# NOVEL WAYS OF CREATING EXPERIENTIAL ADR PROBLEMS

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ABSTRACT

*In legal education, experiential learning has become a vital tool for equipping students with the practical skills necessary for success in Alternative Dispute Resolution (ADR). This article explores three innovative methods for creating dynamic and realistic ADR problems: engaging teaching fellows to develop negotiation simulations, leveraging international LL.M. students to craft cross-cultural hypotheticals, and using artificial intelligence to generate customized exercises efficiently. Each approach offers unique benefits, from fostering deeper student investment in problem design to promoting comparative legal understanding and streamlining the creation of tailored learning experiences. By integrating these methods, educators can enhance student engagement, bridge the gap between theory and practice, and better prepare future legal professionals for the complexities of real-world dispute resolution.*

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## INTRODUCTION

In the evolving landscape of legal education, experiential learning has emerged as a cornerstone for developing practitioner competency and confidence.[1] This approach is particularly significant in the field of Alternative Dispute Resolution ("ADR"), where practical skills and real-world application are highly valued. Using realistic simulations, problem-solving exercises, and interactive scenarios not only enhances learning outcomes, but also bridges the gap between theoretical knowledge and practical application.[2]

This article explores three innovative methods for creating experiential ADR problems: utilizing teaching fellows, engaging LL.M. students for cross-cultural hypotheticals ("hypos"), and leveraging artificial intelligence. Each method offers unique advantages and contributes to a richer, more dynamic learning experience for law students. By examining these approaches, we aim to provide educators with practical insights and strategies to enhance their teaching methodologies and better prepare students for their future careers in law.

## I. USING TEACHING FELLOWS TO CREATE COMPLEX NEGOTIATION PROBLEMS (WELLMAN)

Designing realistic scenarios takes time, inspiration, critical thinking, and clarity.[3] The temptation to recycle or outsource scenario development is non-trivial when balancing the demands of the academe for service and scholarship. Many ADR educators turn to pay-to-play commercial products, disciplinary education resource shares, or artificial intelligence to develop scenarios. An additional novel approach and source for scenario generation might be one of the best ways to enhance realism while also developing students: guided scenario creation using "teaching fellows." This method not only benefits the students who participate in these simulations but also those who design them.

Many ADR teachers likely observe how their students emerge from negotiation courses energized by having seen the value and applicability of negotiation skills in their lives. They want to test their new principled strategies and communication skills in ways that matter to them, not merely academic exercises. They have bought in on the idea that "everything is a negotiation" and begin applying the mantra in as many diverse situations as they can. At the

1. *See* Alex Jones, *The Effect of Negotiation Role-Play on Critical Thinking Skills*, 9 INT'L. J. SCI. & ENG'G RSCH. 1294, 1294 (2018).

2. Eduardo Salas, Jessica L. Wildman, & Ronald F. Piccolo, *Using Simulation-Based Training to Enhance Management Education*, 8 ACAD. MGMT LEARNING & EDUC. 559, 562 (2009) (describing how simulation-based education mimics real-world situations in which students can test and get feedback on their knowledge and application in a low-stakes environment).

3. For an excellent discussion of how to structure problem-centered writing to promote critical thinking, *see* JOHN C. BEAN, ENGAGING IDEAS: THE PROFESSOR'S GUIDE TO INTEGRATING WRITING, CRITICAL THINKING, AND ACTIVE LEARNING IN THE CLASSROOM, 2–5, 17–38 (1996).

United States Air Force Academy, we have taken advantage of this vigor from some of our course alum and channeled it toward creating new scenarios. When a student demonstrates the desire for deeper learning and skill development at the conclusion of the course, we might offer a follow-on opportunity to work alongside faculty to develop negotiation problems and roles for use in a later iteration of the course. The "teaching fellow," as we call them, enrolls in an independent study course supervised by ADR faculty. The course's pedagogy models the student-centered and active learning benefits of project-based learning.[4]

The project around which the teaching fellow's independent study is organized is negotiation simulation design. We begin with a conflict that our students can envision encountering in the future, or one that is currently ongoing in the world without a clear solution. Rather than dictate the conflict, the supervising faculty identifies a few diverse choices from which the teaching fellow can choose in order to fuel motivation and interest.[5] Research suggests that student motivation and sense of satisfaction is connected to the degree to which the problem is central to the discipline, student-driven, and realistic.[6] While total freedom of choice in topic selection might result in anxiety and paralysis, removing all choice and agency can demotivate the student; a best practice is to narrow the field of options and give sufficient guidance and structure necessary for success.[7]

After the teaching fellow selects the topic, the instructor facilitates the learning process with the following key scaffolding. First, the faculty help the teaching fellow understand the project's central problem: what is the main teaching point or insight the students will gain from the exercise? Next, the faculty facilitates brainstorming the key roles and structure: is the exercise best executed as a bilateral negotiation, multiparty negotiation, or a facilitated dialogue with a neutral role? Lastly, the supervising faculty guides the teaching fellow in developing the range of solutions the parties may develop and the incentives for the parties to progress toward potential solutions. This last step requires the most iteration. Faculty must be careful to give the fellow sufficient space for critical thinking, trial and error, and supplying their own voice to the scenario.

Once these key components of the project are conceptualized alongside the supervising faculty, the student independently engages in the process of inquiry to craft the various narratives: (1) What common information and background

4. Eduardo de Senzi Zancul, Thayla Tavares Sousa-Zomer, & Paulo Augusto Cauchick-Miguel, *Project-Based Learning Approach: Improvements of an Undergraduate Course in New Product Development*, 27 PROD. 1, 2–3 (2017).

5. Elijah Wilhelm, *The First Hurdle of Writing Anything: Topic Selection for Student Writing*, 19 INSIGHT: J. SCHOLARLY TEACHING 1, 1 (2024).

6. de Senzi Zancul et al., *supra* note 4, at 2–3.

7. Wilhelm, *supra* note 5, at 2.

do the learners need to understand the central conflict? (2) What interests do each of the parties need to be supplied so that they can effectively play their role and are motivated to problem-solve with the other part(ies)? (3) What is a robust range of creative and realistic ways the parties might resolve the conflict? and (4) How can we sufficiently incentivize the parties to see that a negotiated solution has the promise of a better outcome than what the parties can do independently? In other words, can we sufficiently weaken each of their best alternatives to a negotiated agreement ("BATNAs")[8] such that the learners are not motivated to take the road of least resistance and exert mutual effort to try to reach an agreement?

To demonstrate the student-led scenario development model in action, we offer a recent multiparty scenario developed at the Air Force Academy by a teaching fellow that has been shared with other ADR teachers and received overwhelmingly positive feedback. Our faculty recognized the need for a realistic multiparty scenario for the basic negotiation course's culminating exercise, but the commercial diplomacy problems we found all involved fictitious countries as role players. We desired a real conflict our students could visualize having national security ramifications. We selected an interested teaching fellow and supplied multiple real-world conflicts from which the fellow could choose—various disputes in the South China Sea, the Israeli-Palestinian conflict, and liability flowing from assets in space were a few of the options.

The teaching fellow selected the disagreement over the nine-dash line in the South China Sea.[9] We next guided the teaching fellow in discerning the main teaching point from the exercise (fractioning when confronted with an intractable major issue). Then, we assisted the student in brainstorming the essential parties (which countries to involve in the peace conference), what potential solutions the students may develop, and each party's BATNA[10] such that they would be motivated to problem-solve. For this particular teaching point, we needed to incentivize the parties to not reach agreement on the intractable issue, so the teaching fellow set out to design an incentive mechanism in the form of a scoring matrix to truly make the primary issue unsolvable (i.e., if either party got their interest met on defining the nine-dash line, one party would automatically fail to satisfy their own interests). Finally, the teaching fellow organized a mock run of the exercise to test for blind-spots or creative solutions for the intractable issue we could not foresee.

When the teaching fellow observes the product of their hard work by running the simulation with their peers as the learners, the pride they feel from

8. ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 97 (Bruce Patton ed., 2d ed. 1991).

9. *See*, *e.g.*, *What is the South China Sea Dispute?* BBC (July 7, 2023), https://www.bbc.com/news/world-asia-pacific-13748349 [https://perma.cc/BX7E-45HV].

10. *See* FISHER & URY, *supra* note 8, at 97.

watching a successful simulation by their own peers is overwhelmingly rewarding.

## II. ENGAGING LL.M. STUDENTS TO CREATE HYPOS THAT PROMOTE CROSS-CULTURAL UNDERSTANDING (SIMPSON)

While teaching fellows offer a unique, student-driven approach to scenario creation, another valuable resource in enhancing experiential learning comes from engaging LL.M. students to create hypos that promote cross-cultural understanding.

A great hypo needs a plausible fact pattern. The easiest path to finding a plausible fact pattern is to borrow from a relevant or on-point case. Many professors will create hypos based on real, U.S. cases, and design entire lectures or even courses around them. But once students get used to the professor borrowing fact patterns from real cases, they may also be distracted by trying to find the real case, rather than trying to adopt the real skill that the course aims to impart. And professors, perhaps even more so than students, crave a solid answer: they like to know what a decision-maker actually did (or would do) with a case, as well as the different options that may have been available, given changes in facts.

Working with international LL.M. students to create hypos or experiential learning exercises might help the professor to reach his or her goals, while creating an enriching opportunity for the LL.M. students.

For many international LL.M. students, the LL.M. year is part of a cultural exchange. Even though these students will still likely sit for a U.S. bar exam, their professional future may find them using legal skills obtained in their professional country of origin as well as those acquired in the United States. Working with these international L.L.M. students to create realistic educational hypos could promote cross-cultural understanding while assisting in the effective teaching of U.S. law.

International LL.M. students often arrive in the United States having already completed a full legal degree outside of the United States.[11] With that, they likely have formed a variety of beliefs that are based in the laws, legal culture, and legal practices of their home jurisdiction.

For example, just as the concept of each person being responsible for his or her own legal expenses is deeply rooted in U.S. legal and ethical traditions, an international LL.M. student from a civil law jurisdiction may—based on their legal and ethical systems—firmly believe that the loser should always pay the winner's legal expenses.[12] The international LL.M. student may be familiar with

11. Matthew S. Parker, *The Origin of LL.M Programs: A Case Study of the University of Pennsylvania Law School*, 39 U. PA. J. INT'L L. 825, 828 (2018).

12. Charles R. Plott, *Legal Fees: A Comparison of the American and English Rules*, 3 J.L. ECON. & ORG. 185, 186–87 (1987).

systems that require insurances that will cover the legal fees of the losing party, while these systems and ideas may be foreign to a U.S. student.

Just as the U.S.-based view may be reflected in U.S.-based jurisprudence, the international view may be reflected in foreign jurisprudence and statutes. Preparing hypos with the assistance of international LL.M. students who view their LL.M. process as one of cultural exchange and even comparative legal study provides an opportunity for meaningful cultural exchange.

Engaging international LL.M. students to participate in course preparation by presenting fact patterns based on foundational cases from the LL.M. student's home jurisdiction enables the LL.M. student's J.D.-level classmates to learn something about the LL.M. student's home jurisdiction, while at the same time learning skills and substance related to the U.S. jurisdiction.

On the topic of which party should bear the costs of a court or other dispute resolution procedure, an international LL.M. student with experience in Germany could design a hypo modeled on the "*Case Concerning the 'Immediate' Acknowledgment When the Written Preliminary Procedure Is Ordered*."[13] The fact pattern itself is likely new, yet plausible to American students:

**Fact Pattern**[14]

*On January 18, 2005, the Plaintiff, as the sole heir to Ms. R, filed a claim for damages against the Defendant, Ms. R's caretaker. The Plaintiff claimed that the Defendant, through dishonest deeds and in violation of his fiduciary duties to Ms. R, took actions that reduced Ms. R's assets by just over EUR 10,000. In fact, because of these and 835 similar actions against at least forty-one other individuals in his care, the Defendant had already been sentenced by a criminal court to three-and-a-half years imprisonment. Defendant had already served his time when the civil suit was filed.*

*After receiving the Plaintiff's case, the trial court organized the written pre-trial process. On March 2, 2005, the Court ordered the Defendant to indicate, within two weeks, whether he would admit or offer a defense to the claim. Should the Defendant wish to offer a defense, the Court further ordered that a written statement of defense would be due a further two weeks later.*

*On March 10, 2005, the Defendant admitted the Plaintiff's claim, and applied for the Court to order that the Plaintiff carry the entire costs of the proceeding. The Defendant argued that the Plaintiff had not even informed Defendant of the claim prior to suing. Defendant argued that there had been no pre-trial attempt at settlement. This entire case could have been avoided, had Plaintiff simply approached Defendant. In addition, Defendant made a counterclaim for approximately EUR 300, which he claimed the deceased Ms.*

13. Bundesgerichtshof [BGH] [Federal Court of Justice] May 30, 2006, VI ZB 64/05, juris (Ger.).

14. This fact pattern and the "Plot Twist" are based on BGH, Beschluss vom 30.5.2006 – VI ZB 64/OLG Düsseldorf. *See id.*

*R owed him for care. On the same day, the Defendant paid the Plaintiff the entire EUR 10,000 claim, less the EUR 300 counterclaim.*

*As soon as the money was received by Plaintiff, Plaintiff declared the matter settled insofar as the EUR 9,700.00 was concerned and asked the Court to order the Defendant to pay all costs with respect to the EUR 9,700.00. The Plaintiff objected to Defendant's counterclaim.*

*Pursuant to the local rules, the Court proposed a settlement to the Parties, where the Claimant would accept Respondent's counterclaim of EUR 300, and the Court would decide the issue of who would bear the costs of the proceeding, and in what proportion. In this matter, costs include court costs, as well as legal fees and expenses.*[15]

*The Parties accepted this settlement and made arguments to the Court on who should bear the costs, and in what proportion.*

***Assignment:*** *Students break into small groups of at least three. Within each group, one or more students would argue as Plaintiff (team), one or more students would argue as Defendant (team), and one or more students would render a decision as the Court (team). The Plaintiff (team) and Defendant (team) would argue who should bear the costs and in what proportion, to the Court (team). After a reasonable amount of time, the Court (team) will issue a brief, reasoned decision to the class.*

***Teaching tip:*** *This can be adapted to whatever substantive or practical aspect the professor wants to focus on: professional responsibility, civil procedure, costs in ADR, etc. This exercise and its fact pattern can be used to highlight aspects of U.S. law, professional responsibility, the utility of pre-trial mediation, etc.*

***PLOT TWIST:*** *American students may be aware of the idea, found in non-U.S. jurisdictions or in many arbitrations, that "the costs follow the event", or "the loser pays." In this matter, and consistent with Article 93 of the German Civil Code, the Court ordered the Plaintiff to pay 100% of the costs associated with the proceeding.*[16] *These costs included all of the Court costs and the legal fees and expenses of both sides.*

*This can be understood as a twist on the "loser pays" idea—the twist is that the party who could have avoided the case actually needing to be resolved in court (typically the losing party) pays. Here, it was undisputed that, prior to filing its suit, the Plaintiff had no contact with the Defendant. There was, therefore, no attempt to settle the matter prior to arriving at Court. Court should be the last stop in a Plaintiff's journey to resolution—not the first. Here, the Plaintiff should have approached the Defendant with the Plaintiff's claim prior to filing, and this would have likely prevented the entire lawsuit. The Court found that the Claimant had no reason to believe that the Defendant would not have*

15. *Id.* (citing, for example, section 91 of the German Code of Civil Procedure).

16. *See German Civil Code,* FED. MINISTRY JUST., https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html [https://perma.cc/5Q2R-ZMY6].

*immediately settled the dispute, just as happened in Court. The whole matter, therefore, could have been avoided and it was proper, as a matter of German law, for the Plaintiff to pay the costs.*

Working with international LL.M. students to create hypos based on real cases from the foreign student's jurisdiction of origin or expertise resolves many of the more daunting parts of creating a hypo: (1) the fact patterns are realistic, (2) the fact patterns, especially those that are not originally in the English language, are likely unfamiliar to current students, (3) the hypos can be just as easily limited to one topic area as can a U.S. court case, and (4) there is a ready-made answer for what a judge actually did, while leaving room for the class to ponder and debate what a U.S. judge would or should do.

These cases have the added bonus of supporting the study of U.S. law in the context of other legal systems.

## III. USING ARTIFICIAL INTELLIGENCE (BALES)

Building on the diverse contributions of teaching fellows and LL.M. students, the integration of artificial intelligence ("AI") offers a new frontier in creating customized and efficient ADR problems. For example, ChatGPT4[17] can be used to help draft custom-made problems. In substantive law courses last semester, the first half of most class periods can be spent discussing the reading material, and the second half doing a group-based exercise demonstrating the material from the first half—thus effectively "flipping" the classroom. In ADR courses, ChatGPT can be used to help create customized problems for students—such as creating problems specifically for the three courses this author taught in China in summer 2024.

The best part: with the help of AI, an exercise can be created in under an hour, and often in substantially less time than that. Creating new exercises thus can be integrated into a professor's normal preparation time.

Here is an example of a negotiation problem created using ChatGPT4 for a summer 2024 ADR course taught to Chinese law students. A large proportion of students at this particular law school will leave law school to work for international law firms doing cross-border work, or for large Chinese companies doing business with non-Chinese companies. The goal was to create a negotiation problem that students could work in one class period that would give them a taste of what they might see in law practice. Here is the prompt given to ChatGPT4:

17. Other large-language models exist, such as Claude and Ernie, but my experience is limited to ChatGPT. Similarly, I uploaded the subscription-based ChatGPT4 without having first experimented significantly with the free ChatGPT3, so I have no basis for comparing the two versions. Consequently, when describing how I have used AI, I am exclusively referring to my use of ChatGPT4.

> Please create a negotiation problem for students. The problem should have four complex issues to be negotiated. For each issue, the parties' initial demand should be outside the range of potential agreement, but the acceptable outcomes for each party on each issue should overlap sufficiently so that agreement is possible. The dispute should be a commercial dispute between an American company and a Chinese company. Please create (1) a detailed set of general facts for both parties in narrative form, (2) a detailed set of private facts for each party in narrative form, and (3) a teacher's guide identifying the issues to be negotiated and the range of possible agreement.

Note the specific instructions on overlapping acceptable outcomes. (An additional prompt might instruct ChatGPT to tie at least two issues together, such that a party will provide a concession necessary to resolve one issue only if that party receives a commensurate concession on a different issue.) The prompt could have specified the particular issues to be negotiated, but here left that to ChatGPT4. Though the issues ChatGPT4 came up with were not really all that complex, they were suitable for the purpose of this exercise in this course. And without being specifically asked for it, ChatGPT4 created two roles for each party: a CEO and a chief negotiator. This suggested the introduction of extra complexity by creating some discord between the two members of each team. A follow-up prompt instructed:

> Consistent with everything above, please create a set of private facts for each participant (the CEO for each party and the chief negotiator for each party) creating some sort of conflict between the CEO and the chief negotiator for each party.

Some clean-up work remained. It took about fifteen minutes to proof everything, transfer it to a Word document, and format it. It took another ten minutes to split the material into separate documents: (1) a set of general facts that would go to all students, (2) private facts for each side, (3) private facts for each character, and (4) a "teacher's guide" summarizing all the conflicts and the room for resolution—a total of eight documents. The entire drafting experience took less than an hour from start to finish.

In addition to using ChatGPT to help create problems for ADR courses, ChatGPT can be used to help flip the classroom of substantive-law courses. For example, in an employment law course, after covering a unit on employment contracts, a pedagogical goal was for students to be able to identify and correct problems in a poorly drafted employment contract. (Earlier exercises had them draft specific contract clauses; later in the semester, students were assigned to use AI to help draft entire employment contracts.) Here is the prompt given to ChatGPT4:

> I want to give students a copy of a badly drafted employment contract and have them identify the items in the contract that are badly drafted. The contract should contain lots of ambiguities. It should be unclear whether it is a term contract or an at-will contract. The circumstances under which the employee can be fired

> should be unclear. The contract should be ambiguous about what happens if the employee wants to quit. Please draft the badly drafted contract, formatted as if it were a real employment contract. Separately, please identify the specific problems with the badly drafted contract.

Within seconds, ChatGPT4 provided exactly what was asked for. The problems and ambiguities were representative of what one might expect to see in an employment contract drafted by a nonlawyer. Editing, converting to Word, and formatting took five to ten minutes. Creating the exercise took less than fifteen minutes from start to finish.

A second example of an experiential problem ChatGPT4 helped draft is a mock hearing. Here is the original prompt and a follow-up prompt:

> I want to create an exercise for my students. The exercise will be a mock hearing in front of a judge. In the hearing, a company (company #1) will argue that the judge should issue a temporary restraining order forbidding a former employee from going to work for competing company (company #2). Company #1 is arguing that the former employee will share company #1's trade secrets with company #2. In this exercise, whether the judge should rule for one side or the other should be a close call, with strong arguments on each side. Please create four documents: (1) background information on both companies and on the employee, describing the industry and the companies' history of competition with each other and the employee's background information; (2) private facts for the lawyer representing company #1; (3) private facts for the lawyer representing company #2; and (4) information for the judge that summarizes the applicable law of trade secrets. Provide lots of background information.
>
> Perfect. Please put all the documents except the judge's information into narrative form, embellishing the background facts and the motives of the characters. Add a backstory for Taylor[18] explaining why Taylor left InnovateTech to work for TechPioneers.

Before class, students were divided into groups of three and assigned roles. The first half of class was spent discussing the law of trade secrets and the second half of class holding parallel mock hearings. The hearings required the students to apply the black letter law discussed in class. The hearings also provided a powerful motive for students to prepare carefully for class—no student wants to be embarrassed by a poor hearing performance in front of their peers.

ChatGPT4 has significantly enhanced this professor's teaching and the students' learning. Students are much more engaged in the doctrinal part of each class because they know the material will be important to the exercises they will do the second half of class. Students love the exercises because students are naturally competitive, and they can see how the exercises are preparing them for what they will be doing in law practice.

18. Not included in the prompts above are a few sentences I use in all my problem-writing prompts instructing ChatGPT4 to use gender-neutral names and to avoid gender-specific pronouns.

## CONCLUSION

Integrating teaching fellows, LL.M. students, and artificial intelligence in the creation of ADR problems represents a multifaceted approach to experiential learning in legal education. These methods not only enrich the curriculum but also foster a deeper understanding of legal concepts through practical application and cross-cultural perspectives. Teaching fellows bring fresh, student-driven insights into negotiation scenarios, LL.M. students contribute unique international and cultural perspectives, and AI offers efficiency and customization in problem-creation.

By adopting these innovative approaches, educators can create a more engaging and effective learning environment that prepares students for the complexities of legal practice. The combination of realism, cultural diversity, and technological advancement ensures that students are not only proficient in legal theory but also adept at navigating the practical challenges they will face as future legal professionals.