-1990's about the nature of "new" disputes that were being created through the use of ICT - Information and Communication Technology. The observation was direct and powerful - by increasing the use of ICT, we were creating a cyber-environment (the Internet) and cyber-transactions different from the transactions we were used to in the "real" world. We were also creating conflict different in nature than the conflict created in that real world. The classic example, and the "proof of concept" for ODR, was and is eBay. A buyer in Scotland and a seller in Iowa may have a conflict over an online transaction and find it physically impossible to engage in traditional mediation or other types of dispute resolution. Additionally, there may be no clear legal authority to help them settle the dispute. For individuals in this position, some online dispute resolution system is the only game in town. Since the 1990's, the pace of change and our reliance on ICT for social interaction and communication have increased, and the place of ODR in the field of dispute resolution has been, to some degree, established. In the 1990's there were literally a dozen or so individuals who were talking about and implementing ODR programs. Now, the International ODR Forum, held yearly, attracts hundreds of practitioners from all over the world to discuss ODR and share their experiences.

We will talk in class about the early experiments resolving online conflicts created online, and where those experiments have led over the past decade or so. More importantly, we will discuss the impact of technology on the resolution of disputes that are not created online, but which lend themselves to resolution online, and

perhaps most importantly we will discuss why I believe the application of technology to all types of disputes has made general use of the term ODR a problem. There certainly are still disputes created and resolved online – “true” ODR - but ICT has progressed so far and has become integral to human communication in so many ways, it is now possible to argue that the application of technology to dispute resolution is simply the direction in which ADR, as a field, has evolved in the early 21st Century. In one way, it is possible to look at the ODR development period in which we now find ourselves as the “Great Divide.” On the one hand, development of algorithm driven ODR applications for use in e-commerce, where there are thousands or millions of cases annually, is in high gear and has a very high profile internationally. On the other hand, the increasing place of social media as a “normal” communication channel has made adaptation of a wide variety of communication and data handling applications to ADR processes more commonly accepted.

Even if one takes the position that all ADR is now influenced by the use of technology, there are many questions about how and when to apply ODR technology to disputes. Do the rules of offline ADR apply to the use of ODR technology? How does technology change the “at the table” equation? Can dispute resolution efforts be effective when parties are not face-to-face? How can offline neutrals best translate their skills to the online environment? What role can ODR technology play in peacebuilding? We will discuss all of these questions as part of the dialogue in this course.

A complicating factor in any discussion of ODR technology is the fact that not all applications of technology to dispute resolution have to be online. In this course we also will discuss some applications that are very effective and useful when applied offline.

Another complicating factor related to the growth of ODR and the application of technology to dispute resolution is a growing body of “digital natives” using technology as an integral part of their everyday lives. These “digital natives” pose interesting problems for “digital immigrants” who have not, and probably will not, integrate technology into their lives in as complete a manner.

Required Textbook

Online Dispute Resolution Theory: Theory and Practice (A Treatise on Technology and Dispute Resolution), Mohamed s. Abdel Wahab, Ethan Katsh, and Daniel Rainey, eds., Eleven International Publishing, The Hague, 2012.

[A free copy of the book is available online through the class web site.]

Required chapters from the text (to be read *before* the first class meeting).

Chapter 1 – ODR History (Katsh)

Chapter 2 – ODR and Theory (Rainey and Wing)

Chapter 10 – ODR and Culture (Rainey)

Chapter 11 – ODR and Trust (Ebner)

Structure

In this course we will examine the questions outlined above through readings and discussions in some general areas:

- Development of ODR and the extension of ODR technology to mixed online/offline dispute resolution;
- The impact of ODR technology on ADR practice;
- The impact of ODR technology on intercultural dispute resolution;
- The impact of ODR technology on legal and commercial environments.

In the process of considering these issues, we will look at many of the major providers of ODR technology, examine some of the major ODR initiatives around the world, and do hands-on work with ODR and dispute resolution technologies.

Course content will consist of online and offline material. Readings will be posted online, and there will be a series of discussions, some online and asynchronous and some in "real" time, with guests from some of the leading institutions and organizations involved in ODR, worldwide.

| Key Learning Objectives | How Achieved |
|---|---|
| 1. Students will learn to define <u>online dispute resolution</u> and understand the relationship between technology and all forms of dispute resolution. | Related articles will be provided so students can identify the theories associated with and the skills necessary for engaging in online dispute resolution. |
| 2. Students will learn the differences in practice between traditional ADR and ODR. | Discussions with leading figures in the field of ODR, plus in-class exercises designed to generate ODR material will be used to highlight the special issues of practice associated with ODR. |
| 3. Students will learn the structure and conduct of ODR and the skills necessary to apply theoretical material to online conflict scenarios. | Students will form teams to experience ODR sessions as third parties and as parties through realistic ODR cases. |

Grades

- 1) **In-Class Participation:** Class members are expected to attend all meetings of the class and to participate fully in discussions, presentations, and case simulations. (Maximum = 20 points)

- 2) **Readings Discussion:** Class members, in teams, will be responsible for leading a discussion on the content of the assigned readings. The discussions will be scheduled during the first weekend of the class. (Maximum = 10 points)

- 3) **Practicum Exercise #1:** Class members, in teams, will participate in a synchronous practicum exercise using online platforms. The exercise will be conducted during the first weekend of the class. (Maximum = 15 points)

- 4) **Practicum Exercise #2:** Class members, in teams, will participate in an asynchronous practicum exercise using an online platform. The exercise will be conducted between weekends. (Maximum = 15 points)

- 5) **In-Class Presentations:** Class members, in teams, will be expected to present information about and lead the entire class in a discussion of an online platform that either is being used or could be used for dispute resolution. Each team will be assigned a common grade for the presentation. The presentations will be scheduled during the second weekend of class. (Maximum = 20 points)

- 6) **Writing Assignment:** Class members will be asked to produce, individually, a proposal (using a proposal matrix supplied by the instructor) short paper identifying a dispute resolution venue in which technology is not being used, but could be used, and suggesting ways to integrate technology into the chosen venue. (Maximum = 20 points)

The following scale, based on the department standard, will be used to calculate final grades:

94 - 100 = A
90 - 93 = A-
87 - 89 = B+
84 - 86 = B
80 - 83 = B-
77 - 79 = C+
74 - 76 = C
70 - 73 = C-

NOTE:

The information below is required content for all SMU syllabi – the language is taken from standard university guidelines.

Disability Accommodations: Students needing academic accommodations for a disability must first contact Ms. Rebecca Marin, Coordinator, Services for Students with Disabilities (214-768-4557) to verify the disability and establish eligibility for accommodations. They should then schedule an appointment with the professor to make appropriate arrangements. (See University Policy No. 2.4.)

Religious Observance: Religiously observant students wishing to be absent on the holidays that require missing class should notify their professors in writing at the beginning of the semester, and should discuss with them, in advance, acceptable ways of making up any work missed because of absence. (See University Policy No. 1.9.)

Honor Code: Students are reminded of the SMU Honor Code as referenced in the *Student Handbook*. Intellectual integrity and academic honesty are both the foundation and the goals for this program. Please reference and review the university policies on the responsibilities, policies, and penalties regarding academic honesty at the URL below:

http://www.smu.edu/studentlife/PCL_05_HC.asp

Class Decorum: Turn off (or set on vibrate) all cell phones or pagers. Do not read newspapers, books for other classes, or other outside reading material during class. Walking into class late is disruptive as is leaving early. If you have to leave early, make arrangements before class begins, and then, when you leave, do so quietly. Professional respect and courtesy for your fellow students is imperative at all times.