Mediation Advocacy Seminar

Professor Dwight Golann

The required texts are:
- Shell, Bargaining for Advantage (Penguin Paperback)
- Golann and Folberg, Mediation (Aspen Publishing)
- Handouts (posted on Blackboard)

Syllabus

Part I: Negotiation and Barriers to Settlement

Mon Jan 11  Assignment:
- Shell, Chapter 1, pages 3-15, and Chapter 2
- Review instructions for Win As Much As You Can

Wed Jan 13  Assignment:
- Shell, Chapter 3
- Prepare to negotiate Salt Harbor in class

Wed Jan 20  Assignment:
- Shell, Chapter 4
- Prepare to negotiate Eazy’s Garage

Mon Jan 25 Assignment:
- Shell, Chapter 5
- Prepare to negotiate Sally Soprano

Wed Jan 27  Assignment:
- Shell, Chapter 6
- Debrief and review Soprano

Mon Feb 1   Assignment:
- Shell, Chapter 7
- Prepare and begin negotiation of Mumbai Partners

Wed Feb 3   Assignment:
- Shell, Chapter 8
- Complete and debrief Mumbai

Mon Feb 8   Assignment:
- Shell, Chapter 9
- Prepare and begin negotiation of Jones v. Cutting Edge

Wed Feb 10  Assignment:
- Shell, Chapter 10
- Complete and debrief Jones

2/16  Barriers to Settlement
- Read Golann and Folberg (“Text”), Chapter 4
- Analyze the barriers to settlement in Jones and Mumbai Partners in light of the discussion of cognitive and emotional barriers in Chapter. 4:
  - Why was it hard to reach a deal in Jones (if it was)?
  - Why were the real parties in the Mumbai case unable to settle through direct negotiation, and have to go to mediation?
• In class, complete Jones negotiation (2:00 - 2:30)

Part II: The Mediation Process

2/17 Introduction to Mediation
• Text, 95-120
• Prepare to discuss Questions, pages 107 (#4, 5), 110 (8, 9)
• Before class, arbitrate the Computec case. Take more than 15-20 minutes (the instructions are posted on Blackboard. There are no confidential instructions unless you were given them in class)
  • Each advocate has 5 minutes to make an argument. The arbitrator may ask questions if s/he wishes. No participant should do any outside research.
  • The arbitrator will make a decision and give it (no explanation needed) to Professor Golann. Arbitrators: Do not disclose your decision to litigants

2/22 Stages and Approaches
• Text, 121-137, 142-43
• Questions 18, 19, 28
• Analysis of video

2/24 Mediating a Dispute
• Text, 145-163
• Prepare to mediate Black Lab-Red Roses

3/1 Process Issues
• Text, Chapter 7
• Questions, 173(1), 175 (1, 2, 3)
• Prepare to mediate The Scout Auction

3/3 Emotional Barriers
• Text, Chapter 8
• Questions, 198(2, 3), 199(4, 5, 7)
• Mediate problem case

3/8 Merits Issues:
• Text, Chapter 9
• Questions 237(5, 6, 7, 8)
• Problems 237 (1,2 3, 4)
• Prepare to roleplay vignettes

3/10 The Law of Mediation
• Text, 343-351, 360-361, 363-364, 366-370, 370-373
• Handout: Leary v. Geoghan (on Blackboard)
• Problems and questions 343(1a), 344(2a), 347(2 ), 356(4), 360 (5, 6), 367(20), 370(7), 374(31)

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Part III: Representing Clients and Special Topics
March 22  Representing Clients in Mediation
   • Handout 1
   • Prepare to negotiate the mediation arrangements and select a mediator in *Waltham Construction v. Foster Fuels*

March 24  Representing Clients
   • Handout 2
   • Prepare to conduct the opening session in *Waltham v. Foster*
   • Mediations will be videotaped

March 26  Special class 9:15 am - 12:45 pm
   • Complete mediation of *Waltham* and debrief

March 29  Mediating Ethically
   • Text, 327-341
   • Discuss Problems and Questions, 328(problems 1, 2), 329(probs 3, 4), 334(prob 5), 335 (prob 7), 336(prob 9), 338 (probs 11, 13)

March 31  Review of *Waltham* videos in small groups

April 5    No class
April 7    No class

April 12  Court-Connected Mediation and Med-Arb
   • Text, 419-426, 431-433, 435-442
   • Handout: Brazil, “Thoughts about Impasse for Mediators in Court Programs”
   • Questions 424(4,5), Problem 1 (437) and Question 442(2)
   • Discussion in class

April 14  Special Problems
   • Review and prepare to discuss vignettes

April 21  Begin to mediate *Termination Tempest*

April 22  Continue mediation (Monday class held on Thursday)

April 23  Special class 9:15-12:45 am: complete and debrief mediation

April 28  Review of video in small groups
April 30  Review of video in small groups