

Mediation/Advanced Negotiation (Law 7010-1)

Professors James Holbrook and Stacy Roberts

Spring 2015, Wednesdays and Thursdays: 9:10 - 10:35 am, Room 011

Course Goals — Negotiation and mediation are integral parts of the practice of law for both transactional lawyers and litigators. In this course you will study four strategies of negotiation and related concepts and skills that are used to create deals and resolve disputes:

- Performative Negotiation, where the issue is improving the parties' communication;
- Transformative Negotiation, where the issue is improving the parties' relationship;
- Integrative Negotiation, where the issue is creatively resolving a mutual problem; and
- Distributive Negotiation, where the issue is the fair exchange of value.

Mediation is facilitated negotiation in which an impartial third person—the mediator—helps parties negotiate a mutually acceptable resolution of their dispute. You will study the procedural framework and guidelines for conducting mediation and employing the basic mediator skills of initiating mediation, facilitating communication, asking questions, brainstorming, using private sessions called caucuses, analyzing risks, overcoming impasses, documenting agreements, and providing closure. You will study the important role of emotions in negotiation and mediation, and enhance your competence in high-conflict communication, conflict analysis, and conflict resolution. You will study analytical decision making, plus ethical and public policy issues concerning negotiation and mediation.

Clinical or Other Practical Experience — Because negotiation and mediation skills and insights are best acquired through hands-on experience, it is ideal if you can participate in the Mediation Clinic or the Pro Bono Initiative to observe and practice these skills with real clients.

Instruction and Assessment — The BEYOND REASON text and the DIFFICULT CONVERSATIONS text provide theoretical frameworks and guidelines especially for effective performative and transformative negotiation and mediation. The ADVANCED NEGOTIATION AND MEDIATION text provides the theoretical frameworks and practical suggestions for all four kinds of negotiation and mediation. The SMART CHOICES text provides a practical, analytical model for decision making in both negotiation and mediation. You also will watch videotaped negotiation and mediation demonstrations and engage in small group discussions and role-playing simulations.

It is important that you understand your individual conflict communication preferences. Accordingly, you will audiotape, transcribe, and analyze your communication skills in a high-conflict conversation. You will submit the following short papers: a paper analyzing the negotiators' behaviors in a negotiation training video (the "Jockey" video) we will provide; a paper analyzing the role of the Harvard Negotiation Project's seven negotiation elements in a negotiation you observed or experienced; a paper on reciprocity and trust building you observed or experienced; and a consequences table discussed in the SMART CHOICES text on an important decision you must make in the next year. You will submit a substantial (10 pages or longer) final research or reflective paper critically analyzing a mediation topic of your choice that must be pre-approved by the instructors.

Grades — Grades will be based upon your assigned papers as follows:

“Jockey” video analysis paper:	10%
HNP Seven Elements analysis paper;	10%
“Difficult Conversation” analysis paper:	30%
Reciprocity and Trust Building paper:	10%
Table of Consequences paper:	10%
Final mediation analysis paper:	30%

Classroom participation and preparation for in-class assignments also may be considered when determining your grade. Unexcused absences will be taken into account. If you must be absent, please send an email, voicemail, or other notification to us. There is no seating chart and you are required to sit next to someone different in each class, so that over the semester you will have an opportunity to work with all students in the course.

Assigned Readings are from the following required texts:

AN/M: James R. Holbrook and Benjamin J. Cook, *Advanced Negotiation and Mediation: Concepts, Skills, and Exercises* (St. Paul, MN: West Academic Publishing, 2013)

BR: Roger Fisher and Daniel Shapiro, *BEYOND REASON: USING EMOTIONS AS YOU NEGOTIATE* (New York, NY: Viking Penguin Group, 2005)

DC: Douglas Stone, Bruce Patton, and Sheila Heen, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (New York, NY: Penguin Books, 1999)

SC: John S. Hammond, Ralph L. Keeney, and Howard Raiffa, *SMART CHOICES: A PRACTICAL GUIDE TO MAKING BETTER DECISIONS* (Boston, MA: The Harvard Business School Press, 1999)

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Disabilities Accommodation Policy: The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean of Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 South Central Campus Drive (Union Building), Room

162, or you can call 801-581-5020. All written information in this course can be made available in an alternative format with reasonable prior notification.

Addressing Sexual Misconduct: Title IX makes it clear that violence and harassment based on sex and gender (which includes sexual orientation and gender identity/expression) is a civil rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, color, religion, age, status as a person with a disability, veteran's status, or genetic information. If you or someone you know has been harassed or assaulted, you are encouraged to report it to the Title IX Coordinator in the Office of Equal Opportunity and Affirmative Action, 135 Park Building, 801-581-8365, or the Office of the Dean of Students, 270 Union Building, 801-581-7066. For support and confidential consultation, contact the Center for Student Wellness, 426 SSB, 801-581-7776. To report to the police, contact the Department of Public Safety, 801-585-2677.

<u>Date</u>	<u>Class Topic</u>	<u>Discussion/Exercise/Video</u>	<u>Assigned Readings</u>
1/14	Introduction to course; four kinds of conflict resolution; four conversations	Do “Thumb Wrestling;” conduct and debrief four different negotiations	<i>AN/M</i> : Chapter 1
1/15	Understanding preferences in negotiation and mediation using the four quadrants	Negotiation self-evaluation; conflict communication preferences; conflict and childhood experience	<i>AN/M</i> : Chapter 2; <i>BR</i> : ix-51, 207-11
1/21	Michele Straube	Designing ADR processes	Handouts
1/22	Handling strong negative emotions	Discuss the five core concerns; do the “Elena Narrative” conversation; do “Ladder of Inference” and “Ladder of Accusation” exercises; <i>assign “Difficult Conversation” analysis paper</i>	<i>AN/M</i> : 65-67; <i>BR</i> : 52-140
1/28	Using the HNP-7 elements to prepare for and diagnose negotiations; cooperation vs. competitive styles	Prepare for, show, and discuss the “Jockey” negotiation video; discuss Johari Windows; <i>assign “Jockey” video analysis paper</i>	<i>AN/M</i> : 21-36 <i>DC</i> : xv-43
1/29	ADR comparisons; understanding conflict stories; performative negotiation and mediation	Show “Prosando” joint session; do “conflict story” exercise; do performative negotiation; inferences; contribution; reciprocity	<i>AN/M</i> : 55-72; <i>DC</i> : 44-82
2/4	Russ Wood	Discuss relational communication in negotiation	<i>AN/M</i> : 87-88; <i>BR</i> : 141-182; Handout
2/5	Performative negotiation and mediation; Naming, Blaming, and Claiming	Discuss traditional approaches to conflict; discuss positional bargaining and difficult tactics; <i>“Jockey” video analysis paper is due; assign HNP-7 Elements paper</i>	<i>AN/M</i> : 9-12; <i>DC</i> : 83-128
2/11	Stacy Roberts	Gendered differences in negotiation	Handouts
2/12	Transformative negotiation and mediation; “Three onversations”; reframing; empathy; forgiveness	Show and discuss “Sexual Boundaries” video; <i>HNP 7-Elements paper is due</i>	<i>AN/M</i> : 58-63, 73-87, 99-104; 133-42; <i>DC</i> : 129-248
2/18	Integrative negotiation and mediation; interests; options	Discuss FAINR and integrative negotiation handouts; do integrative negotiation	<i>AN/M</i> : 91-99; handouts
2/19	Dr. Ian McCammon	“Decision-making” presentation	Handouts
2/25	Stacy Roberts	Introduction to domestic mediation	Handouts
2/26	Stacy Roberts	Issues unique to domestic mediation	Handouts
3/4	Distributive negotiation and mediation; legitimacy	<i>Assign Reciprocity and Trust Building paper</i> ; handout “Orange Scout” information; <i>“Difficult Conversation” analysis is due</i>	<i>AN/M</i> : 107-23; “Orange Scout” handout
3/5	Reframing distributive to integrative negotiation and mediation	Do “Orange Scout” negotiation; show parts of “Prosando” video	Handouts
3/11	Marcy Fetzer	Analyzing negotiation principles in children’s literature	Handouts

3/12	Stacy Roberts	Starting a mediation practice	Handouts
3/18	NO CLASS	SPRING BREAK	
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3/25	Defining and allocating risk; drafting a settlement agreement	Handout risk analysis exercise	<i>AN/M</i> : 116-23
3/26	Prof. Amos Guiora	Prof. Guiora's experiences in implementing an Israeli-Palestinian peace agreement; <i>Reciprocity and Trust Building paper is due</i>	Prof. Guiora law review article
4/1	Court-annexed mediation in Utah; Utah ADR Act; Utah Rules of Court-Annexed ADR; Utah Rule 4-510; Utah Uniform Mediation Act	Utah statutes and court rules governing mediation and mediator ethics; confidentiality vs. privilege for mediation communications	<i>AN/M</i> : 169-93; Utah statutes and rules; Mediator Standards handout
4/2	Mediator standards of conduct; mediator disclosures; agreements to mediate; mediator checklists; drafting and giving mediator's opening remarks	Discuss mediator standards of conduct; give mediator's opening remarks; discuss mediator disclosures, agreements to mediate, mediator checklists; practice mediation ethics exam	Agreement to Mediate; Mediator Checklist
4/8	Stating the problem; identifying objectives	"Smart Choices" exercises; <i>assign "Table of Consequences" paper</i>	<i>SC</i> : vii-108
4/9	Alternatives; consequences; tradeoffs	"Smart Choices" exercise about important personal decision to be made	<i>SC</i> : 109-162
4/15	Linked decisions; traps; using tables of consequences and systems analysis	Do "mental traps" exercise;	<i>SC</i> : 163-242
4/16	THE LAST CLASS	<i>Table of Consequences paper is due in class</i>	
4/20		<i>Final paper is due in the Front Office before 5:00 p.m.</i>	