Hypothetical Case 1

The NBA owners imposed a lockout on July 1, 2014, after nearly two years of occasional contract talks went nowhere. The NBA has been seeking to repair a "broken system" that produced $300 million in losses in 2013-14, with 22 of the 30 franchises operating in the red.

In addition to salary givebacks from the players -- the owners are trying to cut total player compensation from 57 percent of basketball-related income (BRI) to 47 percent. The owners want to alter the salary-cap system to prevent some teams from dramatically outspending others as a way of warping competitive balance. Their proposed solutions: a hard salary cap (compared to the long-established "soft" cap) or tougher luxury-tax penalties to further penalize the free-spending teams. The players view a hard cap as a "blood issue" that will block any deal, and they see the severe tax system proposed by the owners -- with penalties increasing to $4 for every $1 by which a club's payroll exceeds the cap -- as a de facto hard cap. The players' proposal calls for a 53-47 split of BRI in their favor, with basically the same soft cap system and smaller givebacks on exceptions and contract lengths than the owners are seeking.

1. The owners are seeking to reduce contract lengths to four years when re-signing their own players and three years for players coming from elsewhere. The players want contracts of five and four years, respectively. Under the most recent system, contracts could be up to six years for "Bird rights" players who stayed with their current clubs and five for others.

2. The owners want to dramatically cut the annual raise built into contracts from 10.5 percent (Bird players re-signed) and 8.0 (others). The players want to reduce the raise amounts only slightly, to 9 percent and 7 percent for contracts of five years, while maintaining the 10.5 and 8.0 raise figures for shorter deals. The union also argues that, since the BRI split fixes the players' compensation, the raise numbers should not really matter.

3. The mid-level exception, which allows any team to exceed the cap by signing a free agent to a contract based on the league's "average salary" of about $5.15 million, needs to be cut down in both length and dollars, the owners say. They are seeking a $3.0 million base on deals capped at three years. The players want mid-level contracts to start at $5 million and run for up to four seasons.
4. The revised tax system suggested by the owners would not only increase the penalties for more profligate spending, it would punish repeat offenders more severely than other clubs. The players are open to a stiffer -- but not that stiff -- system of levies. But they believe that a lesser tax allows for more player movement and more secure individual contracts. Tax penalty $4 for every $1 by which a club's payroll exceeds the cap.

You have been consulted by the NBA. The NBA wants to use an ADR process to resolve these disputes.

Please describe three ADR processes to your client, pointing out the advantages and disadvantages of each process. Which process would you recommend trying first and why?

**LIMIT: Four (4) blue book pages**

**Hypothetical Case 2**

On August 9, 2014, in Ferguson, Missouri, a suburb of St. Louis. Michael Brown Jr., an unarmed 18-year-old African-American male, died after being shot at least six times by Ferguson police officer Darren Wilson, who is white.

According to Ferguson police, Brown was a suspect in a robbery committed minutes before the shooting, although the initial contact between Wilson and Brown was unrelated to the robbery. Brown had no criminal record. Wilson had served four years with the Ferguson Police Department after two years with another local police department. He has no disciplinary history.

According to Brown's friend Dorian Johnson, who was walking with him at the time, Wilson pulled up beside them and said, "Get the fuck on the sidewalk." Johnson said the young men replied that they were "not but a minute away from [their] destination, and [they] would shortly be out of the street." Johnson stated that Wilson drove forward without saying anything further, only to abruptly back up, positioning his vehicle crossways in their path, almost hitting the two men. He said, "We were so close, almost inches away, that when he tried to open his door aggressively, the door ricocheted both off me and Big Mike's body and closed back on the officer."

Wilson, still in his car, grabbed Brown through the open window around the neck. Brown tried to pull away, but Wilson continued to pull Brown toward him. Johnson said that Brown "did not reach for the officer's weapon at all," insisting that Brown was attempting to get free of Wilson rather than attempting to attack him or take his weapon from him. Johnson said Wilson drew his weapon, and "he said, 'I'll shoot you' or 'I'm going to shoot,'" and almost instantaneously fired his weapon, hitting Brown.

Following the initial gunshot, Johnson stated that Brown was able to free himself, at which point the two fled. Wilson exited the vehicle, after which he fired a second shot, striking Brown in the back, according to Johnson. At that point, according to Johnson, Brown turned around with his hands in the air and said, "I
don't have a gun. Stop shooting!” Wilson then shot Brown several more times, killing him. Johnson’s attorney stated that Wilson did not attempt to resuscitate Brown, did not call for medical help, and “he didn’t call it in that someone had been shot.”

**Independent autopsy**
On August 17, a preliminary autopsy was conducted by Dr. Michael Baden, the former chief medical examiner for the City of New York, at the request of the family. According to the report, Brown was shot six times into his front: four of the bullets entered his right arm, one entered his right eye on a downward trajectory, and one entered the top of his skull. According to Baden, all of the rounds were fired from a distance of at least one to two feet. Baden stated, “This one here looks like his head was bent downward, it can be because he’s giving up, or because he’s charging forward at the officer.”

The autopsy appears to contradict some aspects of eyewitness accounts, including that Wilson shot Brown in the back and that Wilson shot Brown while holding Brown’s neck.

Brown’s family has brought a wrongful death and civil rights violation claim against the Town, the police department, and the police officer seeking $1,000,000 in lost future earnings, $1,000,000 for pain and suffering, and $100,000,000 in punitive damages.

The Brown family has consulted you to advise them about ADR options. The police officer has claimed that he acted in self-defense and was in fear of his life. Some discovery has taken place, but the Defendants have been unwilling to produce certain internal documents the Browns’ side thinks will establish willful, wanton, reckless conduct by Defendants, which would improve chances of recovering on the punitive damages claim. The trial, which is likely to take three weeks, is scheduled to begin in 90 days.

The Browns want you do some research and prepare and send a memorandum to them that will help them decide the following questions:

What ADR processes would you recommend, and how do they compare and differ? What are their potential disadvantages compared with each other and with litigation? How should the choice among the processes be made?

**LIMIT:** Four (4) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
Hypothetical Case 3

Sue Lee, a 37 year old single woman, was involved in a serious automobile accident that left her hospitalized for six weeks with multiple fractures and a punctured lung. Her medical expenses exceeded $200,000, and her lost earning capacity exceeded $100,000. Her lawyer filed a lawsuit seeking $250,000 for medical expenses, $150,000 in lost earning capacity, and $1,000,000 for pain and suffering. The insurance coverage is for $500,000. The accident was at an intersection, and there is some evidence that Sue Lee may have been at fault, although Sue Lee claims to have evidence that the other party was more at fault. Sue Lee’s accident occurred in a state that has comparative negligence. Sue Lee’s lawyer comes to you as an expert in ADR.

Please list 2 ADR methods that you would recommend to Sue Lee’s lawyer, pointing out the advantages and disadvantages of each method.

Please list the method you would recommend trying first and the reasons for that recommendation.

LIMIT: Three (3) blue book pages

Hypothetical Case 4

A company discharged a line employee who tested positive for drugs following what it deemed to be a workplace accident, and the union grieved. The company had a policy of testing for drugs and alcohol when a workplace accident resulted in an injury requiring medical treatment or damage to company property and called for discipline or discharge for positive test results.

The employee had been experiencing a difficult recovery from back surgery. He had returned to work dispute continued pain. A co-worker squeezed past him in an aisle with a forklift and bumped into his back. In extreme pain, he asked to go home. But the company’s records incorrectly showed that his point score under its attendance policy was higher than it actually was, and he was told that he would lose his job if he left. His supervisor denied his request to take an absence to be credited toward his Family and Medical Leave Act leave for his condition based on the surgery and stated that the incident would have to be treated as an on-the-job injury.

Prior to the surgery, he had told his friend and night-shift manager that he had a problem with marijuana use and was referred to the employee-assistance program. However, he could not take off work for treatment because he already had used too much FMLA leave.

After the employee’s supervisor told this manager of the situation, the manager sent the employee home, and the employee smoked some marijuana
that night. However, the company concluded that the manager was mistaken in his belief that the employee's pre-existing medical condition made the incident something different than a workplace accident. The next day, the employee worked for two hours before he was taken for a medical examination, which included the drug test. He later entered drug treatment, stopped taking drugs.

You are the arbitrator in this case. Please write a decision and provide the basis and rationale for that decision.

LIMIT: Two (2) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
Hypothetical Case 1

Maxine Snell has been a schoolteacher for 27 years with the Apple County Public School System. She has taught science and math classes at the high school. Last year she was diagnosed with bi-polar disorder and missed the last 2 months of classes. Ms. Snell was hospitalized for 1 month in a psychiatric hospital. Her 2 science classes and 2 math classes were taken over by substitute teachers. She now wants to return to teach in January 2014. Her doctor said she could only teach 2 of the 4 classes. The school is concerned that she may have a relapse and does not want her to come back to teach any classes. Ms. Snell has 2 years to go before her normal retirement. She turns 65 on January 18, 2016. The school has gone out and hired a permanent substitute teacher to teach all 4 classes. The substitute is only certified to teach math, and he is 23 years old.

Ms. Snell has come to you for advice. She thinks that she may have a claim for age and handicap discrimination, but this could take 5 years in court to litigate. Ms. Snell was making about $50,000.00 a year. The Apple County Public School System knows that it could cost them $500,000.00 to defend the lawsuit, and they know that there is a risk they could lose.

Your client has heard of the advantages of using ADR and has asked what ADR process might be available and which process you would recommend.

Please describe these ADR processes to your client, pointing out the advantages and disadvantages of each process. Which process would you recommend and why?

Hypothetical Case 2

You are a new member of law firm, and a partner has come to you for advice involving her representation of a 27-year-old woman in a complex products liability claim involving an alleged defect in a snow blower manufactured by the defendant. The accident resulted in a severe injury to her client's right hand. The client was a concert pianist.
The complaint asks for $200,000 for medical expenses, $30,000,000 in lost future earnings, $4,000,000 for pain and suffering, and $10,000,000 in punitive damages.

The partner tells you there is a pretty good chance of establishing the existence of a dangerous defect and causation. The law in the relevant jurisdiction is unclear as to whether a plaintiff's negligence—if it was not foreseeable to the defendant—could bar recovery, and there is some chance that her client could be shown to be negligent (She reached in the blower to dislodge a twig that got caught). She claims that the motor was turned off when she reached in and that blades started up by themselves. Some discovery has taken place, but the defendant has been unwilling to produce certain internal documents the plaintiff's side thinks will establish knowledge of the defect, which would improve chances of recovering on the punitive damages claim. The defendant has offered to cover medical expenses, but argues that there is no defect and that the plaintiff's other damages are entirely speculative. Trial, which is likely to take three week, is scheduled to begin in 30 days.

The partner tells you that the defendant's lawyer called today and proposed submitting the case either to binding arbitration or to summary jury trial.

The partner tells you that she does not know much about these two processes and how they differ from one another. She asks you do some research and prepare and send a memorandum to her that will help her decide how to respond to the defense lawyer's proposal. Specifically she asks you to deal with the following questions:

What are these processes, and how do they compare and differ? What are their potential disadvantages compared with each other and with litigation? How should the choice among the three processes—arbitration, Summary Jury Trial, and litigation—be made?

LIMIT: Four (4) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, THE DATE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
Hypothetical Case 3

Don Long purchased a 2010 Honda Civic from a used car dealer, Frank’s A-1 Used Cars. On his way home he ran over a curb. When he took the car out the next day, he noticed the steering wheel vibrating at speeds over 40 M.P.H. He took the car to his local mechanic who told him that the axel was severally bent and would have to be replaced at a cost of $1,600.00. Don was told that it appeared that the axel was probably bent when he bought the car. Don went back to Frank’s insisting that they take the car back and demanding that they return the purchase price of $11,000.00. The manager at Frank’s refused, claiming there was nothing wrong with the car, and that Don must have caused the bent axel.

Don Long has come to you for advice to resolve the dispute. What advice would you give him and why?

LIMIT: Two (2) blue book pages

Hypothetical Case 4

Major League Baseball (MLB) suspended Alex Rodriguez (A-Rod) of the New York Yankees for 211 games under the Joint Drug Prevention and Treatment Program (JDA) based on his alleged use and possession of numerous forms of prohibited performance-enhancing substances, including Testosterone and human Growth Hormone, over the course of multiple years and for attempting to cover-up his violations of the Program by engaging in a course of conduct intended to obstruct and frustrate the Office of the Commissioner’s investigation.

Charge 1: Use and Possession of Prohibited Substances:

This charge has two elements: (1) use/possession, and (2) that the specific substance is prohibited under the JDA. A-Rod was given the drug tests, and the drug test results were negative. Although the MLB claims they have the best testing program in sports, they claim that A-Rod was able to beat the tests. Since the MLB doesn’t have a positive test, the MLB is relying on witnesses that claim he used the drugs. However, these witnesses have been paid by the MLB to testify. The MLB says even if use is not found there is evidence that he had possession of banned substances.

Charge 2: Multiple Violations:

MLB charges A-Rod with use or possession of multiple substances, specifically hGH and testosterone, and that the use and/or possession took place over several years.
Section 7(L) of the JDA, entitled “Notice of Violation,” states: 
If the notification requirements of Section 3G are satisfied, a Player will not be disciplined for a second or subsequent violation involving a Prohibited Substance that occurred prior to the time that he Player received actual notice of his first positive test result or non-analytical positive for the same Prohibited Substance, provided that he Player’s discipline for his first violation was not overturned or rescinded.

The Union asserts that MLB cannot stack violations and cite prior years of use if this is the first time it has brought discipline against A-Rod. It cannot discipline him for a second violation if it never notified him of or disciplined him for the first violation. The first offense is a 50-game suspension, the second is 100 games, and the third is a permanent ban (with caveats for return). The Union asserts that it would be improper to wait until three violations for MLB to bring the first charge and seek a permanent ban.

While A-Rod admitted to use prior to the current testing regime being in effect, that is not considered a prior violation.

The JDA states, “a positive test result prior to the first 2006 spring training voluntary reporting date shall not be considered in determining the number of times that a Player has tested positive under the Program.”

Charge 3: Attempt to Cover Up His Violations

A-Rod intended to obstruct and frustrate the Office of the Commissioner's investigation.

There is evidence that A-Rod attempted to buy his Biogenesis records. However, the MLB did buy those records. In trying to buy those records, A-Rod asserts that he has a legal right to his own medical records, and his employer does not.

You have been assigned as the arbitrator. Please write an arbitration decision setting forth the basis and rationale for your decision.

LIMIT: Two (2) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
Hypothetical Case 1

A partner in your law firm has come to you for advice involving her representation of a 32-year old professional basketball player injured in a serious automobile accident where he tore his Achilles heel. There is a good chance that he will never be able to play professional basketball again, and his rehabilitation will take many months. At the time of this accident, the player was making $5,000,000.00 a year and would be a free agent at the end of the season where he might be able to command $10,000,000.00 a year. Although the player was a passenger at the time of the accident, he had given the driver some marijuana, and they were both smoking it at the time of the accident. Fortunately, no arrests were made, and the player thinks no one knew about the marijuana.

The player is looking for $500,000 for medical expenses, $100,000,000 in lost future earnings, and $20,000,000 for pain and suffering.

The partner tells you that the liability is reasonably certain since the player was a passenger, but there is a question about damages because the player had an earlier Achilles heel injury in college that had been repaired. There is also the question of contributory negligence since the player had supplied the marijuana to the driver.

Although there has been some discovery, the defendant has not yet learned of the marijuana use, but the partner thinks it is only a matter of time that the defendant will discover this.

Although the trial is not scheduled to start for at least six months, the partner fears that the defendant is on the verge of discovering the marijuana use and that his will substantially diminish the recovery.

The partner tells you that the defendant’s lawyer called today and proposed submitting the case to some form of alternative dispute resolution.

The partner tells you that she does not know much about ADR. She asks you do some research and prepare and fax a memorandum to her that will help her decide how to respond to the defense lawyer’s proposal. Specifically she asks you to deal with the following questions:
What 3 ADR methods would you recommend, pointing out the advantages and disadvantages of each method?

Which method would you recommend trying first stating the reasons for that recommendation?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

There are two partners in a small amusement business, Mary Rose and Sarah Bird. Mary has been in the amusement business for thirty years. Sarah was an accountant and a friend and knew nothing about the amusement business. Mary had asked Sarah to be partners in purchasing and running a small amusement park. Sarah agreed but only of she would be an equal partner. Mary agreed but on the condition that Mary could buy Sarah out at any time at a fair market price.

The two partners are now having serious problems and Mary wants to buy Sarah out. Sarah says according to the written partnership agreement, she is entitled to $4,000,000 for her share. Mary thinks the agreement says that a partner’s share is worth $2,000,000. At $4,000,000, Mary cannot afford to buy Sarah out, but Mary could buy Sarah out for $2,000,000. Since they cannot resolve the dispute, Sarah has brought a suit to dissolve the partnership and sell the amusement park. Sarah is happy to do this. Mary on the other hand does not want to sell the amusement park to a third party because it was her dream to own her own amusement park.

Mary has responded to Sarah’s suit to dissolve the partnership by bringing a counterclaim for fraud and other related claims.

The parties have decided to try to resolve their dispute through some alternative dispute resolution method.

Please list two methods that you would recommend, explaining the advantages and disadvantages of each method.

If you were advising Mary, which method would you recommend and why.

If you were representing Sarah, which method would you recommend and why.

LIMIT: Four (4) blue book pages
Hypothetical Case 3

Sandy Storm and Wendy Worth were married shortly after Massachusetts legalized gay marriages. Both Sandy and Wendy were married before to men but divorced when gay marriages became legal. Sandy is sixty-three and Wendy is fifty. Sandy has three children who are independent. Wendy has one son who is 22 and living at home with her former husband.

Sandy and Wendy live in a six-bedroom colonial in North Andover, Massachusetts, which has a fair market value of $1,850,000. There is no mortgage on the property, and it was part of Wendy's divorce settlement with her former husband. When Sandy and Wendy married, Wendy put the home in both their names at tenants by the entirety. Sandy made no contribution to that property, but all the bills for that property are paid out of a joint bank account.

Sandy and Wendy purchased an ultra-modern apartment complex consisting of sixty-four two-bedroom apartments, thirty one-bedroom apartments, and ten three-bedroom apartments. Sandy paid $500,000 and Wendy paid $200,000 as a down payment. Sandy and Wendy took out a mortgage of $2,600,000 for the balance of the purchase of the complex. Wendy is managing the apartment complex. Sandy keeps the books and records, since she is a C.P.A. The net income from the apartments is generally about $450,000 a year. The apartment complex is located in Andover, Massachusetts, and there is a low occupancy rate.

Wendy's husband and son are living in one of the three-bedroom apartments in the complex. They are not paying any rent.

Sandy has just found out that Wendy is having an affair with someone on the air force base in New Hampshire. Sandy is devastated. She wants a divorce. She wants Wendy out of the marital home and wants to fire Wendy as manager of the apartment complex. Sandy also wants Wendy's former husband and son evicted from the three-bedroom apartment.

Wendy cannot afford to lose her job, and her former husband and son cannot afford to move out of the apartment.

Wendy wants to salvage her marriage. She says it was a terrible mistake and that she loves Sandy. Sandy has filed for divorce and has filed a restraining order to prevent Wendy from living in the marital home and also to prevent Wendy's new lover from threatening Sandy. Wendy's lover has threatened Sandy's life and has flown over the marital home in a threatening manner. Wendy has broken off the affair and asked for forgiveness. Wendy insists that Sandy has blown this way out of proportion. Wendy insists that Sandy is making too much of the affair, and that it will all blow over. Wendy has come to you for legal advice.
Please list 2 ADR methods that you would recommend to Wendy, pointing out the advantages and disadvantages of each method.

Please list the method you would recommend trying first and the reasons for that recommendation.

LIMIT: Three (3) blue book pages

Hypothetical Case 4

Frank Twist is employed by A.C.E. Manufacturing Co. He operates heavy-duty press equipment. A.C.E. has a no drug/no alcohol policy. Any employee caught on company property under the influence of drugs or alcohol or in the possession of drugs or alcohol is subject to immediate termination. Frank Twist is also a member of a labor union that has a grievance/arbitration provision that no employee will be discharged except for "good cause."

Six months earlier, Frank's supervisor, John Deese, thought he smelled marijuana on Frank's coat but took no action. But as a result John began to monitor Frank more closely. When John noticed that Frank was spending a lot of time in the men's room, he went into the men's room after Frank left, and John clearly smelled marijuana in the air and noticed a lit joint in one of the stalls. Although, John did not see Frank with the marijuana in his possession or observe that Frank was under the influence at this time, he terminated Frank the next day for being in the possession of marijuana. John had observed that no one had used or entered the men's room for at least an hour and that there was no way the joint could still be lit unless Frank had lit it up.

The union filed a grievance on Frank's behalf asserting that Frank was not discharged for "good cause" as required by the collective bargaining agreement.

The case is now in arbitration, and you have been assigned as the arbitrator. Please write an arbitration decision setting forth the basis and rationale for your decision.

LIMIT: Two (2) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
Hypothetical Case 1

You have been retained by John Drake to represent him in an automobile accident. His injuries were much more severe because of an alleged failure of the seat belt he was wearing. The person driving the other vehicle, Frank Dodge, was a new driver who was cited for going through a red light causing the accident. Unfortunately, Frank’s insurance policy was limited to $20,000. Frank had no other assets.

The medical bills that John incurred were almost $75,000. Future medical bills could exceed $60,000. John also lost income of $120,000 and has a 20% impairment of his left hand and 15% of his left foot. He is right-handed.

John was out of work for 52 weeks and worked 24 partial weeks. John is 47 years of age.

You have estimated that his compensatory damages together with pain and suffering have a settlement value of at least $400,000.

John was driving a Ford Mustang. The seat belt in the car was manufactured by Secure Seat Belt Co.

You have brought a suit against Frank Dodge for negligence and against Ford Motor Co. and Secure Seat Belt Co. for products liability.

You have been retained by John Drake on a contingent fee basis. You will receive 25% of any recovery if the case is settled before trial and one third if the case goes to trial.

John would like a quick settlement and is willing to accept $200,000. The case will not be scheduled for trial for at least two years.

What ADR processes would you recommend? List at least two. How do they compare and differ? What are their potential advantages and disadvantages compared with each other and with litigation? How should the choice among the
ADR processes and litigation be made? Are there any ethical considerations? If so, explain what they are.

**LIMIT: Four (4) blue book pages**

**Hypothetical Case 2**

Lisa Mona, works for Gacy's a large retail clothing store in New York. She has gone out on maternity leave and wants to return to work. Gacy's claims that Lisa's job has been eliminated in a company reorganization while Lisa was out. Lisa was the only one to lose a job during this reorganization.

Lisa has threatened to sue Gacy's for violation of the FMLA and for sex discrimination under state and federal law. Lisa has found another job, but this new job will pay her $10,000 a year less than her job at Gacy's, and Lisa will lose her 7 years of seniority with Gacy's.

It is getting close to Christmas time, the busiest time for Gacy's, and Gacy's is concerned that the negative publicity will hurt sales, since Gacy's has a large maternity department.

Gacy's human resources department has received a letter from Lisa's lawyer demanding reinstatement with full back pay or in the alternative $250,000.

Gacy's has come to you for advice. Gacy's has heard about mediation and arbitration as possible ways to resolve the case and to avoid court.

Explain the advantages and disadvantages of each process. What process would you recommend to Gacy's and why?

**LIMIT: Three (3) blue book pages**
Hypothetical Case 3

Pat Richmond, age 52, and Donald Poore, age 58, have been married for seven years. This is the second marriage for each of them. Pat has two grown children who are independent. Donald has a daughter who is 20 and in college.

Pat owns a small retail stationery business that she began 18 years ago. In 2009, the business had revenues of $2,000,000 down 45% from the previous year because of the recession. Pat was forced to lay off 7 employees leaving her with 8 full-time employees and 2 part-time employees. Even with the lay offs, Pat is barely able to meet her operating expenses.

Donald’s daughter Alice has worked in the business for the last 2 years, as a commissioned salesperson, to help pay for college.

Before Donald met Pat, he had worked as a salesman for a small copying service, which is no longer in business. When he and Pat married, Donald left that company and became Director of Sales at Pat’s company.

Pat found out that Donald is having an affair with his first wife. Donald insists that it was a one time thing for old time’s sake, and that he wants to continue with the marriage. Pat wants a divorce and wants to fire Donald. Even if this did not happen, Pat was planning to eliminate Donald’s job for economic reasons and take over his responsibilities to save money.

Donald is angry about losing his job and his marriage and is concerned about his daughter Alice’s job. With the bad economy and his age, Donald is concerned that he will have a hard time finding another job. He also has no place to live. Donald and his daughter Alice have been living in a house owned by Pat. Pat obtained the home when she divorced her first husband. The house is quite large. It has 6 bedrooms and an in-law apartment in the basement that Alice has been using to live in.

Donald would like to salvage his marriage and his job with Pat, but at the very least, be able to continue to live at Pat’s house. Pat has filed for divorce. Donald has come to you for advice.

Please list 3 ADR methods that you would recommend to Donald, pointing out the advantages and disadvantages of each method.

Please list the method you would recommend trying first and the reasons for that recommendation.

LIMIT: Four (4) blue book pages
Hypothetical Case 4

Mary Spader has worked for the Hart Construction Co. for the last seven years. This year the company instituted a new policy that any employee having possession of drugs on company property would be terminated. At the same time the company also instituted a policy that no employee would be terminated except for good cause and that any disputes would be arbitrated. Mary was seen going to the bathroom quite frequently on a particular day and her supervisor, Sam Parker, smelled what appeared to be marijuana. When he went in to look, he found 4 grams of cocaine in one of the stalls. Sam confronted Mary, and Mary told him she did not know anything about the cocaine and that the reason she was going to the bathroom so frequently was that she had a bug.

Two days later Sam learned that the man Mary was living with had just been arrested for selling cocaine. Sam confronted Mary again, and although Mary again denied she had anything to do with the cocaine in the bathroom, Sam noticed some white powder on Mary’s blouse. Sam asked if he could test the white powder on her blouse to determine if it was cocaine. Mary refused and walked away. Sam terminated Mary for possession of drugs on company property. Mary contested the discharge and sought arbitration.

You have been selected as the arbitrator in this case. Please write an arbitration decision setting forth the basis and rationale for your decision.

LIMIT: Two (2) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, THE DATE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
Hypothetical Case 1

Pat Hand and Sandy Beech had lived together for 12 years. They moved to Massachusetts three years ago so they could marry. Last year they adopted a baby from Africa. Pat just learned that Sandy is having an affair with a co-worker, and Pat is furious and wants a divorce. Pat and Sandy own a home jointly in Andover that has a value of about $900,000.00. It has a $250,000.00 mortgage. Pat and Sandy also own a condo in Vermont worth at least $400,000.00 with no mortgage. Pat stopped working last year to take care of their new baby. Before that, Pat worked as a comptroller at a medium size company earning $150,000.00 a year plus benefits. Pat is a CPA.

Pat has come to you for advice. Please list 3 ADR methods that you would recommend to Pat, pointing out the advantages and disadvantages of each method.

Please list the method you would recommend trying first and the reasons for that recommendation.

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Dawn Earley was walking to church on Sunday when she was struck and seriously injured while she says she was walking in the crosswalk. She had multiple fractures and was hospitalized for 4 weeks. Her medical expenses exceed $120,000.00 and future medical expenses will cost another $50,000.00. Dawn lost 8 months from work with a lost income of $40,000.00. Dawn also has a permanent loss of function in her right major hand of 30%. Dawn is 47 years of age and expects to work another 15 years. The insurance coverage is for 2 million dollars, but the insurance does not want to pay more than $250,000.00 because the insurance company claims that Dawn was not in the crosswalk and that she darted out between 2 parked cars, and that Dawn was more at fault than the driver.
Dawn wants the entire policy of two million dollars but needs to recover at least $500,000.00 to pay for the medical bills, lost income, and pain and suffering and the loss of function.

The case is ready for trial and scheduled to be tried in 3 weeks. Unknown to the insurance company, Dawn's key witness who was to testify that Dawn was in the crosswalk is not available for trial.

You are Dawn's lawyer. How would you convince the insurance company lawyer to use some ADR method? What process would you recommend? List at least 2 processes and explain the advantages and disadvantages of each process.

**LIMIT: Three (3) blue book pages**

**Hypothetical Case 3**

Allen Wrench has been a school teacher for 32 years and has taught Spanish, French, and Social Studies at the high school. For 31 years Allen had a perfect attendance record. Last year Allen missed 2 months of his classes. Allen was hospitalized for 1 month in a psychiatric hospital for depression. His classes were taken over by substitute teachers. He expects to return to teach in the fall. His doctor said Allen could return to teach but could only teach 1 of his 5 classes initially and that Allen could probably teach 3 of his 5 classes after January. The school is concerned that Allen may have a relapse and does not want him to come back to teach any classes. Allen has a year to go before his normal retirement. He turns 65 on January 4, 2010. The school has gone out and hired a permanent substitute teacher to teach all 5 classes. The substitute is only certified to teach Spanish, and she is 26 years old.

Mr. Wrench has come to you for advice. He thinks that he may have a claim for age and handicap discrimination, but this could take 5 years in court to litigate. Mr. Wrench was making about $60,000.00 a year. The high school knows that it could cost them $250,000.00 to defend the lawsuit and knows that there is a risk they could lose.

Your client has heard of the advantages of using ADR and has asked what ADR process might be available and which process you would recommend.

Please describe these ADR processes to your client, pointing out the advantages and disadvantages of each process. Which process would you recommend and why?

**LIMIT: Four (4) blue book pages**
Hypothetical Case 4

The A.C.N.E. Construction Company and the Construction Workers Union had a long relationship. Their collective bargaining agreement was about to end on December 6, 2008. The parties met nine times prior to the expiration of the collective bargaining agreement to negotiate a new agreement. In the past, the Company had provided 100% of the cost for medical benefits for the employees. Costs had become so expensive that the Company wanted to reduce its share to 70%. After the collective bargaining agreement ended, four more bargaining sessions were held, the last one was held on July 18, 2009. At that meeting, the Company declared an impasse and provided 70% of the cost for medical benefits for the employees, and the Company provided a memo to the employees notifying them they would now be paying 30% for medical benefits and this would be paid through deductions from their paychecks.

The Union has invoked arbitration.

You have been selected as the arbitrator to hear this case. Write a decision based upon the facts given and provide the rationale for your decision.

LIMIT: Two (2) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
Hypothetical Case 1

Mary Roe was rear-ended while at a stop light. She alleges that she suffered permanent damage to her left knee. The insurer does not question liability but believes that the injury to her left knee was not caused by the accident but rather due to the fact that Mary Roe is an Aerobics instructor and that it was the repetitive motion that caused her permanent injury. Mary Roe is contemplating a knee replacement that will require at least six months of rehabilitation. Mary Roe anticipates medical and hospital bills of $60,000.00 and lost income of at least $45,000.00. Mary Roe will likely suffer a partial loss of income for another year that she anticipates will be another $45,000.00. Mary Roe also anticipates future problems with arthritis and additional medical expenses of $25,000.00. Mary Roe is a single mother, age 42 with a daughter about to start college. She would like to settle the case quickly but needs at least $60,000.00 in her pocket, which means about $90,000.00 since the case is on a 1/3 contingency.

The insurance carrier does not want to pay more than $60,000.00 for medicals believing that the knee injury is unrelated to the accident according to their medical expert.

What processes would you recommend? How do they compare and how do they differ? What are their potential advantages and disadvantages compared with each other and with litigation? How should the choice among the ADR processes and litigation be made?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Assume that you are a lawyer representing a plaintiff in an employment discrimination claim. Your client, a 54-
year-old lesbian woman named Jane Rowe, worked as a dental hygienist. One of the dentist’s patients complained that he did not want some queer poking around in his mouth. The dentist has worked with Jane for seventeen years and likes her, but this new patient could be a source for a great deal of business. The dentist is also concerned that if he fires Jane because of this patient that he could get sued for discrimination.

You learned from your client that she plans to retire soon and move to a warmer part of the country. Accordingly, she is anxious to get this matter wrapped up quickly and to get as much money as she can out of this (The dentist does not know that she plans to retire soon and, presumably considers her valuable).

After several unsuccessful attempts to negotiate a resolution—in which your client asked for a severance package that would have provided her with enough money to make the move to Florida. The parties agreed to submit the claim to binding arbitration and selected an arbitrator through the American Arbitration Association. In your demand for arbitration, you asked for $250,000 in compensatory damages (including pain and suffering and emotional distress) and a monthly amount of $600.00 a month for three years. At the beginning of the session (which you and your client attended along with the dentist and his lawyer), the arbitrator asked if the parties had attempted to settle the case.

After the lawyers explained the history of the settlement efforts, the arbitrator asked if the parties would like him to mediate the case before attempting to arbitrate. How would you respond to this question and what issues and dilemmas would you have to face in deciding how to respond?

LIMIT: Three (3) blue book pages

**Hypothetical Case 3**

An employee who had a chronic condition used all her allotted FMLA leave before February 2, 2008, and was told that subsequent absences applicable to FMLA leave would have to be supported by a doctor’s note. She was then out sick because she of a virus that left her in a coma for four days. When she returned on March 16, she had doctor’s
notes for the first three days. She did not call in on March 12 until after the shift started. Therefore, she was assigned two points under the employer’s no-fault attendance policy. This put her over 10 points and made her subject to termination.

An employee has four days under the employer’s system to set up disability leave. In this case, the employee did not bring in her doctor’s note for the March 12-16 absence within the four-day period.

The Supervisor of Employee Relations conducted a fact-finding hearing on March 16. The employee claimed she was in a coma, but she provided no documentation for that claim. The employee was terminated.

The union grieved, alleging among other things that the employee’s coma made it impossible for her to comply with the employer’s time requirements. The employer denied the grievance asserting, in part, that the employee did not document the absence due to her coma before she was discharged.

You have been selected as the arbitrator in this case. Please write an arbitration decision setting forth the basis and rationale for your decision.

LIMIT: Three (3) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, THE DATE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
Hypothetical Case 1

Mary and John Drake have been married for 17 years. They have two children, a boy 14 years old and a girl 11 years old. John just learned that his wife Mary was having an affair with John's best friend, Richard Lane. John is a stock broker and earns about $500,000.00 a year. Their marital home is worth at least $750,000.00. They also own a summer home in New Hampshire that is on a lake and is worth at least $500,000.00. They also own a condo in Florida on the ocean that is worth about $400,000.00. The mortgages on all three properties are less than $200,000.00. Mary worked as a paralegal about 15 years ago but has not worked since she had children. John has come to you for advice on how to resolve his dispute.

Please list 3 ADR methods that you would recommend to John, pointing out the advantages and disadvantages of each method.

Please list the method you would recommend trying first and the reasons for that recommendation.

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Jane Doe, a 15 year old girl, was a passenger in a motor vehicle driven by her father, James Doe, that was involved in an intersectional accident with a small pick-up truck. As a result of the accident, Jane suffered multiple fractures including a collapsed lung and was hospitalized for two weeks. She was out of school for 1 year and had permanent injuries to her major hand and her left foot. Jane was not wearing a seat belt at the time of the accident, and there is a dispute as to whether the driver of the pick-up truck went through a red light. The case has a settlement value between $750,000.00 and $1,000,000.00. The insurance available is $250,000.00 from James Doe's policy and $1,000,000.00 from the small pick-up truck. Jane Doe is now 18 years old and has become estranged from her family. Jane has come to you for advice, and you have send out claim letters to both insurance carriers. Both carriers have stated that they would be willing to try an ADR method for resolving this dispute.
What ADR method would you recommend? Please set forth the reasons for your recommendation. Do you see any ethical issues in Jane suing her father? If so, what ethical issues do you find.

**LIMIT: Three (3) blue book pages**

**Hypothetical Case 3**

Anita Thomas worked under Clarence Hill’s supervision for 3 years and during that entire period of time, Mr. Hill would sexually harass Ms. Thomas asking her for sexual favors and telling her that her raises and promotions within the organization were up to him. Ms. Thomas was too fearful to complain to anyone, although there was a policy against sexual harassment. She was afraid to use the policy because the person designated to handle complaints of sexual harassment was George Clinton, Mr. Hill’s best friend. What caused Ms. Thomas to come to see you seeking advice was Mr. Hill had placed a nude picture of himself on Ms. Thomas’s desk with a note to meet him in the broom closet where he would negotiate a raise with her. Ms. Thomas loves her job, but she is on the verge of a nervous breakdown and cannot continue to work under Mr. Hill’s supervision. She has come to you for advice.

Please state the ADR method you would recommend to Ms. Thomas setting forth your reasons for that recommendation.

**LIMIT: Two (2) blue book pages**

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ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, THE DATE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
MASSACHUSETTS SCHOOL OF LAW

FINAL EXAM – Alternative Dispute Resolution
Professor Frederick T. Golder
617-927-9590
Email: ftgolder@gmail.com
December 12, 2006

Hypothetical Case 1

Rhonda Peach has been a school teacher for 37 years with the Crook County Public School System. She has taught history and English classes at the high school. Last year she was diagnosed with bi-polar disorder and missed the last 4 months of classes. Ms. Peach was hospitalized for 3 months in a psychiatric hospital. Her 2 history classes and 2 English classes were taken over by substitute teachers. She now wants to return to teach in January 2007. Her doctor said she could only teach 2 of the 4 classes. The school is concerned that she may have a relapse and does not want her to come back to teach any classes. Ms. Peach has 2 years to go before her normal retirement. She turns 65 on January 4, 2009. The school has gone out and hired a permanent substitute teacher to teach all 4 classes. The substitute is only certified to teach history, and he is 23 years old. Ms. Peach has come to you for advice. She thinks that she may have a claim for age and handicap discrimination, but this could take 5 years in court to litigate. Ms. Peach was making about $50,000.00 a year. The Crook County Public School System knows that it could cost them $250,000.00 to defend the lawsuit, and they know that there is a risk they could lose.

Your client has heard of the advantages of using ADR and has asked what ADR process might be available and which process you would recommend.

Please describe these ADR processes to your client, pointing out the advantages and disadvantages of each process. Which process would you recommend and why?

LIMIT: Four (4) blue book pages

Hypothetical Case 2

Jane Bancroft and Laura Good were married in Massachusetts on April 1, 2006. Jane had been previously married to Peter Piper for 7 years and has 2 children from that marriage – Jack age 4 and Jill age 2. Jane has legal custody of the 2 children but Peter has custody rights. Jane is also receiving $400.00 a week in child support from Peter and is living in the marital home bought by Peter before he married Jane. The marital home was put in both their names as tenants by the entirety after they married, and Jane was awarded the marital home in the divorce proceeding on June 1, 2004. Peter wants to bring a suit to get custody of the children and get back the marital home. Peter is furious that Jane has married Laura, has custody of his 2 children, and is living in a home he bought. Peter is also on the board of directors of a group that wants to ban gay marriages.
Peter has come to you for advice. What processes would you recommend for resolving his disputes, explaining the advantages and disadvantages of each process? Would your advice be different if you represented Jane? If so, explain why it would be different.

LIMIT: Three (3) blue book pages

Hypothetical Case 3

John Dice was involved in a serious motor vehicle accident on July 4, 2004. The accident caused injuries and damages to Mr. Dice consisting of multiple fractures, hospitalization for 3 weeks, medical and hospital bills totaling approximately $117,000.00. Mr. Dice also missed 11 months of employment and a loss of wages of $60,000.00. Mr. Dice also has a permanent loss of function of his left major hand of 30%, his right foot of 10%, his right minor hand 20%. As a result of these injuries, Mr. Dice can longer work overtime at his job causing a loss to him of about $20,000.00 a year. Mr. Dice is 35 years old and expects to work at least 30 more years. The accident was an intersectional accident. There is a dispute as to who had the green light. The insurance carrier for the other driver has a million dollar insurance policy but has an eyewitness that has Mr. Dice going through a red light.

Mr. Dice has come to you for advice. He knows that if he files a lawsuit it could take years, and he would like to get the money within the next 6 months. What processes would you recommend for Mr. Dice? Explain the advantages and disadvantages of each process.

LIMIT: Two (2) blue book pages

Hypothetical Case 4

Mary Short recently purchased a 2005 Toyota Camry from a used car dealer, Dick’s Premium Used Cars. On her way home she ran over the curb in her driveway. When she went to take the car out again, she noticed the steering wheel vibrating. She took the car to her local mechanic who told her that the axel was severally bent and would have to be replaced at a cost of $1,200.00. Ms. Short was told that it appeared that the axel was probably bent when she bought the car. Ms. Short went back to Dick’s insisting that they take the car back and demanding that they return the purchase price of $11,000.00. The manager at Dick’s refused, claiming there was nothing wrong with the car, and that Ms. Short must have caused the bent axel.

Ms. Short has come to you for advice to resolve the dispute. What advice would you give her and why?

LIMIT: Two (2) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, THE DATE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
Hypothetical Case 1

Minnie Douke was employed by the Drake Company, a manufacturer of model cars, for 24 years as a first shift supervisor. The Drake Company hired a new plant manager about 3 weeks ago. Ms. Douke had applied for the position but was rejected and a much younger male employee, George Kerrey, was hired instead. George Kerrey has just fired Ms. Douke asserting that she was incompetent.

Ms. Douke has come to you for legal advice. Ms. Douke is 60 years old and is a lesbian. Ms. Douke thinks that she was fired because of her age, her gender, her sexual orientation, and because she complained that a younger male was appointed as plant manager.

You have sent a claim letter to the Drake Company asserting that Ms. Douke was a victim of age, gender, sexual orientation, and retaliation discrimination. Ms. Douke’s lost wages until age 65 could amount to $250,000. Her emotional stress damages could add another $100,000, and punitive damages could add another $500,000.

The Drake Company claims that Mr. Kerrey did not know that Ms. Douke was a lesbian, although everyone at the Drake Company knew this, since at all company functions, Ms. Douke always brought her wife and introduced her as such to her co-workers.

Ms. Douke intended to work until age 62 and then retire with a full pension. Her evaluations over the 24 years were excellent. A full pension requires at least 25 years of service and age 62.

You know that the cost of defending this lawsuit could cost the company at least $250,000. The lawyer for the Drake Company has contacted you and told you the company is willing to consider resolving this without resort to litigation.

State at least two processes you would recommend to Ms. Douke. State the advantages and disadvantages of each process and also compare them to litigation. If one of your choices is mediation, please state the type of mediator you would choose, explaining why you would choose that type of mediator.

LIMIT: Four (4) blue book pages
Hypothetical Case 2

Susan Waite has been having marital problems for the last three years with her husband Frank. They have been married for 16 years and have 2 children, John aged 16 and Mary aged 14. Susan came home the other day and found Frank in bed with Susan’s younger sister. This was the last straw for Susan. She has come to you to get a divorce and custody of the children. Frank was forced to get married 16 years ago because Susan claims that Frank got her pregnant. Frank now suspects that he was not the father and wants a paternity test. Frank also thinks Susan is an unfit mother and wants custody of the children. Frank has a very successful business and earns $350,000 a year. Their marital home is worth at least 2.5 million dollars. They have a vacation home in New Hampshire worth at least $750,000. Susan has been twice hospitalized for depression and has a drug addiction.

What processes would you recommend to Susan for resolving her disputes with Frank, explaining the advantages and disadvantages of each process. Would your advice be different if you represented Frank? If so, explain why it would be different.

LIMIT: Three (3) blue book pages

Hypothetical Case 3

Kevin Hurtt was involved in a serious motor vehicle accident that resulted in multiple fractures, 2 weeks in the hospital, and $26,000 in medical bills. Kevin also lost 6 months of work and a loss of income of $30,000. He also has a permanent loss of function of 15% of his left minor hand. Kevin is 37 years of age. Although the insurance coverage is for a million dollars, the insurance company does not want to pay more than $100,000 because it was an intersectional accident, and they take the position that Kevin was more at fault than their driver.

Kevin wants the entire policy of one million dollars but needs to recover at least $100,000 to pay for the medical bills and lost income.

Kevin has come to you for advice. What processes would you recommend for Kevin? Explain the advantages and disadvantages of each process.

LIMIT: Two (2) blue book pages

Hypothetical Case 4

A city transit company discharged a bus driver who tested positive for drugs following an accident. The union grieved the discharge. The company had a policy of testing for drugs and alcohol when a workplace accident resulted in an injury requiring medical
treatment or damage to company property and called for discipline or discharge for positive test results.

The employee had previously undergone successful drug rehabilitation treatment before his employment with the company. The employee had 16 years of accident-free performance with the transit company, and the cause of the accident was a van going through a red light, not the fault of the employee.

The employee tested positive for marijuana the day of the accident but was not cited for any motor vehicle violations or infractions. The driver of the van was cited for going through a red light.

You have been selected as the arbitrator in this case. Please write a decision and provide the basis and rationale for that decision.

LIMIT: Two (2) blue book pages

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, THE DATE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!
Hypothetical Case 1

You are a new associate in a large law firm; the shareholders know that you have a strong background in dispute resolution (From taking this course). A partner comes to ask your advice about the following situation. She is representing the plaintiff, an 18-year-old woman, in a large and complex products liability claim. She is asserting that a defect in a lawn mower manufactured by the defendant caused an accident that resulted in a severe injury to her client’s foot, which has impaired her ability to dance, thus dooming her career aspirations to be a ballerina. (She has been studying ballet since age five and has performed in several high school productions; one week after the accident she was scheduled for an audition for admission to the school associated with a major national ballet company.)

The complaint asks for $100,000 for medical expenses, $2,000,000 in lost future earnings, $500,000 for pain and suffering, and $2,000,000 in punitive damages. The shareholder tells you that there is a pretty good chance of establishing the existence of a dangerous defect and causation. She says, however, that the law in the relevant jurisdiction is unclear as to whether a plaintiff’s negligence—if it was not foreseeable to the defendant—could bar recovery, and there is some chance that her client could be shown to be negligent in an unforeseeable way (she was practicing pirouettes while mowing the lawn). Some discovery has taken place, but the defendant has been unwilling to produce certain internal documents the plaintiff’s side thinks will establish knowledge of the defect, which would improve chances of recovering on the punitive damages claim. The defendant has offered to cover medical expenses, but argues that there is no defect and that the plaintiff’s other damages are entirely speculative. Trial, which is likely to take one week, is scheduled to begin in 30 days.
The partner tells you that the defendant’s lawyer called today and proposed submitting the case either to non-binding arbitration or to early neutral evaluation under the local court program. Under that program, if the attorneys agree on a dispute resolution process, the court will propose a list of three volunteers who can conduct the chosen process. The parties can jointly pick one; if they cannot agree, each is entitled to strike one neutral.

At this point the partner’s secretary enters and says that the partner has an emergency telephone call. A few minutes later the partner returns to explain that she has been called out of town on urgent business of another client. She tells you that she does not know much about ADR and is not quite sure what these two processes are and how they differ from one another or from litigation. She asks you to do some research and prepare and fax a memorandum to her that will help her decide how to respond to the defense lawyer’s proposal. Specifically she asks you to deal with the following questions:

What are those processes, and how do they compare and differ? What are their potential advantages and disadvantages compared with each other and with litigation? How should the choice among the three processes—non-binding arbitration, ENE, and litigation—be made?

LIMIT: FOUR (4) PAGES

Hypothetical Case 2

Recently you took a mediation training program that emphasized a facilitative-broad approach, and you were captivated by the potential inherent in that approach for developing interest-based agreements that can improve the parties’ relationship—and perhaps the parties themselves. You would like to try out this approach in a real case. Fortunately, one of your fellow students in the mediation course, a local lawyer named Tom Hart, whom you had not known before you took the training program, called you shortly after the course ended and asked if you would consider mediating a case in which he represented the defendant. Hart said that the plaintiff had agreed to have you serve in this capacity. You were thrilled to accept.
During the opening session the plaintiff, a 50 year-old woman of Hispanic descent named Dixie Minoso, was not represented by a lawyer; she told you she could not afford a lawyer and wanted to try to work this out informally, without filing a lawsuit or a claim with the EEOC. She also stated that she had been involved in other mediations (as she had worked as a legal secretary) and, based on those experiences, she expected you to predict how her claim would fare in the EEOC and in court. Before you could respond, Tom Hart said that evaluations were not part of mediation and that he did not want you to make predictions.

Describe and analyze the various ways in which a mediator in your situation might respond— in word and deed. Be sure to identify and discuss the potential advantages and disadvantages of the potential responses and any dilemmas you would face in deciding what to do.

LIMIT: THREE (3) PAGES

Hypothetical Case 3

Another shareholder in the law firm in which you are a new associate comes into your office and asks you to write a memorandum to him explaining the difference between mediation and arbitration. He says he knows how the definitions differ, but he wants you to tell him how the two differ in practice. He wants this information so he can help prepare a presentation for a panel on which he will appear at a continuing legal education program sponsored by the state bar.

LIMIT: TWO (2) PAGES

Hypothetical Case 4

A company discharged a line employee who tested positive for drugs following what it deemed to be a workplace accident, and the union grieved. The company had a policy of testing for drugs and alcohol when a workplace accident resulted in an injury requiring medical treatment or damage to company property and called for discipline or discharge for positive test results.
The employee had been experiencing a difficult recovery from knee surgery. He had returned to work dispute continued pain and swelling, most of the time wearing a homemade protective device. He was not wearing the device when a co-worker squeezed past him in an aisle with a forklift, and he bumped his knee. In extreme pain, the employee asked to go home. But the company's records incorrectly showed that his point score under its attendance policy was higher than it actually was, and he was told that he would lose his job if he left.

His supervisor denied his request to take an absence to be credited toward his Family and Medical Leave Act leave for his condition based on the surgery and stated that the incident would have to be treated as an on-the-job injury.

Prior to the surgery, he had told his friend and night shift manager that he had a problem with marijuana use and was referred to the employee-assistance program. However, he could not take off work for treatment because he already had used too much FMLA leave.

After the employee's supervisor told this manager of the situation, the manager sent the employee home, and the employee smoked some marijuana that night. However, the company concluded that the manager was mistaken in his belief that the employee's pre-existing medical condition made the incident something different than a workplace accident. The next day, the employee worked for two hours before he was taken for a medical examination, which included the drug test. He later entered drug treatment, stopped taking drugs, and began to attend Alcoholics Anonymous regularly.

You have been chosen as the arbitrator in this case. Please write a decision and provide the basis and rationale for your decision.

LIMIT: THREE (3) PAGES

ALL ANSWERS MUST BE IN YOUR BLUE BOOK. PUT THE NAME OF THE COURSE, THE DATE, AND YOUR IDENTIFICATION NUMBER ON YOUR BLUE BOOK. GOOD LUCK!