

PROFESSIONAL PRACTICE 544

How This Class Works

- First half (pre mid-term): Theory
Second half (post mid-term): Practice
- Grading based on mid-term and final exams
 - Both multiple choice, open book/notes
 - No homework, no readings
 - Just lecture/discussion and two AIA documents
 - Generous curve in grading exams
 - Class participation can boost borderline grades
 - Opportunity to raise grades of C or below by writing paper
- Attendance is important, but lectures will be posted on my website
- Schiff Hardin LLP scholarship for best performance

LEVELS OF GOVERNMENT

- National (not “Federal”)
- State
- Municipal, etc.

FUNCTIONS OF LAW

- Criminal Law
 - Protects the state
 - Protects people
- Civil Law
 - Balancing interests of groups/individuals
 - Ensuring predictability

HIERARCHY OF LAWS

1. Constitution
2. Statute
3. Executive Order
4. Administrative Regulation
5. Common Law (court-made)
6. Contracts and Agreements
7. Custom and Practice

ELEMENTS OF A CLAIM

- Existence of a duty
- Breach of that duty
- Causation
- Damages

DISPUTE RESOLUTION PROCEDURES

Binding:

Court litigation
Arbitration

Non-Binding:

Negotiation
Mediation

ANATOMY OF A LAWSUIT

1. Summons and Complaint (Plaintiff)
2. Defendant's initial responses
 - a. Motion to Dismiss
 - b. Answer
 - c. Counterclaim
3. Pre-trial Discovery
 - a. Production of Documents
 - b. Interrogatories
 - c. Depositions
 - d. Subpoenas to third parties
4. Trial (Jury or Bench)
 - a. Jury selection
 - b. Opening statements
 - c. Evidence and witnesses
 - d. Closing arguments
 - e. Jury instructions
 - f. verdict/judgment
5. Appeal

HOW AN ARBITRATION WORKS

1. Demand for Arbitration (Claimant)
2. Arbitrator Selection Process
3. Respondent's Answering Statement (and Counter-Demand)
4. Limited Discovery
 - a. Mutual document exchange
 - b. No interrogatories generally permitted
 - c. Depositions usually limited or prohibited
 - d. Subpoenas to third parties for documents or attendance at hearing only
5. Evidentiary Hearing
 - a. Opening statements
 - b. Witnesses, but no evidentiary exclusions
 - c. Arbitrator may ask questions
 - d. Closing arguments and/or written briefs
 - e. Award
6. No right of appeal
 - a. Arbitrators can make errors of law or fact without being overturned
 - b. Fraud or overt bias can be appealed

MEDIATION PROCEDURES

- Evaluative Versus Non-Evaluative
- The Mediation Process
 1. Individual Meetings/Written Submittals to Educate Mediator
 2. Joint/Confrontational Session
 3. Separation of Parties and Shuttle Diplomacy
- Mediation may be Interrupted or Continued