

Law 310: Alternate Dispute Resolution

OBJECTIVES OF THE COURSE:

The above course is also one of the Compulsory Clinical Courses prescribed by the Bar Council of India – Rules of Legal Education, 2008. The Major concern of law is conflict resolution. Familiarization with the modalities and techniques of resolution of conflict is necessary component in the endeavors of developing expertise in juridical exercise. The traditional justice delivery system through adjudication by courts had already given way to a large extent of back log of cases. There are many alternative mode of dispute resolution in the common law countries. The advent of globalization has enthused this transformation everywhere. The study of ADR is highly significant in molding the students of law to act as soldiers of justice in the ever - changing socioeconomic scenario. The course aims to give the students an insight into the processes of arbitration, conciliation and mediation in areas where the traditional judicial system had its away in the past and in the new areas of conflicts that demand resolution by alternative methods, No doubt, the course has to be taught with comparative and international perspectives with a view to bringing out the essential awareness of the national and international systems emerging at the present context. In this course there will be a theoretical Examination of 80 Marks to be taken by the University and the rest of 20 Marks are to be given by the college evaluating the students through their visits to various ADR centers, Arbitration Tribunals, Mediation Centers etc and through practical exercises.

Theoretical Examination: 80 Marks

Practical Exercises: 20 Marks

Syllabus:

1. Alternate Dispute Resolution:

1.1 Meaning, object and importance

1.1.1 Arbitration, Conciliation, Mediation

1.1.2 Distinction between Arbitration, Conciliation and Mediation

1.2 Arbitration: Meaning and scope

1.3 Arbitration Agreement:

1.3.1 Essentials, Kinds of Arbitration Agreements

1.3.2 Who can enter into Arbitration Agreement?

1.3.3 Validity and reference to Arbitration

1.4 Arbitration Tribunal:

1.4.1 Appointment of the Arbitration Tribunal

1.4.2 Grounds for challenge

1.4.3 Procedure of the Tribunal:

1.4.4 Time, Place and Language of Hearing

1.4.5 Statement of Claim and defence, counter claim and other proceedings

1.4.6 Jurisdiction and Powers of the Tribunal

2. Arbitration Award:

2.1 Rules of Guidance

2.2 Forms and Content of the Arbitration Award

2.3 Settlement through ADR

2.4 Interim Award, Award of interest by Arbitrator

2.5 Requirements of Valid Award

2.6 Correction and interpretation of Award

2.7 Grounds for setting aside the Award

2.7.1 Incapacity of the Party

2.7.2 Invalidity of Arbitration Agreement

2.7.3 Want of proper notice and hearing

2.7.4 Contravention of composition and procedure

2.7.5 Breach of conviviality

2.7.6 Impartiality of the arbitrator

2.7.7 Bar of limitation, *res judicata*

2.7.8 Consent of parties

2.8 Termination Proceedings

2.9 Powers of Arbitrators

3. Enforcement of the Foreign Award and Miscellaneous:

3.1 Foreign Award, International and Commercial Arbitration: Essentials

3.2 Choice of place and proper law of arbitration

3.3 Enforcement of Foreign Awards: Procedure and essentials

3.3.1 New York Convention Awards

3.3.2 Geneva Convention Awards

3.4 Conciliation, Conciliators: Number and qualifications, appointment procedure

3.5 Principles of Conciliation Procedure, Procedure, Settlement, Restrictions on

The role of conciliators, Termination of Conciliation proceedings

3.6 Provisions of Appeal and Revision

3.7 Rule making powers of High Courts and Central Government

Practical Exercises: 20 Marks

(i) Negotiation skills to be learned with simulated program

(ii) Conciliation skills

(iii) Arbitration Law and Practice including International arbitration and Arbitration rules.

The above mentioned exercises are required to be conducted by senior legal practitioners through simulation and case studies. At least three practical exercises/case study reports shall be written in a journal after having visited the Arbitration-Conciliation Centers by a student. Evaluation thereof shall be conducted in practical exercises to be submitted by a student in a journal/diary to the concerned law college and the marks thereof will be sent by the college after evaluation to the Gujarat University.

Suggested Readings :

1. Avtar Singh, Law of Arbitration and conciliation and Alternative Dispute Resolution, Eastern Book Company
2. Dr. S. C. Tripathi, Alternate Dispute System (ADR), Central Law Publication
3. Dr. S. K. Roychowdhary & H. K. Saharay, Arbitration & Conciliation, Eastern Law House
4. Sukumar Ray, ADR, Eastern Law House
5. S. K. Chawla, Law of Arbitration & Conciliation including other ADRs, Eastern Law House
6. Madhusudan Saharay, Textbook on Arbitration & Conciliation with Alternative Dispute Resolution, Universal Law Publishing Co., New Delhi
7. P. K. Basu Majumdar, Law of Arbitration, Universal Law Publishing Co., New Delhi
8. B.P. Saraf and M. Jhunjhunwala , Law of Arbitration and conciliation, Snow white, Mumbai.
9. Gerald R. Willame (ed) , The New Arbitration and Conciliation Law of India, Indian Council of Arbitration New Delhi.
10. A.K. Bansal, Law of International Commercial Arbitration, Universal, Delhi.
11. P.C. Rao & Willam Sheffield , Alternative Disputes Resolution - What it is and How it works ? Universal, Delhi.
12. G.K. Kwatra, The Arbitration and Conciliation Law of India, Universal Delhi.
13. Basu N.D. Law of Arbitration and Conciliation, Universal Delhi.
14. Johari, Commantary on Arbitration and Conciliatino Act, 1996 , Universal , Delhi.
15. Markanda P.C. Law relation to Arbitration and Conciliation, Universal Delhi.
16. Dr. S. R. Myneni, Alternate Dispute Resolution, Asia Law House
17. Dr. U. Pattabhi Ramiah, Arbitration & ADR, Asia Law House
18. Dr. N. V. Paranjape, Arbitration & Alternative Dispute Resolution, Central Law Agency
19. S. P. Gupta, Arbitration & Conciliation, Allahabad Law Agency
20. Justice P. S. Narayana, The Arbitration and Conciliation Act, 1996, ALT Publications
21. Sarfaraz Ahmed Khan, Lok adalat : an effective alternative dispute resolution mechanism, A.P.H. Pub. House, New Delhi