Lawyering: Problem-Solving and Dispute Resolution
Section 4 – Prof. Jerry
University of Missouri School of Law
Fall 2018

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Course Goals, Objectives, and Expected Learning Outcomes

This course is essentially a semester-long examination of the roles of lawyers. The course will increase your knowledge of what it means to be a lawyer and will improve the skills you need to be an effective one. The course will also increase your understanding of the values embraced by the profession; these are the ideas, principles, norms, and rules that guide us when we make choices about how we should act when practicing as lawyers.

More specifically, this course is structured to accomplish the following goals, objectives, and outcomes:

- increasing your understanding of lawyers’ roles and relationships with clients generally;
- knowing the distinction between problem-solving and traditional legal adversarial approaches to lawyering;
- acquiring basic skills in interviewing and counseling clients and negotiation;
- knowing basic “alternative” dispute resolution (ADR) procedures, their strengths and weaknesses, and the basic elements of the theory and practice of these procedures;
- understanding how to analyze cases to assess appropriateness of different dispute resolution approaches and procedures;
- acquiring basic skills in negotiation and mediation advocacy;
- acquiring the knowledge and skills needed to recognize and evaluate ethical dilemmas that can arise during the representation of a client during dispute resolution; and
- improving analytical skills. Effective analysis has several elements: identifying problematic issues; developing alternative perspectives about those issues; and making sound generalizations based on theory and one’s own experience to develop appropriate strategies to suggest to the client.
This course focuses primarily on the roles of advocates with some discussion of the roles of neutrals (such as mediators and arbitrators). You will increase your knowledge of how lawyers help clients select and participate in efficient, just, and appropriate methods of managing and resolving conflicts.

Standard 303 of the *ABA Standards and Rules of Procedure for Approval of Law Schools* requires each student at an accredited law school “to satisfactorily complete at least . . . one or more experiential course(s) totaling at least six credit hours.” In the judgment of your School of Law faculty, successful completion of this course will satisfy two of Standard 303’s six credit hour requirement.

**Requirements and Grading**

Grades will be based on the following criteria:

*75% - Final Exam.* The exam will be an in-class, closed-book exam.

*25% - Reflection papers, exercises, on-line quizzes, and class participation.* We will conduct a number of in-class and out-of-class exercises, including simulations of negotiation and mediation. For some of these exercises, you will be asked to write a reflection paper. I will also, from time to time, assign a graded quiz that you will complete on TWEN. Usually the quizzes will focus on the assigned readings. In addition, you are expected to be present and prepared to participate in class discussions and in-class exercises.

American Bar Association rules require “regular and punctual class attendance” of students. Attendance is very important because much of the learning happens in class. I expect you to attend all classes. That being said, I understand that some absences are unavoidable; the common examples are personal illness (if you are contagious, you should *not* come to class), family health emergencies, professional development activities (such as a job interview), and the obligations of religious holidays. If you anticipate an unavoidable absence, please give me advance notice (if possible) and a brief explanation. Otherwise, please provide a brief explanation afterwards. Once you miss three classes for any reason, you should schedule an appointment with me to discuss the situation. Upon the fourth unexcused absence, you will receive a three-point penalty on your final grade for the course. Upon the fifth absence, you are subject to being dropped from the class.

I will take attendance promptly at the beginning of each class. I reserve the option to count arriving late as an unexcused absence for that day. I recognize that sometimes factors beyond our control cause us to be late; although entering the classroom late is distracting, I would prefer that you come to class if you are late rather than not come at all.

This semester, I have professional commitments that will require me to cancel a class and schedule a make-up. Attendance at make-up sessions is expected and the
material covered is certainly “testable,” but an excused absence at a make-up session will not count toward your total absences.

**Book; Required Readings**

The required text is Stefan H. Krieger & Richard K. Neumann, Jr., *Essential Lawyering Skills* (5th ed. 2015). Assignments from this book are listed below with the prefix “K&N.”

Additional required readings will be posted in the “Course Readings” page in TWEN.

**Course Web Site: TWEN**

I will use a course web page on TWEN (The West Education Network). The syllabus and other course materials will be posted on this website. I will also use the portal on the TWEN site to post assignments and other information about the course. I may occasionally send email messages to the email account that you designate when you register with TWEN. Please check your email account regularly to make sure it remains functional during the course.

**How to Reach Me**

Because I am generally available in my office Monday through Friday, I do not set specific office hours. In other words, please feel free to stop by at any time. I do have meetings from time to time, and there are some occasions this fall when I will have out-of-town travel commitments. If it is easier for you (and especially if you miss me after a couple of tries), email me or talk to me after class about setting a specific time for an appointment. As a general proposition, I like to keep the hour before each class to myself. Thus, this semester, I have regular commitments (and I am unavailable) at the following times: Monday through Friday, 1:00 to 3:00 p.m.

In addition to coming by my office, feel free to communicate with me by email. This is an excellent way to reach me. I will try to respond as soon as I can; if you e-mail me about the course, please mention "Lawyering" in the subject line so that I will be less likely to miss your e-mail among the many I receive daily.

**Policies**

**Intellectual Pluralism**

The Law School community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities (http://osrr.missouri.edu). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

**Academic Integrity**
Academic integrity is fundamental to the activities and principles of both the Law School and the legal profession for which you are preparing to join. All members of the Law School community must be confident that each person’s work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of its Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

**Disabilities**

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (http://disabilityservices.missouri.edu), S5 Memorial Union, 882-4696, and then notify either Associate Dean Mitchell or Denise Boessen in the main office of your eligibility for reasonable accommodations. The Office of Disability Services is responsible for reviewing documentation provided by students requesting academic accommodations and for accommodation planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

**Requirement of Consent for Redistribution of Recordings of Classes**

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. In addition, a violation may affect a student’s grade.

**Laptops and Cell Phones**

I ask that cell phones be turned off during class, but there are exceptions. For example, if you are responsible for a dependent, I understand that you may need to be available
and reachable at all times. If that is your situation, please put your phone on the “vibrate only” mode. There may be other exceptional situations that require a phone to be ready for use.

In that same vein, it is permissible to use laptops, tablets, and other mobile devices in class for note taking and to access Web materials related to the class. Because of the potential for a mobile device screen to be distracting to those seated near you, what I require is that you not use a mobile device during class for non-class purposes (such as checking e-mail, social media sites or other websites, or text messaging) or in any manner disruptive to those around you. This is simply one aspect of a shared value of our law school community -- that we all conduct ourselves professionally, which includes respecting our classmates and our class setting.

**Class Schedule and Assignments**

As you do the readings, think about what makes sense to you – and what does not. Do not assume that everything in the readings is the only possible perspective – or even a correct one. For most issues we will encounter in this course, there are multiple valid perspectives (although I will urge you to conclude that not all of them are equally valid). Consider what generalizations you can develop that you can use to be an effective and professionally responsible lawyer who successfully advances your clients' interests.

Our class discussion will not cover everything in the reading assignment. However, our class discussions will presume that you have completed and are familiar with the assigned reading for that day. If you have questions about the readings, please raise them, preferably in class (or with me privately).

Note that the schedule and assignments that follow are subject to change.

**8/21 Introduction to the Course**

K&N, Chapter 1

ALLI Gerkman & Logan Cornett, _Foundations for Practice: The Whole Lawyer and the Character Quotient_ (Denver: Institute for the Advancement of the American Legal System), July 2016, pp. 5-21, 29-34


**8/23 Roles of Lawyers**

Leonard L. Riskin et al., _Dispute Resolution and Lawyers_ (Abridged 5th ed. 2009), pp. 6-13, 34-37

K&N, Chapter 2

Predictors of Lawyering Effectiveness

Moore’s Circle of Conflict
8/28 **Roles of Lawyers & Attorney-Client Relationships**  
K&N, Chapters 3-4

8/30 **Listening Skills: Basic Concepts**  
K&N, Chapter 5  
2 videos (see Course Readings tab on TWEN)  
**Listening exercise ASSIGNED (graded)**

9/4 **Questioning and Listening Skills**  
K&N, Chapter 5 (cont.)

9/6 **Interviewing Clients**  
K&N, Chapters 7-8  
Video No. 1 (25 minutes)  
**Interviewing exercise ASSIGNED (graded)**

**Friday, 9/7, 5:00 p.m.: **Listening exercise DUE**

9/11 **Interviewing Clients (and Interviewing Witnesses)**  
K&N, Chapter 9

9/13 **Interviewing Clients**

**Sunday, 9/16, 5:00 p.m.: **Interviewing exercise DUE**

9/18 **Interviewing Clients: Discuss Simulation**  
In-class exercise on interviewing-counseling-negotiation relationships  
K&N, Chapters 18, 20-22

9/20 **Counseling Clients: Basic Strategies**  
(will continue to discuss 9/18 assigned readings)  
**Counseling (in-class) exercise distributed**

9/25 **Counseling Clients**  
In-class counseling exercise  
**Counseling (out-of-class) exercise ASSIGNED (mandatory but not graded)**

9/27 **Negotiation: How it Works; Positions and Interests; Power**  
LEONARD L. RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS (Abridged 5th ed. 2009), pp. 150-57  
K&N, Chapter 23 (except Section 23.5)

10/2 **Negotiation: In-class Exercise**
10/4  **Negotiation: Strategy & Styles; Video, Part 1**
K&N, Chapters 24-26
**Negotiation exercise ASSIGNED**
**Negotiation paper ASSIGNED (graded)**

Friday, 10/5, 5:00 p.m.: **Counseling (outside of class) exercise DUE**

10/9  **Negotiation: Tactics; Video, Part 2**
K&N, Chapters 27-28

10/11  **Negotiation: Conducting Negotiation Effectively**
Continued discussion of topics in K&N, Chapters 23-28

10/16  **Negotiation: Strategies and Tactics**
Continued discussion of topics in K&N, Chapters 23-28
Post-Negotiation Evaluation Checklist

10/18  **Negotiation - Discuss Simulation; Legal and Ethical Obligations in Negotiation**
K&N, Sections 23.5; MRPC 1.2, 1.4 (inc. com. 2, 5), 1.6, 1.16, 3.3, 4.1 (inc. com. 1, 2), 4.2, 8.4; ABA Formal Ethics Ops. 93-370 & 06-439
**Negotiation exercise DUE**
**Negotiation paper DUE**

10/23  **Mediation: Introduction**
ABA Section of Dispute Resolution, Preparing for Mediation,
http://www.americanbar.org/content/dam/aba/images/dispute_resolution/Mediation_Guide_general.pdf
Pre-Mediation Checklist
Sample Mediation Agreement
Mediator’s Opening Session Checklist

10/25  **Mediation: Effective Advocacy and Choosing a Mediator**
Arthur A. Chaykin, Selecting the Right Mediator, DISP. RESOL. J., Sept. 1994
Tom Arnold, *20 Common Errors in Mediation Advocacy*, 13 ALTERNATIVES TO HIGH COST LITIGATION 69 (May 1995) (in supplementary materials)
Choosing a Mediator (RHJ document)
Mediation Styles Review Document (RHJ document)
E. Hicks, Effective Mediation Opening Statements
**Mediation exercise ASSIGNED (mandatory but not graded)**
**Mediation assessment form ASSIGNED (graded)**
10/30 **Mediation: Understanding the Process**  
LEONARD L. RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS (Abridged 5th ed. 2009), pp. 211-24, 324-29  
Video, Part 1

11/1 **Mediation: Understanding the Process (cont.)**  
Video, Part 2

11/6 **Mediation: The Role of the Mediator**  
Model Standards of Conduct for Mediators  
Skim: CPR, ADR Suitability Guide  
In-class Exercise

11/8 TBD

Nov. 7, 8, or 9 Mediation Exercise, 5:00-9:00 p.m. (Wed.-Fri.)  
**A one-hour mediation; two-person teams will mediate “against” a team from another Lawyering section; a law student who has completed the mediation course will serve as the mediator

11/13 **Mediation: Simulation Debrief**  
Bias and Cross-Cultural Issues in Interviewing, Counseling, Negotiation, and Mediation  
K&N, Chapter 6  
**Mediation Assessment Form DUE

11/15 **Bias and Cross-Cultural Issues (continued)**  
**Practice Exam Distributed

11/20 & 11/22: No class; Thanksgiving break

11/27 **Arbitration: Nature of Arbitration**  
Review National Academy of Arbitrators/MU Center for Study of Dispute Resolution website materials on arbitration:  
http://law.missouri.edu/arbitrationinfo/2015/05/12/arbitration-101/

11/29 **Arbitration (continued); Advising Clients about the Choice of Dispute Resolution Approaches; Practice Exam Debrief**  
LEONARD L. RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS (Abridged 5th ed. 2009), pp. 11-19, 606-612  
Skim: CPR, Protocol for Early Case Assessment
The distribution and due dates for the assignments are listed above, but here is a chart that summarizes the key dates:

<table>
<thead>
<tr>
<th>Date</th>
<th>Distribution</th>
<th>Due</th>
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<tbody>
<tr>
<td>Tues., Aug. 30</td>
<td>Listening Skills Exercise</td>
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<td>Thurs., Sept. 6</td>
<td>Interviewing Exercise</td>
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<td>Fri., Sept. 7, 5:00 pm</td>
<td>Listening Skills Exercise</td>
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<tr>
<td>Sun., Sept. 16, 5:00 p.m.</td>
<td>Interviewing Exercise</td>
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<td>Thurs., Sept. 20</td>
<td>Counseling (in-class) Exercise (for 925)</td>
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<td>Tues., Sept. 25</td>
<td>Counseling (out-of-class) Exercise</td>
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<td>Thurs., Oct. 4</td>
<td>Negotiation Exercise &amp; Negotiation Paper</td>
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<tr>
<td>Fri., Oct. 5, 5:00 p.m.</td>
<td>Counseling (out-of-class) Exercise</td>
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<tr>
<td>Thurs., Oct. 18</td>
<td>Negotiation Exercise &amp; Negotiation Paper</td>
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<td>Thurs., Oct. 25</td>
<td>Mediation Exercise &amp; Mediation Assessment</td>
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<tr>
<td>Wed.-Fri., Nov. 7-9</td>
<td>Mediation Exercise (one hour; 5-9 p.m.)</td>
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<td>Thurs., Nov. 15</td>
<td>Practice Exam</td>
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<td>Mon., Nov. 26, 5:00 p.m.</td>
<td>Mediation Assessment</td>
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**FINAL EXAM:**  
Tuesday, Dec. 11, 8:30 a.m.  
Two-hour, in-class written exam