

UNIVERSITY OF MUMBAI

No.UG/ 349 of 2004

CIRCULAR

The Head, University Department of Law and Principals of the affiliated colleges in Law are hereby informed that the recommendation made by the faculty of Law at its meeting held on 27th May, 2004 has been accepted by the Academic Council at its meeting held on 18th June, 2004 vide item No.4.26 and subsequently approved by the Management Council at its meeting held on 31st July, 2004 vide item No.17 and that in accordance therewith the Post-Graduate Certificate course in Alternative Dispute Resolution (A.D.R.) has been introduced from the academic year 2004-2005.

They are further informed that in exercise of the powers conferred upon Management Council under Sub section (i) 54 of the Maharashtra University Act, 1994, the Management Council has made the Ordinances 5448, 5449 and in exercise of the powers conferred upon it under Section 55(i) of the Maharashtra University Act 1994 Management Council has approved Regulations 4799, 4800, 4801, 4802, 4803, 4804, 4805, 4806 relating to the scheme, syllabus and standard of passing for the Post-graduate Certificate course in Alternative Dispute Resolution (ADR) is as per Appendix and that the same has been brought into force with effect from the academic year 2004-2005.

Mumbai 400 032
19th August, 2004

for I/c REGISTRAR.

To,

The Head, University Department of Law and Principals of the affiliated colleges in Law.

A.C.4.26/18.06.2004

M.C.17/31.07.2004

No.UG/349-A of 2004

19th August, 2004

Col. forwarded with compliments to the Dean, Faculty of Law, for information.

for I/c REGISTRAR.



UNIVERSITY OF MUMBAI



**Ordinances, Regulations and Syllabus
Relating to
Post-Graduate Certificate Course
in
Alternative Dispute Resolution (ADR)**

(with effect from the academic year 2004-2005)

UNIVERSITY OF MUMBAI

PREAMBLE

In India the law of Arbitration was changed in 1996 by repealing the old Indian Arbitration Act of 1940. The new statute, the Arbitration and Conciliation Act of 1996 contains the provisions for the detailed statutory framework for the conduct of Arbitration and Conciliation based on the UNCITRAL (United Nations Commission on International Trade Law) Rules.

The resolution of disputes forms a large part of the justice delivery system. India has a long tradition of resolving disputes through Alternative Dispute Resolution methods viz.:- Arbitration, Conciliation, Mediation, Lok Adalats etc. At present there are about 30 million cases pending in the Indian Courts.

A major step to expedite judicial process in this direction was initiated by the Central Government by enactment of the Arbitration and Conciliation Act, 1996 which made significant changes in the law of Arbitration. Conciliation has been given statutory recognition, for the first time, for settlement of disputes. Institutions such as Lok Adalats have been given statutory recognition by the Legal Services Authorities Act, 1987. The Code of Civil Procedure, 1908 has been amended by incorporating Section 89 and Order X, Rules 1A, 1B and 1C, making it obligatory on the courts to explore the settlement of disputes by ADR Methods in pending suits, which will create more demand for trained Arbitrators, Conciliators and Mediators, to cater to the needs of more than 10,000 courts spread all over the country.

The need of the hour is to create an awareness of ADR Methods among the people and to prepare a large pool of trained professionals in the field of ADR who will be able to practice these ADR Methods to resolve disputes.

ADVANTAGES OF ADR

- Reduces legal cost
- Reduces time spent on litigation
- Confidentiality maintained in business relationship
- Confidentiality maintained in family relationship

OBJECTIVES OF THE COURSE

The main objectives of the Course are

- Understand the strengths and weaknesses of various dispute resolution methods
- Explain primary dispute resolution process and functions.
- Develop techniques and skill to make effective use of ADR methods
- Describe and explain the ADR movement
- Compare and contrast various legal implications of each method
- Train participants to be effective Arbitrators, Conciliators and Mediators
- Reduce the backlog of pending cases
- Develop Case Management System
- Reduce the time pendency of the litigations

UNIVERSITY OF MUMBAI

**Ordinances, Regulations and Syllabus relating to Post Graduate
Certificate Course in Alternative Dispute Resolution (ADR)**

O. 5448 **TITLE OF THE COURSE** - Post Graduate Certificate Course
in Alternative Dispute Resolution

O. 5449 **ELIGIBILITY** - A candidate for being eligible for admission to
Post Graduate Certificate Course in Alternative Disputes
Resolution should be a practising Advocate or a Chartered
Accountant with minimum three years practice.

R. 4799 **ADMISSION PROCEDURE** -

Candidates seeking admission to the Course
shall submit a prescribed application form. The
application form duly filled in should be
submitted in the Department of Law
alongwith a photocopy of the enrolment in the
Bar Council of Maharashtra or from Institute of
Chartered Accountants of India.

R. 4800 **FEES** - Tuition fee: Rs.2500/-

R. 4801 **COURSE STRENGTH** -

The Course will admit only 50 students at a
time on the basis of seniority in practice.

R. 4802 SELECTION COMMITTEE

Selection of the candidates will be done by a Committee consisting of following members :

- (a) Vice-Chancellor or an academician nominated by him.
- (b) Member, nominated by the High Court.
- (c) Head of the Department of Law.
- (d) University Lawyer nominated by the Vice-Chancellor, will be the ex-officio member of the Committee.

R. 4803 DURATION OF THE COURSE

The Course will be conducted twice a year at the University Fort Campus, Department of Law. The first Course will commence in July, 2004 and the Second in January, 2005. Duration of the course will be 14 weeks. The Course will be conducted twice a week, on Fridays (3 hours) and Saturdays (4 hours).

14 weeks---3 hours on each Friday-----5 pm to 8 pm

4 hours on each Saturday---10 am to 12 pm and
12.30 pm to 02.30 pm

7 hours x 14 weeks = 98 hours

8 Role plays of 3 hours each = 24 hours
Extended upto 26 hours.

ADR----8 hours

1. Commercial and financial Disputes
2. Family and Matrimonial Disputes
3. Real estate and Land Disputes
4. Intellectual property
5. World Trade Organisation
6. Accident Claims

R. 4804 TEACHER'S QUALIFICATIONS

Experts in the subjects will deliver lectures and conduct Simulation Exercises in Arbitration, Conciliation and Mediation based on live cases. Experts in the field from India and abroad will conduct the course.

- (a) Retired Judges
- (b) Advocates with 10 years and above or more standing
- (c) Academicians preferably with more than 10 years or at least 7 to 10 years teaching experience

R. 4805 SCHEME OF EXAMINATION

1. Candidate must fully interact in the class programmes.
2. Candidate should compulsorily have 90 percent attendance
3. Candidate should complete and submit about 4 to 6 assignments, which will be given to him/her.
4. Candidate should actively participate in simulation and role play exercises.

(I) ADR (Alternative Dispute Resolution)

1. Introduction to ADR
2. Key Concepts in Dispute Resolution
3. Disputes- Kinds of Disputes-justiciable dispute--Dispute Resolution in adversary system, court structure and jurisdiction
4. Dispute Resolution at grass root level, Lok Adalats, Nyaya Panchayath, Legal Aid, Preventive and Strategic legal aid
5. ADR –Meaning and philosophy, overview of ADR processes. Legal counselling, case – planning strategy, Conciliation/Mediation, Negotiation and Arbitration-Court annexed Arbitration- encouraging settlement
6. Negotiation I- Theories and Frameworks
7. Negotiation II- Skills and Behaviour
8. The Negotiation III-Barriers to Agreements
9. Negotiation IV-Rule of law; Ethics and Policies
10. Mediation I- Introduction Overview, Purposes and Uses
11. Mediation II – Skills-Roles of Mediators, Parties, Lawyers
12. Mediation III –Ethics-Fairness, Neutrality, Confidentiality and Personal values-- Policies, Controversies
13. Mediation IV- Practical skills of client interviewing/legal counselling
14. ADR-Information Technology, Internet – cyberspace-online cyberspace dispute resolution.
15. Arbitration I: Introduction – Arbitral Proceedings-commencement, Roots of procedural evidence, "Fast Track" arbitration, statement of claim and defence, hearing and return proceedings-Interim measures by Court and by Arbitral Tribunal
16. Arbitration II: The law of binding Arbitration
17. Arbitration III: Skills and Ethics of Arbitration

18. Arbitration IV: Arbitral Tribunal—Composition, eligibility and qualifications of arbitrators, Termination or a mandate of arbitral Tribunal's and of arbitrators, grounds of challenge of arbitrators, appointment of arbitrators and filling up of vacancies, powers and functions of Arbitral Tribunal's, competence of arbitral Tribunal to rule on its own jurisdiction etc.
19. Arbitration V: Practice and Legal issues; "compulsory" arbitration in Courts and contracts
20. Arbitration VI: Evolution of mediation/conciliation as a mode of settlement of disputes, distinction between mediation, conciliation, negotiation and good offices—definition of scope of conciliation, advantages of conciliation over arbitration and judicial settlement—Application and scope of conciliation under conciliation and the Arbitration and Conciliation Act of 1996 – Appointment of conciliators; commencement of conciliation proceedings, conduct of conciliation proceedings – submission of statements – communication between conciliator and parties, suggestions for settlement – confidentiality of information – Admissibility of evidence in other proceedings—role of Conciliator in conciliation proceedings—settlement agreement—status and effect—Termination of conciliation proceedings; costs and deposits.
21. International Commercial Arbitration

(II) Practical Application of ADR methods in different fields and areas.

1. Commercial and Financial Disputes.

1A---Commercial Disputes--- -Brief introduction to

1. Contract including Government Contracts, Engineering Contracts, Insurance.
2. Sale of Goods Act, 1930
3. Partnership Act, 1932
4. Law of carriage--- Land, Air, Sea, and Multimode
5. Transfer of Property Act, 1882
6. Companies Act

1 B---Financial Disputes ----

1. Bank disputes, Securities and Matters related to Debt Recovery Tribunals
2. Negotiable Instruments.

2 Family and Matrimonial Disputes----

1. Marriages and Divorce
2. Matrimonial home and Property
3. Maintenance
4. Guardianship
5. Custody of the Children
6. Adoption
7. Inheritance/ Succession

3. Building Contracts, Real Estate and Land Disputes

- 1 Partnership
2. Housing Societies
3. Maharashtra Housing and Area Development Authority.
4. Maharashtra Land Revenue Code
5. Slum Rehabilitation.

4. Intellectual Property:--

Need for protection of Intellectual Property, International Organisations and agreements relating to intellectual Property, Patents, Trademarks, Copyrights, Industrial Designs, Geographical Indication, Layout Design in Integrated Circuits, Undisclosed Information.

5. World Trade Organisation :---

Bretton Woods Conference, Formation of WB, IMF, GATT, Birth of WTO
Agreement on Trade in Goods,
TRIPS—Trade Related aspects of Intellectual Property Rights,
TRIMS—Trade Related Investment Measures,
GATS—General Agreement on Trade in Services
DSB---Dispute Settlement Body

6. Accident Claims

LIST OF BOOKS RECOMMENDED FOR READING ON MEDIATION.

1. The Indian Arbitration and Conciliation Act of 1996.
2. The Fundamentals of Family Mediation, by John M. Haynes and Stephanie Charlesworth.
3. The Promise of Mediation, by Robert A. Baruch Bush and Joseph Folger
4. Alternative Dispute Resolution, by P. C. Rao and William Sheffield
5. Getting to Yes, by Fisher
6. Getting past No, by Fisher and Ury
7. Mediation in Family Dispute, by Marian Roberts
8. Family Mediation, by Lisa Parkinson
9. People Skills, by Robert Bolton
10. The Mediator's Handbook by Ruth Charlton and Micheline Dewdney
11. Mediation: Principles, Process, Practice by Laurence Boulle.- Butterworths.
12. Living the 7 Habits by Stephen R. Covey
13. The Monk who sold his Ferrari by Robin Sharma.

R. 4806-A PARTICIPATION CERTIFICATE

On successful completion of the Course, candidates shall be given 'Participation Certificate' by the University of Mumbai.

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