

LL.B. VI Term



## **LB-602 : Alternative Dispute Resolution**

*Reading Materials Prepared by*

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## **LB-602- Alternative Dispute Resolution**

### **Objectives of the Course**

With the introduction of Section 89, CPC and amendment in the Arbitration and Conciliation Act 1996 in 2015, alternative dispute resolution methods have been given a primary role in reducing arrears and promoting fast and affordable settlement of disputes. This course has two primary objectives. First is to provide the students with the theoretical understanding of the concepts and the legal provisions relating to ADR. Secondly, the course is geared to train the students in the practical skills required to effectively participate in the ADR processes. The course has been designed for a class of not more than 30 students. It is desirable that the course is delivered by a team of teachers together for individualized learning and supervision.

The teaching methods to be employed by teachers include lectures, use of multi-media, simulation exercises, role plays, field visits, feedback and other CLE methods of teaching and learning.

The course focuses on instilling the following practical skills among the students: Communication including verbal, non-verbal, body language and para-linguistic; Case and Dispute Analyses and Strategy; Distinguishing interests from rights; Persuasion; Skills of mediators; Drawing agreements; Negotiation skills; Ethical dilemmas.

Learning Outcomes: At the end of the Semester, the students will be able to

- Describe, analyse and apply the substantive rules of ADR
- Choose appropriate ADR
- Communicate effectively
- Draw settlement agreements
- Choose appropriate negotiation strategy
- Practice Mediator's skills
- Solve the ethical dilemmas

#### Required Readings:

1. The Arbitration and Conciliation Act 1996 as amended in 2015
2. Section 89, Code of Civil Procedure
3. Legal Services Authorities Act, 1987
4. Mediation and Conciliation Rules 2004 of Delhi High Court
5. P.C. Markanda, LAW RELATING TO ARBITRATION AND CONCILIATION, pp.1-8, (8<sup>th</sup> Edn. 2013) LexisNexis
6. 222<sup>nd</sup> Report of the Law Commission of India on NEED FOR JUSTICE-DISPENSATION THROUGH ADR, etc. (2009)
7. 246<sup>th</sup> Report of the Law Commission of India on AMENDMENTS TO THE ARBITRATION AND CONCILIATION ACT 1996 (2014)

<b>Introduction to Alternate Dispute Resolution: Differences between litigation, arbitration, conciliation, mediation and negotiation (2 lectures)</b>	
<b>1.</b>	
	<b>Readings:</b>
	1. Need for Alternatives to the Formal Legal System (Special Address by Muralidhar S. in International Conference on ADR, Conciliation, Mediation and Case Management Organised By the Law Commission of India at New Delhi on May 3-4, 2003) 01
	2. 'Comparison of Adjudication with ADR', Mediation Training Module of India Chapter 4 (2011) SC of India 08
	3. 'Development of Mediation in India', Mediation Training Module of India Chapter 1 (2011) SC of India 11
	4. <i>Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. P. Ltd.</i> , (2010) 8 SCC 24 19
<b>2.</b>	<b>Communication – Introduction, verbal, non-verbal communication, para linguistics (2 lectures)</b>
	<b>Readings:</b>
	1. Body Language – non-verbal communication 35
	2. One and Two-Way Communication
	<b>Simulation Exercises (2 classes)</b>
<b>3.</b>	<b>Negotiation- Introduction, Style and Strategies ( 2 lectures)</b>
	<b>Readings:</b>
	1. Negotiation Strategies 105
	2. Negotiation: The Seven Elements Checklist 128
	<b>Negotiation Simulation Exercises (6 Classes)</b>
<b>4.</b>	<b>Conciliation / Mediation – (4 lectures)</b>
	(a) Difference between mediation/ conciliation and other ADRs
	(b) Mediator's Skills and Roles
	(c) Stages of Mediation: Mediator's Opening Statement; Parties' Opening Statement; Joint Session; Caucus or Separate Session; Final Negotiation/Deal-Making Round; Closure
	(d) Strategies and Techniques
	(e) Role of Silence/Apology
	(f) Handling Emotions/Impasse
	(g) Drafting Agreement
	(h) Ethical Dilemmas in Mediation
	<b>Readings:</b>
	1. Understanding Conflict by Aman Hingorani 130
	2. 'Concept & Techniques of Mediation', Mediation Training Module: Delhi Mediation Centre 133
	3. 'Stages in Mediation Process and Role of Mediator' by Ashish Kumar 153

4. Justice Manju Goel, ‘Successful Mediation in Matrimonial Disputes’ available at <http://www.delhimediaioncentre.gov.in/articles.htm> 165

**Simulation Exercises (8 classes)**

**5. Arbitration**

- (a) Overview of A&C Act, 1996 (1 lecture)  
 (b) Overview of International Rules (2 lectures)  
 (c) Drafting Arbitration Clause (1 lecture)  
 (d) Case Analysis (1 lecture)

**Readings:**

1. Aman Hingorani, “Alternative Dispute Resolution, including Arbitration, Mediation and Conciliation”, All India Bar Examination Preparatory Materials 38  
 2. 2015 Amendment to the Arbitration and Conciliation Act, 1996 61  
 3. National Insurance Co. Ltd. v Boghara Polyfab Pvt. Ltd., (2009) 1 SCC 267  
 4. ONGC Limited Vs Western Geco International Limited (2014) 9 SCC 263  
 5. Excerpts from Drafting Dispute Resolution Clauses A Practical Guide, American Arbitration Association 83  
 6. Steven Lubet, *Modern Trial Advocacy: Analyses and Practice*, pp 1-13 94

**Simulation Exercise (8 classes)**

- (i) Drafting Arbitration Clause  
 (ii) Identifying good and bad facts  
 (iii) Identifying Issues  
 (iv) Presenting Arguments  
 (v) Ethical Exercise

**Simulation Exercises (8 classes)**

- 6. Visits to Delhi Mediation Centre / Lok Adalat /Arbitration Centre and Submission of Reports (two days each)**

**Examination:**

End-semester written examination--- 50 marks

Oral/ practical exercises—50 marks

• Mediation (10 marks)	• Attendance
• Negotiation (10 marks)	96 - 100% = 10 marks
• Arbitration (10 marks)	91 - 95% = 8 marks
• Field Visit Report (10 marks)	86 - 90% = 6 marks
	81 - 85% = 4 marks
	76 - 80% = 2 marks
	Less than 76% = 0 marks