

**LEGAL EDUCATOR'S COLLOQUIUM:
THE INTERFACE BETWEEN NEGOTIATION THEORY AND MEDIATION
PRACTICE**

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A QUICK TRUE/FALSE QUIZ

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| Question 1 | It is critical to the success of your mediation to have the parties brainstorm as many options as possible before deciding on the "solution." | True | False |
| Question 2 | The parties (i.e., clients) need to tell their stories in joint session for mediation to succeed. | True | False |
| Question 3 | If the parties make their proposals for resolution directly to each other, the mediation has a better chance of success. | True | False |
| Question 4 | When parties are ready to put a "number" into the negotiation, it is best to help them start with a number you think might be somewhat acceptable to the other side. | True | False |
| Question 5 | The mediator will have a hard time convincing the party who thinks she has a 50-50 chance of winning \$400,000 at trial to take a \$200,000 offer. | True | False |
| Question 6 | Mediators often need to bring parties down a peg to get cases settled. | True | False |
| Question 7 | The mediator should strive to have the parties "like" him or her. | True | False |
| Question 8 | The parties should have control over when a mediation ends. | True | False |

Question 9	Mediators should accurately and honestly transmit offers and counteroffers back and forth between the parties in caucus.	True	False
Question 10	Mediators need to let the parties vent their emotions if they are to be successful in moving the parties towards problem-solving.	True	False
Question 11	Mediators are neutral. Thus they should not express their views on the goal of a mediation or on the process to be used.	True	False
Question 12	Mediators should ignore lawyers and talk directly to the clients in the mediation session.	True	False

Where to Go for Answers and Discussion

1: Chris Guthrie, *Panacea or Pandora's Box?: The Costs of Options in Negotiation*, 88 IOWA L. REV. 601 (2003); Walton, R.E. and McKersie, R.B., *A Behavioral Theory of Labor Negotiations: An Analysis of a Social Interaction System*, New York: McGraw-Hill (1965)

2: Nancy Welsh, *Making Deals in Court-Connected Mediation: What's Justice Got to Do with It?*, 79 WASH. U. L. Q. 787 (2001)

3: Barriers to Conflict Resolution (Kenneth Arrow et al., eds., 1995); Robert H. Mnookin, *Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict*, 8 OHIO ST. J. DISP. RESOL. 235 (1993); Robert A. Baruch Bush & Joseph P. Folger, *Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice*, 13 MEDIATION Q. 263 (1996); Richard Birke & Craig Fox, *Psychological Principles in Negotiating Civil Settlements*, 4 HARV. NEGOT. L. REV. 1 (1999).

4: Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 Econometrica 263 (1979); Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCIENCE 453 (1981); Russell Korobkin & Chris Guthrie, *Psychological Barriers to Litigation Settlement: An Experimental Approach*, 93 MICH. L. REV. 107 (1994)

5: Daniel Kahneman & Amos Tversky, *Choices, Values, and Frames*, 39 AM. PSYCHOLOGIST 431 (1984); Jeffrey M. Senger & Christopher Honeyman, *Cracking the Hard-Boiled Student: Some Ways to Turn Research*

Findings into Effective Training Exercises, The Conflict Resolution Practitioner, Monograph published by the Georgia Commission on Dispute Resolution and the Consortium on Negotiation and Conflict Resolution, (2001)

6: Howard Raiffa, *The Art and Science of Negotiation*, (1982); Max Bazerman & Margaret Neale, *Improving Negotiation Effectiveness Under Final Offer Arbitration*, J. OF APPLIED PSYCHOLOGY 67 (1982); Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, in *Judgment Under Uncertainty: Heuristics and Biases* (Daniel Kahneman et al. eds., 1982)

7: Robert B. Cialdini, *Influence: How and Why People Agree to Things*, (1984)

8: Jennifer Gerarda Brown & Ian Ayres, *Economic Rationales for Mediation*, 80 VA. L. REV. 323, 354 (1994).

9: See Brown and Ayres, question 8.

10: Keith G. Allred, *Anger and Retaliation in Conflict: The Role of Attribution*, in Deutsch and Coleman, *The Handbook of Conflict Resolution* pp. 236-255 (2000).

11: Scott Peppet, *Contractarian Economics and Mediation Ethics: The Case for Customizing Neutrality Through Contingent Fee Mediation*, 82 TEXAS L. REV. 227 (2003); Kevin Gibson, Leigh Tompson & Max Bazerman, *Shortcomings of Neutrality in Mediation: Solutions Based on Rationality*, 12 NEGOT. J. 69 (1996).

12: Rubin & Sander, *When Should We Use Agents: Direct v. Representative Negotiation*, 4 NEG. J. 395 (1988); Gilson & Mnookin, *Disputing Through Agents: Cooperation and Conflict between Lawyers in Litigation*, 94 COLUM. L. REV. 509 (1994); Mnookin, *Why Negotiations Fail* (cited in Question 3); Mnookin, Peppet and Tumello, *Beyond Winning: Negotiating to Create Value in Deals and Disputes*, Chapter 3 "The Tension between Principals and Agents." See also Jean Sternlight, *Lawyers' Representation of Clients in Mediation: Using Economics and Psychology to Structure Advocacy in a Nonadversarial Setting*, 14 OHIO ST. J DISP. RESOL. 269 (1999).

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