Prof. Jonathan Cohen

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Office Hours: Tues., 10:00-12:00

**Diversity, Inequality, and Dispute Resolution**

I. Course Overview

This course examines disputes in which different types of diversity, such as gender, race, ethnicity, religion, sexual orientation, class, and age, are central to the conflict. Course readings explore different aspects of conflict resolution in the context of diversity and social inequality, as well as the use of different dispute resolution mechanisms (e.g., adjudication, mediation, and negotiation) for such disputes. Along with discussing readings, significant class time will be spent on experiential role-play exercises in which diversity-related issues are central to the conflict. These include both exercises in which students act as the parties to the dispute and ones in which they act as attorneys representing the parties.

II. Course Materials

1. Text and Articles. There will be assigned readings and for many classes there also will be simulation exercises that students must prepare prior to class. Many of the readings come from scholarly legal articles and can be accessed through links given in the syllabus (you may need to paste them into your browser) or other online means. However, some of the readings will come from three required books, which I recommend purchasing (any format is fine):

 Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness, 10th anniversary edition(New York: New Press, 2020).

 Sharon E. Rush, Loving Across the Color Line: A White Adoptive Mother Learns About Race (Lanham, MD: Rowman & Littlefield, 2000).

Douglas Stone, Bruce Patton & Sheila Heen, Difficult Conversations: How to Discuss What Matters Most (New York: Penguin, 2010).

2. Simulation Exercises. For many classes, we will use simulated role-play exercises that will be distributed to you electronically over the course of the semester. Five of these (Weathers v. Evans, Grocery Store, Ellis v. MacroB, Drug Testing in the Workplace, and Termination Tempest) are copyrighted exercises produced by the Program on Negotiation at Harvard Law School, and *you must purchase the right to receive these materials at the law school bookstore.* You can purchase this right either in person or online (preferable). The bookstore will keep track of who has purchased this right. To order online, visit [www.ufl-lawshop.com](http://www.ufl-lawshop.com). Click on **“**Textbooks” and then selectLAW for department, 6390 for course, and 18526 for the section. Once keyed in, click “Find materials for course.” The next page will display the required materials. Add these to cart and select “In Store Pick Up”. Please note that you will *not* actually pick up the materials at the bookstore. Rather I will email to you each week the role-play materials you will need for that week. When you receive role-play materials, you can print them for your personal use if you wish but please do not share, post, or otherwise retransmit these materials.

III. Course Requirements

1. Attendance & Preparation. Your attendance and preparation are critical in this course. For many classes, you will be paired with one or more students to do simulated exercises. Hence, if you are absent, your absence will preclude not only your participation that day but may also preclude that of your partner(s). The same applies to preparation. If you come to class unprepared, not only will you lose out, but so will your partner(s) for that day. Class will start promptly at the scheduled time. Students arriving late will receive only partial credit for attendance that day. Please note that ABA Standards require that students devote approximately 120 minutes of out-of-class preparation for each class hour of instruction.

2. Helpfulness to Your Fellow Students. Often the best person to give you feedback following a simulation exercise is the person(s) with whom you have just negotiated. Hence, I ask that you give feedback to one another and assist one another in learning as constructively as you can. The more you help one another in learning, the richer your experiences will be.

3. Participation. My general educational philosophy is that dialogue is one of the best vehicles for learning. This is a discussion course, and I hope that everyone, myself included, will learn by sharing ideas together. Also, if you have creative ideas about how we can explore the materials in interesting and fun ways, please let me know. I welcome your suggestions.

4. Readings. Below is a list of assigned readings. Students are expected to have done the assigned readings, including preparing simulation materials, prior to class.

5. Written Requirements.

A. Identity Exploration and Two Reflection Papers. You are required to submit three written assignments, each approximately 400 – 600 words (typically about 2 pages, double-spaced) in length. The first is exploration of your own identity (“Who am I?”) and the second and third are reflection papers on role-play simulations of your choosing. The “Who am I?” exercise is described below in the syllabus. I will discuss the reflection papers in class, but briefly these are a space for you to reflect on some aspect or aspects of a role-play simulation. The aim is not simply to record what took place, for you won’t learn much from that. Rather that aim is for you to think about what took place. What went well? What went poorly? Was there something I might have done different? Was there an element to the exercise that I found surprising or intriguing? I recommend submitting your reflection papers soon after the exercise (e.g., the following week); however, all reflection papers are due by March 15, 2022.

B. Research Paper. There is no final exam, however, at the end of the course, you must submit an approximately 1,750 – 2,250 word research paper (typically about 7-9 pages, double-spaced) on a topic of your choice related to the subject matter of the course. While you do not need advance approval from me in selecting a topic, I am happy to talk with you about possible topics if you wish. You must also make a presentation to the class on your topic. All citations should conform to the current Bluebook standards for law review articles. Also, please use footnotes at the bottom of the page rather than endnotes. Your research paper will be due on April 19, 2022. Except in extraordinary circumstances, late papers will receive automatic grade reductions. Toward the end of the course, you are also required to make a presentation about your topic to the class.

C. Submitting Materials. While sometimes exceptional circumstances may necessitate otherwise (e.g., your access to campus has been restricted for COVID reasons), I ask that you submit hard copies of all assignments (i.e., “Who am I?”, two reflections papers, and research paper). The exception to this is your final research paper, for which I ask that you *both* submit a hard copy in class and also email me (cohenjr@law.ufl.edu) an electronic copy of the paper.

6. In-Course Modifications. At times, there may be miscellaneous assignments or modifications to the assigned readings announced via the email list that the university maintains for the course. For this reason, all students should have a valid “@ufl.edu” email address.

IV. Course Objectives & Learning Outcomes

Students will gain an understanding of disputes in which diversity-related issues are central to the disputes. This includes understanding issues related to identity, inequality, communication, blaming, problem-solving, and the role of both formal (e.g., adjudication) and informal (e.g., negotiation) dispute resolution mechanisms in such disputes. Students will gain an understanding of challenges and opportunities involved in representing clients in such disputes, sensitivity to the appropriateness of different dispute resolution mechanisms, and an awareness of structural challenges undergirding such disputes. Students will gain skill in negotiating such disputes through experiential role-play exercises.

V. Recording Classes

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third-party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

VI. Preferred Name and Pronouns

I hope that you will feel welcome and safe in this class and that you will be comfortable participating in class discussions and communicating with me on any issues related to the class.  If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise.  I would like to acknowledge your preferred name and pronouns that reflect your identity.  Please let me know how you would like to be addressed in class if your name and pronouns are not reflected by your UF-rostered name. Please be aware as well that, while it will not change your legal name for ofﬁcial UF records, you can change your “Display Name” in Canvas. To do so, go to one.uﬂ.edu and edit your settings within “Directory Proﬁle.”

VII. Disability Accommodations

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs. Students with disabilities should follow this procedure as early as possible in the semester.

VIII. Grading

The course will be letter graded. Grades will be based on your identity exploration and two reflection papers (15%, corresponding to 5% each), skills assessment (15%), class participation (30%), and your research paper (40%). For questions about grading, delays in submitting work, and other academic policies, please refer to the law school’s academic policies, available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies>. The grading scale for the course is:

Grade Point Grade Point Grade Point

A (Excellent) 4.0 C+ 2.33 D- 0.67

A- 3.67 C (Satisfactory) 2.00 E (Failure) 0.0

B+ 3.33 C- 1.67

B (Good) 3.00 D+ 1.33

B- 2.67 D (Poor) 1.00

IX. Online Course Evaluations

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](https://gatorevals.aa.ufl.edu/students/) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/).

**Schedule of Topics**

**Week 1: Exploring Identity**

Reading: *Difficult Conversations*, chs. 1-6

Exercise: *“Who am I?”*

Please write and bring to class a short essay (400-600 words) about *you*, including only information that you would feel comfortable sharing with other students in class. Your essay might discuss something you care deeply about, someone who has touched your life, a transformative experience, aspects of your heritage or background, or anything else that helps to make you *you*. Who are you? How did you become that person?

**Week 2: Gender**

Reading: Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 Yale L.J. 1547, 1547-1581 (1991). Available at <https://digitalcommons.law.yale.edu/ylj/vol100/iss6/1>.

Exercise: *Weathers v. Evans*

**Week 3: Race and Ethnicity**

Reading: Richard Delgado, Chris Dunn, Pamela Brown & Helena Lee, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 Wis. L. Rev. 1359, 1359-1391, 1400-1404 (1985). Available at: <https://scholarship.law.ua.edu/fac_articles/584>.

Exercise: *Changing the Bottom Line*

**Week 4: Race and Ethnicity**

Reading: *Difficult Conversations*, chs. 7-12

Exercise: *Grocery Store*

**Week 5: Sexual Orientation & Religion**

Reading: Gerarda Brown, Jennifer, *Peacemaking in the Culture War Between Gay Rights and Religious Liberty*, 95 Iowa L. Rev. 747, 749-761, 780-806, 817-819 (2010). Available at [https://ssrn.com/abstract=1578286](https://ssrn.com/abstract%3D1578286).

Exercise: *Ellis v. MacroB*

**Week 6: Class**

Reading: Jonathan R. Cohen, *Negative Identity and Conflict*, 35 Ohio St. J. on Disp. Resol. 737, 737-752 (2020). Available at <https://scholarship.law.ufl.edu/facultypub/1043/>.

Exercise: *Drug Testing in the Workplace*

**Week 7: Age**

Reading: Elayne E. Greenberg, *Fitting the Forum to the Pernicious Fuss: A Dispute System Design to Address Implicit Bias and 'Isms in the Workplace*, 17 Cardozo J. Conflict Resol. 75, 75-113 (2015). Available at <https://scholarship.law.stjohns.edu/faculty_publications/143/>.

Exercise: *Termination Tempest*

**Week 8: Structural Challenges I: The Psychology of the Unconscious**

Reading: Charles R. Lawrence III, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism,* 39 Stan. L. Rev. 317 (1987). Available at

<https://scholarspace.manoa.hawaii.edu/bitstream/10125/65975/1/The%20Id%20The%20Ego.pdf>; Charles R. Lawrence III, *Unconscious Racism Revisited: Reflections on the Impact and Origins of "The Id, the Ego, and Equal Protection",* 40 Conn. L. Rev. 931 (2008). Available at <https://scholarship.law.georgetown.edu/facpub/339/>.

**Week 9: Structural Challenges II: Living in Different Worlds**

Reading: Sharon E. Rush, Loving Across the Color Line: A White Adoptive Mother Learns About Race (Lanham, MD: Rowman & Littlefield, 2000).

**Week 10: Structural Challenges III: Beyond Facial Neutrality**

Reading: Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness, 10th anniversary edition(New York: New Press, 2020).

**Weeks 11-13: Student Presentations**