I. Introduction to the course

This course explores the relationship between human rights and dispute resolution. Although many important human rights are initially established through public trials, the vast majority of human rights complaints are resolved in less formal forums and/or in confidential processes (such as arbitration and mediation). This phenomena has generated important theoretical and policy debates, including whether informal processes adequately advance the public’s interest in promoting human rights and whether mediators can and should address the power disparities that characterize most human rights conflicts.

The course is comparative and draws on cases, studies, and academic and professional literature from the United States, Australia, Hong Kong, and other jurisdictions. The course begins by introducing students to the different methods of dispute resolution, including traditional court-based litigation, arbitration, mediation, and conciliation. We will discuss the reasons underlying the movement away from litigation and towards alternative dispute resolution (ADR). In addition to reducing the cost of dispute resolution (and thereby arguably increasing access to justice), ADR offers numerous advantages, including confidentiality, more harmonious relations, and more varied settlements than traditional “winner take all” judgments. On the other hand, critics often argue that ADR is not a transparent process and lacks the educational and systemic impact of a public trial. Critics also maintain that informal dispute resolution can disadvantage women and others who have traditionally held less bargaining power in society.

The course will then examine the theoretical debates on ADR in the context of particular types of human rights complaints, including gender and racial discrimination, sexual harassment, and disability discrimination. We will focus primarily upon the dispute resolution processes adopted by publicly funded agencies, which are charged with a duty to promote and enforce laws protecting equality and other human rights. While these agencies have different names in different countries (such as “human rights commissions”, “civil rights commissions”, and “equal opportunities commissions”), they
have certain common characteristics. Most of these agencies are empowered to receive and investigate complaints and to provide some assistance in attempting to resolve complaints. Some agencies also have the power to litigate cases in court or in a specialist tribunal. However, agencies are experiencing increasing caseloads and have limited litigation budgets. This means that the vast majority of complaints will have to be resolved through mediation or some other alternative dispute resolution process. Indeed, many agencies are required by statute to attempt mediation before giving any assistance to litigate. Thus, this is a particularly interesting field in which to study the advantages and disadvantages of alternative dispute resolution and to consider ways in which mediators address (or do not address) imbalance of power and other challenges. While some agencies adhere to strict concepts of neutrality when mediating complaints, other agencies (such as the Australian Human Rights and Equal Opportunities Commission) have endorsed a more activist approach, one in which officers are required to address power differentials, advise on possible settlement outcomes, and ensure that the agreement does not undermine the purpose of the underlying legislation.

II. ASSESSMENT

There is no final examination in this course. The final grade is determined as follows:

(1) 50% of the grade is determined by a research project leading to a typed research paper, which should be 4,500-5,500 words in length (including footnotes and bibliography). I will distribute a list of suggested topics but you may also propose a topic for my approval. Ideally, you should select your general topic by September 15 although you may refine the topic after that date. Students will be given extensive supervision in selecting their topics and writing the paper. For example, students should aim to submit a working bibliography (by October 7), an outline (by October 28), and draft of the paper (by November 18). I promise to give you comments on these preliminary stages within one week of submission. You will also have many opportunities to discuss the comments with me. Final paper is due on December 12 at 4:00 p.m. The goal is to produce a paper that you can be truly proud of (and perhaps use as a writing sample should you need one when you apply for a professional position or further academic studies).

(2) 25% of the grade is determined by your in-class presentation on your paper topic (or on a sub-topic that is related to your paper). The presentations will be scheduled for the final two classes (December 2 and 9).

(3) 25% of the grade is determined by your preparation for and participation in class discussions. I expect you to make a good effort to complete the readings. I will distribute discussion questions in advance of class to help you prepare and will sometimes ask you to send me a brief email with your reflections on the readings. I do not expect you to have the “right answer” but rather to demonstrate that you have read and thought about the material. Enthusiasm and a willingness to volunteer will be highly rewarded in your class participation mark.
III. READING MATERIALS

There is no required textbook for this course. Excerpts from cases, studies, and academic and professional literature will be distributed and/or posted on the course website. The readings tend to be heavier in the first part of the Semester, in part because I want to expose you to materials that may help you in your research paper. Some materials (e.g. a court judgment or excerpts from a journal article) will require in-depth reading. Other materials (such as human rights treaties) are easier to read; I may ask you to just skim a treaty and bring it to class.

In November you will note a dramatic decrease in the amount of reading assigned, so that you can concentrate on your individual research projects. We also have two public holidays in November (Nov. 4 and 11) when we will not hold class but will instead have individual meetings with the teacher (on another day in the relevant week) on your research projects.

IV. STUDENT LEARNING OBJECTIVES

Upon successful completion of this course, students should be able to:

Discuss, in general terms, the nature of complaints alleging violations of civil and human rights, and the ways in which these complaints differ from traditional private law disputes.

Discuss the role of human rights and equal opportunities agencies in promoting equality and human rights, and in resolving human rights conflicts (including, for example, complaints of gender discrimination and sexual harassment, disability discrimination, and ethnic conflicts).

Discuss the different types of enforcement powers typically given to human rights and equal opportunities agencies, including the power to investigate, litigate, and/or mediate complaints.

Identify the ways in which agencies may differ in their approaches to conflict resolution, as a result of the cultural context or the legal system in which an agency operates.

Identify and discuss the major theoretical and policy debates on the powers of human rights agencies and their approaches to conflict resolution (including debates on whether the agency should remain neutral in situations of imbalance of power and whether an agency should engage in strategic litigation to promote public awareness of human rights issues).
Conduct research on a topic that furthers the student’s understanding of one of the theoretical or policy debates studied in this course or of the special challenges presented by human rights conflicts.

Write, with supervision from the instructor, a well-organized research paper, properly supported by footnotes and bibliography.

Present a summary of research findings in class and answer questions from the teacher and fellow students.

V. PROVISIONAL SCHEDULE

With the exception of the first class, you are expected to complete the reading assignment before class. The course is divided into four main “topic” areas.

**TOPIC ONE (WEEKS 1-4): GENERAL CONCEPTS**

Week 1: Tuesday, August 26

**Introduction to the course.** We will go over the syllabus (including the assignment for Week 2) and Handout One.

We will also spend some time discussing students’ backgrounds and interests.

We will finish class early today to allow students to attend a special event on campus, sponsored by the Matsunaga Institute for Peace and Conflict Resolution and other groups. The topic is highly relevant to our class and may give you some good ideas for your research papers. The event information follows:

**Pacific Indigenous Dialogue on Faith, Peace, Reconciliation and Good Governance; featuring His Highness Tui Atua Tupua Tamasee Efi, Head of State of Samoa**

Tuesday, August 26, 3:30-5:30 p.m. School of Architecture Auditorium

**Topic:** book presentation by His Highness Tui Atua Tupua Tamasee Efi, Head of State of Samoa and Chancellor of the National University of Samoa, followed by a panel discussion with distinguished professors from the Matsunaga Institute for Peace, Richardson School of Law, Pacific Islands Studies Program, School of Travel Industry Management, Department of Religion, East West Center and Hawaii Pacific University
Assignment for Week 2 Class: (complete before Tuesday, Sept. 2)

1. Complete the readings in the Week Two Reading Packet: Introduction to Dispute Resolution (will be distributed in first class).

2. Review the list of “Legal System and Dispute Resolution Terminology” in Handout One. Try to type or jot down your understanding of terms that we did not discuss yet in class (we will complete in class on Sept. 2).

3. Email me (carolep@hawaii.edu) a short essay (one page is fine) that critiques: (a) one or more of the presentations at the Pacific Indigenous Dialogue; or (b) one of the excerpts in the Week Two Reading Packet.

Note: “critique” means to provide a critical review. Please do not simply state that you liked or disliked a presentation or article. Try to analyze the material in depth; question the assumptions or conclusions; and substantiate your views with some specific examples.

Week 2 Class: Tuesday, September 2

Introduction to methods of dispute resolution.

We will discuss this topic from a comparative perspective so that students develop a general understanding of how different legal and political systems have approached dispute resolution. In some societies there is a long tradition of preferring mediation to litigation, while others have tended to view an adversarial trial as the best way to find the truth and resolve a dispute. In addition to cultural influences, other institutional factors (such as the availability of legal services) tend to influence the choice of process. We will also discuss the concept of the “vanishing trial”, a term that refers to the modern movement towards using arbitration and mediation to resolve disputes, even in societies (like the United States) which have been viewed as preferring adversarial trials.

We will also discuss the list of suggested paper topics in this class.

Assignment for Week 3 Class: (complete before Tuesday, Sept. 9)

1. Complete the readings in the Week Three Reading Packet: Introduction to human rights and prepare to discuss the Discussion Questions.

2. Review the list of “Human Rights Terminology” in the Week Three Reading Packet. Try to type or write in your understanding of these terms in advance of class (we will discuss them in class on Sept. 9).
3. Review the list of suggested paper topics and send me an email with your preferred paper topic. Remember that you can propose your own topic – you are not restricted to the list.

4. See me to discuss your proposed paper topic. (Regular office hours are 1-4:00 p.m. on Thursdays, so Sept. 4 would be a good time to do this. I can also meet students on Monday, Sept. 8 in the morning or early afternoon.)

Week 3 Class: Tuesday, September 9

**Introduction to the nature of human rights and civil rights.** Where do these rights come from and how do they differ from traditional “private law” rights? We will discuss, in general terms, the different sources of human rights law, including international treaties, national constitutions, and civil rights legislation. We will also discuss differences in the extent to which these rights can be enforced. While some countries adopt treaties or laws that proclaim rights without providing a means to implement or enforce them, the modern trend is to provide legal remedies for violations of civil and human rights.

We will also spend some time in this class discussing possible paper topics (you should have emailed me a proposal by now).

Assignment for Week 4 Class: (complete before Tuesday, Sept. 16)

1. Complete the readings in the Week Four Reading Packet: Introduction to human rights commissions and their powers; prepare to discuss the Discussion Questions.

2. Email me (before Sept. 16) the proposed title of your research paper and the title (with full citation) of at least one book or journal article that you plan to read to start your research. [Note: this should be a high-quality academic or official publication. You should avoid Wikipedia and other websites unless you are absolutely sure who wrote the piece and that the author is qualified. Feel free to ask me if you have questions about sources.]
Week 4 Class: Tuesday, September 16

Enforcing human and civil rights; the role of human rights agencies and their powers. People who allege violations of human and civil rights often lack political and economic power and they may lack the funds to obtain legal representation. Moreover, it is generally recognized that society as a whole has an interest in seeing that human and civil rights legislation is enforced. For these reasons, many national and local governments have established special agencies (typically known as human rights or equal opportunities commissions) to promote and enforce certain rights. In this class, we will discuss the different enforcement powers that are may be given to these agencies, including the power to investigate, litigate, and/or mediate complaints. We will also discuss the reasons why mediation is used far more frequently than litigation and why some agencies are legally required to attempt mediation before commencing litigation.

We will also spend a little time “reporting back” to the class on individual research topics and the sources students plan to read.

TOPIC TWO (WEEKS 5-9)
IMPLEMENTING THE RIGHTS TO GENDER AND RACIAL EQUALITY

Assignment for Week 5 Class: (complete before Tuesday, Sept. 23)

1. Complete the readings in the Week Five Reading Packet: Introduction to racial and gender equality; prepare to discuss the Discussion Questions.

2. Email me (before Sept. 23) a short comment (no more than one page) noting what you learned from the first book or journal article that you read for your research project. E.g., what is the author’s main thesis? Do you agree with the views of the author? How do you plan to use this piece in your paper? What is your next step in the research?

3. Start collecting additional materials for your research paper and begin preparing your Working Bibliography.
Week 5 Class: Tuesday, September 23

**Introduction to the sources of racial and gender equality and the right to be free from discrimination.** In this class we will examine the major international treaties on equality, and examples of national approaches. In some cases, the rights proclaimed in these instruments conflict with traditional beliefs or practices, giving rise to substantial debate on how strictly (or quickly) the right to equality can be enforced.

We will also spend some time discussing the article or book you have started reading for your research project. This is an opportunity to share with your fellow colleagues your initial thoughts and responses to the article or book that you chose to read.

**Assignment for Week 6 Class: (complete before Tuesday, Sept. 30)**

1. Complete the readings in the Week Six Reading Packet: The role of strategic litigation; prepare to discuss the Discussion Questions.

2. Prepare to tell the class what you have done this past week for your research project and what you plan to do in the coming weeks.

Week 6 Class: Tuesday, September 30

**The role of strategic litigation promoting equality.** We will read and discuss examples of human rights or equal opportunities agencies using “strategic litigation” to develop and promote racial and gender equality. We will also discuss the potential for “backlash” when courts issue judgments that may clash with traditional beliefs or practices.

Report to the class: what have you located or read this past week for your research project? What are your next steps in the research project?

**Assignment for Week 7 Class: (complete before Tuesday, October 7)**

1. Complete the readings in the Week Seven Reading Packet: Mediation and power imbalances; prepare to discuss the Discussion Questions.

2. Email me (before Oct. 7) the Working Bibliography for your research paper. This should have a minimum of ten sources and should include a good “mix” of sources. (We will discuss what I mean by this early in the semester.)
Week 7 Class: Tuesday, October 7

Mediation and Power. Are women and certain ethnic groups at a disadvantage in mediation? Should a human rights agency take special steps to address imbalances of power? If it does so, how will it address claims of bias, which will likely be made by the respondents to complaints of discrimination? What happens if the “neutral” mediator is perceived to be advocating for one side in the dispute?

I will also give some feedback on sources and how to cite them (based on my review of the Working Bibliographies).

Assignment for Week 8: (complete before Tuesday, October 14)

1. Complete the readings in the Week Eight Reading Packet: Sexual harassment and mediation; prepare to discuss the Discussion Questions.

2. If I have asked you to revise or expand your Working Bibliography, please try to email me the revised version within one week of receiving my comments.

Week 8 Class: Tuesday, October 14

Mediating complaints alleging sexual harassment. How should a human rights agency and/or the mediator employed by that agency approach a case alleging sexual harassment? How does a person who alleges sexual harassment feel when asked to “negotiate” with the alleged harasser? What role does the cultural context play here?

Assignment for Week 9 Class: (complete before Tuesday, October 21)

1. Complete the readings in the Week Nine Reading Packet: Ethnic conflict and dispute resolution; prepare to discuss the Discussion Questions.
Week 9: Tuesday, October 21

Ethnic conflict and dispute resolution. Historically, ethnic disputes have been characterized by significant power imbalances and can be extremely contentious, sometimes even violent. How should a mediator or human rights body address these issues?

TOPIC THREE (WEEKS 10-14)
DISABILITY RIGHTS AND DISPUTE RESOLUTION

Assignment for Week 10 Class: (complete before Tuesday, October 28)

1. Complete the readings in the Week Ten Reading Packet: Introduction to Disability Rights; prepare to discuss the Discussion Questions.

2. Email me the draft of the Outline for your Research Paper.

Week 10 Class: Tuesday, October 28

Introduction to the disability rights movement and sources of the right to be free from disability discrimination. In this class we will examine the new Convention on the Rights of Persons with Disabilities (which came into force in 2008) and examples of national legislation promoting the rights of persons with disabilities. We will discuss how these instruments represent a fundamental shift in approach to disability – from a medical approach to one based upon human rights, social change, and empowerment.

Assignment for Week 11: (complete before Tuesday, Nov. 4)

1. Review any comments that I have sent you on your outline and consider whether you need to revise it. If so, please email the revised outline to me by Nov. 4.

2. Draft a two short Introduction to your research paper (about two paragraphs stating your thesis and the basic organization of your paper.) Please email this to me by Nov. 4.
Week 11: Tuesday, November 4  ELECTIONS DAY – NO CLASS

As a make-up for this class, each student should make an appointment to see me this week to go over the detailed outline and the Introduction to your research paper. The best time for an appointment is on the afternoon of Thursday, Nov. 6 but I can make other times available if this does not work for you.

Week 12: Tuesday, November 11  VETERAN’S DAY – NO CLASS

You have this week free to work on the draft of your research paper. You are encouraged (but not required) to come and see me this week to discuss your progress.

Assignment for Week 13

1. Email me the Draft of your Research Paper by November 18.

2. Review the cases in the Week Ten Reading Packet. (This was given to you for the Week Ten class on Disability Rights. I am not giving you a new packet for this class as I know that you will be busy with your draft papers. But please try to review the cases again before class on Nov. 18).

Week 13 Class: Tuesday, November 18

The role of strategic litigation in establishing the rights of persons with disabilities. Because so much of the discrimination that people with disabilities experience is based upon barriers in society, it is arguable that strategic litigation (as opposed to confidential case-by-case mediation) is particularly important in this field of law. We will discuss certain important examples in the US and abroad and consider how an agency decides which cases should be litigated.

Assignment for Week 14 Class

1. Complete the readings in the Week 14 Reading Packet: Mediating Complaints of Disability Discrimination (this will be a short assignment).

2. Make an appointment to see me, before November 25 to discuss my comments on your draft and your plans for your in-class presentation.
Week 14: Tuesday, November 25

**Mediating complaints of disability discrimination.** Despite the advances achieved through litigation, the vast majority of complaints will be resolved through mediation. Indeed, in many cases, persons with disabilities will prefer confidential mediation to a public trial. How do the agencies and mediators address power imbalances and ensure that persons with disabilities have an equal opportunity to participate in the process?

**TOPIC FOUR (WEEKS 15-16)**
**PRESENTATION AND DISCUSSION OF INDIVIDUAL RESEARCH PROJECTS**

Week 15: Tuesday, December 2

Reserved for in-class presentations and review.

Week 16: Tuesday, December 9

Reserved for in-class presentations and review.

**FINAL VERSION OF RESEARCH PAPER DUE ON FRIDAY, DECEMBER 12.** Please submit hardcopy to my office or email to carolep@hawaii.edu by 4:00 p.m.

Please feel free to email me if you have questions regarding the course.

Professor Carole Petersen (carolep@hawaii.edu)
Fall semester, 2008