

**LAWS\*37401\_19LF**

**Syllabus #3: INTRO TO MEDIATION EXP, FALL 2019 – Rev. 11/12/19**

**PROFESSOR CHARLES PILLSBURY**

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Fall 2019, 14 Weeks, Two Credits

**Mondays, 08/26/2019 – 12/02/2019; 8:00 – 9:50pm**

**Room 116 (Legal Clinic area)**

**OFFICE HOURS:** I'm often available before or after class, or we can arrange to meet in person or talk by phone at a mutually convenient time. In any case, I plan to meet with each of you individually once during the first half of the semester.

**SYLLABUS #3 – 11/12/19 (subject to modification)  
INTRODUCTION TO MEDIATION EXP, FALL 2019**

**OVERVIEW:** This is an experiential course that will introduce you to basic mediation skills, practice and theory, including the benefits and limitations of mediation as a dispute resolution method. Our class time will be divided nearly equally between developing mediation skills as an impartial third party and discussing conceptual issues and challenges facing third party neutrals. While this course is experiential, its purpose is not to “train” you to become a mediator. Instead, the purpose of this course is to introduce you to the practice of mediation, so that, as a lawyer, you will be an informed consumer of mediation, when the circumstances call for it.

**Text: Frenkel & Stark (F&S), THE PRACTICE OF MEDIATION: A VIDEO-INTEGRATED TEXT, 3<sup>rd</sup> Edition (Wolters Kluwer Law & Business 2018).** For more information about this text, please visit:

<http://www.wklegaledu.com/Frenkel-Mediation3>

**COURSE REQUIREMENTS & GRADES:** There will be no scheduled exam. *Students will choose to write either a final paper or a take-home exam.* Your take-home exam or paper will be due **Wednesday, 12/18/19, @noon.**

No grading system can fully and fairly evaluate your student performance in this class. This is a class that requires a great deal of class participation, and I have learned that there is no objective way to measure or evaluate class participation.

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Therefore, 80% of your grade will be based on your final paper/take-home exam, as the case may be, and other required writing assignments; and 20% of your grade will be based on class attendance.

- 40% of your grade will be based on your final paper/take-home exam;
- 40% will be based on two short required written assignments and completion of pre- and post- self-assessments and all post-simulation evaluations; and
- 20% will be based on class attendance (see below), the only objective way I have found to measure class participation.

In grading your second short required writing assignment (see Class 8 below) and your final paper/take-home exam, I use four weighted criteria:

1. Argument (30%);
2. Documentation (30%);
3. Organization (20%); and
4. Writing (20%).

**CLASS ATTENDANCE:** Because class attendance is critical to the success of an experiential course, you are expected to attend ALL 14 classes. Indeed, the 20% of your grade related to class attendance is just that; it's based on class attendance, not class participation, although the latter is also expected. Recognizing, however, that things happen over which you have no control: **A student enrolled in this class should not miss more than two class sessions. Absences, whether excused or unexcused, in excess of this limit will result in a lower grade for the course. In contrast, if a student misses none or only one class, your attendance record will result in a higher grade.** *For example, a student with a grade of B, based on her/his written work, who*

- *attends 13 or 14 classes, will receive a B+ for the course;*
- *misses two classes, will receive a B; or*
- *misses more than two classes, will receive a B-.*

Should you discover that you are unable to attend any class for any reason, please notify me by e-mail or voicemail AS SOON AS POSSIBLE. I plan interactive exercises based on the entire class being present and may need to change assignments should anyone be absent.

**CLASS PARTICIPATION:** Class attendance is rewarded; class participation is expected. This class will teach you a different set of skills and thinking from those most of you have encountered thus far in law school. As lawyers-in-training, you

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are schooled to give advice to parties; to solve problems FOR them, not WITH them. The crux of being a mediator is not to give advice, but to assist parties in communicating, in identifying interests, in developing options based on their interests, and then helping them identify the option or options that provide the most mutually beneficial solution. As an attorney representing a client in a mediation, you will be acting more as a consultant than an advocate. This is a shift in thinking and practice and is best learned through doing and reflecting. There is no expectation that you will end the semester as a skilled mediator, but you will have a firm grasp of the principles and processes of mediation, and an understanding of what you need to do, to become either an effective mediator or a strong advocate in a mediation.

Your participation, therefore, in class discussion, exercises and role plays are critical to both your learning in this course and the success of this experiential course as a whole. I invite you, therefore, to engage with the material and in the exercises, role plays and debriefs. This may present you with opportunities to do things out of your comfort range, but I encourage you to push yourself, because, trite as it may sound, the more you participate in this class, the more you will learn.

#### **WRITTEN ASSIGNMENTS:**

##### TAKE-HOME EXAM OR PAPER.

Your take-home exam or final paper, as the case may be, should be at least 2,000, but no more than 2,500, words, including citations; double-spaced, single-sided pages. Please insert citations EITHER in the text after a Quotation or an Assertion OR at the bottom of the relevant page of text. Any bibliography added as an appendix will not count toward the word limit.

OTHER WRITTEN ASSIGNMENTS. In addition to your final paper or take-home exam, from time to time, you will be given additional writing assignments over the course of the semester. Not all these additional writing assignments will be graded; but two will be, and are listed in the syllabus as “**Graded Writing Assignment.**”

##### MEDIATION SHORT PAPER – PROPOSED GENERIC OUTLINE

As noted above, instead of a take-home final exam, you may write a short final paper on a mediation topic of your choice. **YOUR PAPER SHOULD PROVIDE REASONED SOLUTION(S) TO PRACTICAL LEGAL PROBLEM(S).**

When outlining and writing a paper, I strongly recommend you use this format.

- I. INTRODUCTION**
- II. BACKGROUND**
- III. CURRENT LEGAL PROBLEM(S)**
- IV. PROPOSED SOLUTION(S)**
- V. CONCLUSION**

When writing your paper, I recommend you write Sections II, III & IV first, before writing either your Introduction or your Conclusion.

### **I. INTRODUCTION**

Your **Introduction** introduces your topic and provides the reader with a guide or “road map” to your paper. Your introduction should include your thesis statement, e.g., the argument your paper will be making, and should briefly note what topics you plan to cover in Sections II, III, & IV.

Introduction and Conclusion are adequate section headings for Section I & V. For Sections II, III & IV, however, please use descriptive section headings telling the reader what to expect when reading each of these sections. When sections II, III & IV have subsections, e.g., A., B. C...1.2.3..., use descriptive headings for these, too.

### **II. BACKGROUND**

**Section II** provides general background on your paper’s topic.

### **III. CURRENT PROBLEM(S)**

**Sections III & IV** are the heart of your paper. **Section III** is dedicated to describing the legal problem(s).

### **IV. PROPOSED SOLUTION(S)**

**Section IV** offers proposed solutions to the legal problem(s) you have identified in Section III. These solutions might be ones you propose, or ones proposed by others. If you have identified and discussed more than one solution, please use your **Conclusion** to state what you think should be done after considering all the proposed solutions you discuss in **Section IV**.

### **V. CONCLUSION**

Your **Conclusion** summarizes what you discussed in Sections II, III & IV.

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**COMPLIANCE WITH ABA Accreditation Standard 310:** Standard 310 of the ABA’s Accreditation Standards requires that for each credit hour earned, a student must do an amount of work that reasonably approximates at least 50 minutes of classroom instruction per week and at least an average of 120 minutes of out-of-class work per week for 15 weeks.

Out-of-class work includes class preparation, post-class review, outlining, time spent on written and other class assignments, meeting with study groups, meeting or otherwise communicating with the professor to discuss course-related topics, and exam preparation. The 15-week period includes one week for examinations.

In my judgment, based on the average length and difficulty of the reading assignments and the number and average difficulty of other course exercises and assignments, at least 4 or more hours of out-of-class work will be required on average per week to prepare adequately for class, complete all assignments, master the course material, and perform satisfactorily on all course assessments.

At the end of the course, you will be asked to estimate approximately on average how much out-of-class time you spent per week per credit hour in this course, so please be mindful of this requirement as the course progresses.

**COMPLIANCE WITH Americans with Disabilities Act and Section 504 of the Rehabilitation Act.** Quinnipiac University is committed to creating a learning environment that meets the needs of its diverse student body. Students with disabilities who wish to request reasonable accommodations should contact the Associate Dean of Students, Kathy Kuhar, by email ([kathy.kuhar@quinnipiac.edu](mailto:kathy.kuhar@quinnipiac.edu)) or phone (203.582.3219). Quinnipiac University complies with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

**COMPLIANCE WITH Title IX Policy Against Gender-Based Discrimination and Sexual Misconduct.** Quinnipiac University is dedicated to fostering a healthy and safe environment in which every member of the community can realize their full potential in an educational, working and living environment free from all forms of gender or sex discrimination and sexual misconduct. The University’s Title IX Policy is available in the MyQ catalog at <https://catalog.qu.edu/university-policies/titleix-policy/>. The document contains information about university policies, the Title IX grievance procedures, notice of the Title IX Coordinator, and rights and resources available to anyone who is involved in a Title IX matter.

**LEARNING OUTCOMES:** This course is directed toward the **First Tier Learning Outcomes identified below**. Progress toward these learning outcomes will be assessed through your written work and to a lesser extent, as provided above, through classroom participation.

**First Tier Learning Outcome 2: Graduates are expected to demonstrate knowledge and understanding of legal theory, systems, and doctrine, including core areas of substantive and procedural law and alternative methods for resolving disputes.**

**Specific Criteria**

1. The range of dispute resolution processes and the ability to advise clients and others on choices of process/forum.

**First Tier Learning Outcome 3: Graduates are expected to demonstrate competency in oral and written communication in the legal context.**

**Specific Criteria**

1. Competency in listening effectively to clients and others.
2. Competency in cogently communicating analysis and advice in writing across a range of types of writings (e.g., memos, briefs, and client letters).

**First Tier Learning Outcome 6: Graduates are expected to demonstrate at least novice-level competency in other professional skills needed for competent, effective and ethical participation as a member of the legal profession.**

**Specific Criteria**

1. At least novice-level understanding of and competency in approaches for managing conflict for effective problem solving.
2. At least novice-level competency in collaborative work approaches.
3. At least novice-level understanding of and competency in effective negotiation practices.

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**NOTE: All assignments are subject to modification.**

#### Assignments

- *Reading and video clip assignments should be completed before class on the day they are listed;*
- *All chapter-by-chapter video clips are assigned unless otherwise noted.*
- *Written assignments are due before class on the day they are listed.  
PLEASE SUBMIT ELECTRONIC COPIES OF ASSIGNMENTS BY  
EMAILING THEM TO ME BEFORE CLASS ON THE DAY THEY'RE DUE.*

**Aug. 26: Class #1** – Introduction to Course; Introduction to Dispute Resolution.

- **Read: F&S, Chapter 1, "So You Want to Study Mediation?"** An Introduction to Processes of Mediation and Skills of Effective Mediators
- **Read: Riskin & Wohl, "Mindfulness in the Heat of Conflict: Taking STOCK"** (2015) (IN 2020, ASSIGN FOR CLASS # 11)
- **Complete 1<sup>st</sup> Self-Assessment–Graded Writing Assignment BEFORE class, complete this 2-page self-assessment, which should take you @10 min.**
- **Complete Thomas-Kilmann Conflict Mode Instrument – BEFORE class, please take and score this instrument, which should take you @15 min.**

**Sept. 2: No Class – Labor Day**

**Sept. 9: Class #2** – The Role of the Mediator and Differing Approaches to the Mediation Process

- **Read: F&S, Chapter 3, The Role of the Mediator: Differing Approaches, Fundamental Norms**
- **Watch** Video clips ("Play-All") Craig Lord and Cheryl Cutrona. Please watch in this order: Lord, and then Cutrona.

**Sept. 16: Class #3** – Mediation Role Play Exercises

- **Read: F&S, Chapter 2, Negotiations, and Why They Fail, pp. 21-40**
- **Read: F&S, Chapter 5, Mediation as a Structured Process**

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**Sept. 23: Class #4** – Preparing to Mediate; Stages of Mediation; Bias

- **Read: F&S, Chapter 4**, Preparing to Mediate.
- **Read: Izumi, Implicit Bias & Prejudice in Med.**, SMU.LR.Feb.2018
- **Do: Implicit Association Test.** Take at least one (or more, if you like) of the tests available online from Harvard at <https://implicit.harvard.edu/implicit/>  
Each test takes about 10-15 minutes to complete.

**Sept. 30: Class #5** – The Mediator’s Opening Statement; Listening; Clarifying; Summarizing and Reframing.

- **Read: F&S, Chapter 6**, Opening the Process, Defining the Problem
- *Note: Omit video clips 6-J & 6-N (1), (2) & (3).*
- **Graded Writing Assignment (10% of grade):** Write an Opening Statement using no more than 600 words; citations are not required.

**Oct. 7: Class #6** – Expanding Information in Mediation to Aid the Negotiations

- **Read: F&S, Chapter 7**, Expanding Information
- *Begin Satellite Dish role-play.*

**Oct. 14: Class #7** – Identifying and Framing Issues, Organizing an Agenda.

- **Read F&S, Chapter 8**, Identifying and Framing Negotiating Issues, Organizing an Agenda
- *Continue Satellite Dish role-play.*
- **Ungraded Writing Assignment:** *If you elected to write a supervised short paper, please submit a one-page outline of your final paper; if you’re not writing a supervised paper, please see assignments below for Class #9.*

**Oct. 21: Class #8** – Persuasion and Problem-Solving in Mediation.

- **Read F&S, Chapter 9**, Generating Movement through Problem-Solving and Persuasion; *Note: Omit clips 9-A, -C and -D.*
- **Watch Harris Bock (“Play-All”)** mediate Resnick v. Stevens Realty.
- **Graded Writing Assignment:** Identify and evaluate Bock’s “persuasive” interventions. (at least 1,200, but no more than 1,500, words, double-spaced and single sided) (20% of grade).

**Oct. 28: Class #9** – Conducting the Bargaining, Dealing with Impasse.

- **Read F&S, Chapter 10**, Conducting the Bargaining, Dealing with Impasse
- **Review: Riskin & Wohl**, “Mindfulness in the Heat of Conflict” (2015)
- **Ungraded Writing Assignment:** *For those writing unsupervised short papers, please submit a one-page outline of your final paper.*

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**Nov. 4: Class #10 – Mediation Simulation #1**

- **Watch** Hanna (“Play-All”) mediate Fitzgerald v. Fitzgerald.
- **Watch** video clips 6-N (1), (2) & (3).
- **Ungraded Writing Assignment:**
  - Write a short paragraph each about two things you have learned to date about mediation, and
  - List one question you still have about mediation generally or the mediation process specifically.
- **In Class: Mediation Simulation #1**

**Nov. 11: Class #11 – Concluding the Mediation**

- **Read F&S, Chapter 11**, Concluding the Mediation
- **Graded Writing Assignment:** complete post-simulation #1 evaluation form
- **Discuss** questions you have about mediation (Class #10 assignment)

**Nov. 18: Class #12 – Mediation Simulation #2**

- **Ungraded Writing Assignment:** *Submit draft of supervised final paper, which may exceed word limit.*

**Nov. 25: Class #13 – The Ethics of Mediating**

- **Read F&S, Chapter 12**, The Ethics of Mediating; **Review F&S**, Appendices B, C & D.
- **Graded Writing Assignment: ALL:** complete 2<sup>nd</sup> Self-Assessment
- **Graded Writing Assignment: Mediators & Observers:** complete post-simulation #2 evaluation form
- **In class course evaluation**

**Dec. 2: Class #14 – TBD (by 3 or 4 class volunteers)**

- **Take-Home Exams** distributed at end of class.
- **Exams/Papers due by NOON, Wednesday, Dec. 18.** Please submit a hard copy to the faculty secretary and an electronic copy to me.
- **Please email or speak to me** about ANY questions you may have about either your take-home exam or your final paper.