Lawyering: Problem-Solving and Dispute Resolution
2020FS LAW 5095 Schmitz (3A & 3B) T/TH

3A: 9-9:50 AM T/TH via Zoom
3B: 3:30 -4:20 PM T/TH via Zoom

Fall 2020

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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. Additionally, you will gain a broad understanding of alternative dispute resolution (ADR), as it includes the means lawyers use most for problem-solving. Indeed, at core, this course helps create a lens for your legal education – as we are called to be “problem-solvers” as lawyers every day!

That said, 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. I also am striving for the first time in Lawyering to include skills education to assist you in becoming “technologically competent” as is now required as part of the Rules for Professional Responsibility. This is more than being able to use a cell phone and computer! This relates to using virtual conferencing software like Zoom to communicate and means for safely deploying technology as a lawyer to avoid security pitfalls.

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.

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 hours requirement.

**Covid Syllabus Statement -- Decreasing the Risk of COVID-19 in Classrooms**

This course is online, but you have rooms in the building for attending sessions via Zoom. Accordingly, you may be in the building, where you should pay attention to safety. MU cares about the health and safety of its students, faculty, and staff. To provide safe, high-quality education amid COVID-19, we will follow several specific campus policies in accordance with the advice of the Center for Disease Control and Boone County health authorities. This statement will be updated as information changes.

- If you are experiencing any COVID-related symptoms, or are otherwise feeling unwell, do not attend in-person classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea.
- We will all wear face coverings while in the classroom, unless you have a documented exemption due to a disability or medical condition.
- We will maintain a 6-foot distance from each other at all times (except in specific lab/studio courses with other specific guidelines for social distancing).
- We will enter the classroom and fill the room starting at the front, filing all the way across a row. When class ends, we will exit the row nearest to the door first; the instructor or TA will give the signal for the next row to exit, in the same manner.
- In any small section or lab class that requires them, additional measures will be listed in the syllabus and be mandatory for class participation.
- Online office hours will be available for all students.

Compliance with these guidelines is required for all; anyone who fails to comply will be subject to the accountability process, as stated in the University’s Collected Rules and Regulations, Chapter 200 Student Code of Conduct.

If an instructor has concerns about how a student is following COVID-19 policies and protocols, please report those concerns to the Office of the Dean of Students. You can fill out a COVID
Safety Measures Reporting Form here:

By taking the above measures, we are supporting your health and that of the whole Mizzou community. Thank you in advance for joining me and your peers in adhering to these safety measures.

**Mental Health**
The University of Missouri is committed to supporting student well-being through an integrated network of care, with a wide range of services to help students succeed. The MU Counseling Center offers professional mental health care and can help you find the best approach to treatment based on your needs. Call to make an appointment at 573-882-6601. Any student in crisis may call or go to the MU Counseling Center between 8:00 – 5:00 M-F. After hours phone support is available at 573-882-6601.

Visit https://wellbeing.missouri.edu to take an online mental health screening, find out about workshops and resources that can help you thrive, or learn how to support a friend. Download Sanvello, a phone app that teaches skills and strategies to help you maintain good mental health. Log in with your Mizzou e-mail to unlock all the tools available through Sanvello at no cost to you.

**Communication, Accommodation, and Pivot**
This class is specifically designed for online instruction to be sure we can provide the best instruction possible for the experiential work involved. It was very difficult for us to decide to redesign the class to be taught online, as I love teaching in person and interacting with students live in a classroom!! However, we decided to move it online due to the pandemic and realization that the experiential exercises will not work with the current guidelines for in-person classes, and it would be impossible to keep you safe.

Accordingly, everything you need will be on Canvas: 1) Course website with assignments, announcements, discussions, syllabus, etc.; 2) Online office hours through MU Connect (again on Canvas); and 3) Links to join live Zoom classes. Also, you may always send me an email at schmitzaj@missouri.edu to schedule an online meeting if you have trouble with MU Connect. Note also that you are also encouraged to schedule meetings with the TA for the course per the email listed on this Syllabus.

I have been a 1L teacher for over 20 years and it brings great joy for me to have the honor each year of teaching 1Ls. Indeed, I care deeply about teaching and your learning. We may be physically distanced, but I do not want you to feel distanced from me! I am here to assist you with class, and with law school generally. Moreover, please reach out if you are having trouble with the class, have critiques, have questions, etc.!
**Requirements and Grading**

Grades will be based on the following criteria:

- 50% - Final exam (2 hours);
- 50% - Exercises, papers, & class participation. We will be conducting a number of in-class and out-of-class exercises. For some of these exercises, you must write a short paper. Below are the dates in which the graded assignments will be distributed and due:

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<tr>
<th>Graded Exercises</th>
<th>Distributed</th>
<th>Due</th>
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<td>Listening Paper</td>
<td>Sept. 3</td>
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<td>Client Interviewing</td>
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<td>Mediation Simulation</td>
<td><strong>TBD!</strong></td>
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<tr>
<td>Mediation Paper</td>
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**Class Attendance**

Attendance, preparation, and engagement in the exercises are of most importance. Attendance is very important because much of the learning happens in class. Furthermore, this class is online so that you can remain safe while participating in exercises and discussion. These classes will be mainly **synchronous during the appointed class times**, and therefore, you should plan on attendance during the times as noted in your schedule. **Be sure to consult Canvas for assignments, announcements, and discussions!**

Nonetheless, we understand that flexibility is necessary – as Internet issues arise, people may suffer illness, etc. These are certainly uncertain times! Accordingly, I ask that you do your best to attend class meetings, but let me know if there is a reason you need to miss and we can work out alternatives for learning the material. Indeed, I will record class meetings via Zoom and these recordings will be posted on Canvas. We also will engage in discussions via Canvas, and assignments will be submitted via Canvas. This will allow us to remain safe and have a central “space” for class content. **Above all, please let me know if you have questions or concerns as we go through the semester!**

**Teaching Assistant (TA)**

This class has a teaching assistant (TA) for each subsection to help with class simulations and assignments. Emily Miller (for Section 3A at 9AM) & Haley Benson (for Section 3B at 3:30) Please **take advantage of this extra assistance**. Note that the TAs will hold office hours and are available to meet outside of class! See the first page of the syllabus for contact information for your subsection of the Lawyering class.

**Required Readings**

*Stefan H. Krieger & Richard K. Neumann, Jr., Essential Lawyering Skills, Fifth Ed.*.

Assignments from this book are listed below with the prefix “K&N”.

*Additional required readings will be posted on Canvas!
**Course Web Site**
This course will make use of a course web page through Canvas. The syllabus and other required course materials will be posted on this website. I will also send email messages to the email account that you designate when you register and will post announcements on Canvas. **It is your responsibility to check Canvas and your registered email regularly** (at least once a day) and to make sure the account remains functional and is not too full to accept emails.

**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.

**Collaborative Class and Contacting Me**
This is a small and collaborative class. That means it will benefit you to work with others in the class and create your own discussion and study groups. I also stand ready to assist with your learning. Again, you can access **office hours through MU Connect** – as has been set up in Canvas. Currently, I plan to have office hours on T/TH in order to work with your schedule as I realize that your M/W/F is packed! I am passionate about teaching, and it is my pleasure to assist you in learning.

**Intellectual Pluralism**
The School of Law 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 the School of Law. 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 the School of Law’s 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**
Please let Dean Mitchell or Registrar Boessen know as soon as possible that you anticipate barriers related to the format or requirements of this course; you have emergency medical information to share with me; or, you need to make arrangements in case the building must be evacuated.

If you require disability-related accommodations (such as a note taker, extended time on exams or captioning), please establish an Accommodation Plan with the Disability Center. The Center is located at S5 Memorial Union. You should also contact the Associate Dean for Academic Affairs Mitchell or the Law School’s Registrar Boessen, so that they can help coordinate any necessary accommodation.

**Class Schedule and Assignments (subject to change so check Canvas!)**

Discussion in class will inevitably cover some but not all of the material in the readings. Please do not expect that we will explicitly discuss all of the readings. *Nonetheless, you are responsible for all the readings, and I may call on you with questions or include surprise quizzes on the readings from time to time.* Above all, I hope that you will learn from all of the readings and find the class exercises helpful. If you have questions or concerns about the readings or exercises, please let me know. Other students often have the same questions and it benefits us all for you to share your questions and concerns.

**Schedule of reading assignments – See Canvas for more specifics!!**

8/25  **Introduction to Lawyering with Attention to the Digital Age**
  - K&N chap. 1
  - Technological Competence Assignment (on Canvas)
  - Group Discussions in Breakout Rooms

8/27  **Professionalism and Practice**
  - Shultz & Zedek: Predictors of Lawyering Effectiveness (on Canvas)
  - K&N chap. 2
  - Guest Presenter: Linda Warren Seely, Esq., Director, American Bar Association, Section of Dispute Resolution (via Zoom from Washington, D.C.); Linda.Seely@americanbar.org

9/1  **Justice and Lawyers**
  - Read: A Presumption of Guilt by Brian Stevenson (book excerpt on Canvas)
  As you do the reading and watch the video in class, please consider the following questions: What does Mr. Stevenson tell us about the role of lawyers as advocates?; What skills do lawyers need to have to play that role?; What kind of relationship did Mr. Stevenson have with his clients?; Why was he able to reach that kind of relationship?
  - Mapping exercise in class
9/3  Lawyer as Problem-Solver; Understanding Conflict (at the Heart of the Problem)
  o  K&N Chaps. 3-4
  o  Moore’s Circle of Conflict
  o  Conflict and Starwars:  https://www.youtube.com/watch?v=n_XR8aYBySQ
  o  Problem-Solving Exercise in class
     **Listening exercise ASSIGNED (graded) * Before you complete the exercise, watch The Power of Listening  
     https://www.youtube.com/watch?v=saXfavo1OQo  (Ted Talk by William Ury)

9/8  Roles Lawyers Play in Resolving Disputes
  •  Senate Table Exercise in class
  •  Discussion of Senate Table Exercise

9/10  Questioning and Listening Skills
  •  Discussion of Listening Exercise
  •  K&N chap. 5
  •  Short talk on Listening:  https://www.youtube.com/watch?v=cSohjlYQI2A
    ** Listening exercise DUE

9/15  Cross-Cultural Considerations—Special Guest Star (expert in the area!)
  •  K&N chap. 6

9/17  Interviewing Clients
  •  K&N chaps. 7-8
  •  Champion v. Champion —Be ready to be the lawyer in class:

    You are about to interview John/Joyce Champion about a possible divorce from his/her spouse, Gillian/Gary. From the Intake Sheet provided to you before your interview, you know the following: John/Joyce is 30 years old. Gillian/Gary is 40. The couple was married ten years ago in Columbia, Missouri. Their son, David, is five years old. Gillian/Gary runs a telecommunications business, Champion Resources. John/Joyce has suffered from chronic back pain for a number of years. The doctors have been unable to diagnose the cause. John/Joyce wants to continue to have David live with him/her, but he/she needs child support and alimony in order to live alone and raise David in the rather upscale suburb in which the family presently lives.

    Conduct initial stages of a first interview – from ice-breaking small talk, to preliminary problem identification, a preparatory statement, and fact gathering about the marriage and family assets.

    ** Interviewing exercise ASSIGNED (graded)
9/22 **Interviewing Clients (and witnesses)**
- K&N chap. 9
- In Class we will watch and discuss a video [https://www.youtube.com/watch?v=AQZccSUqa9k&feature=youtu.be](https://www.youtube.com/watch?v=AQZccSUqa9k&feature=youtu.be)
- Discussion of techniques

9/24 **Interviewing Clients: Discuss Simulation**
**Interviewing exercise DUE**

9/29 **Counseling Clients**
- K&N chaps. 18, 20-21

10/1 **Counseling Clients: Simulation & Discussion**
**In-class counseling exercise**

10/6 **Negotiation: How it Works; Positions and Interests; Power**
- Why Negotiations Fail | Nick Coburn-Palo | TEDxTaipeiAmericanSchool, at [https://www.youtube.com/watch?v=DC_ebaS6LaA](https://www.youtube.com/watch?v=DC_ebaS6LaA).
- K&N chap. 23 (except §23.5)

10/8 **Negotiation: Strategies and Styles**
- K&N chaps. 25-26
- Special guest star Prof. John Lande (expert in the area!).

10/13 **Negotiation: Tactics**
- K&N chaps. 27-28
- Epic FAILS in negotiation: [https://www.youtube.com/watch?v=ltpJP3EI1lc&feature=youtu.be](https://www.youtube.com/watch?v=ltpJP3EI1lc&feature=youtu.be)
**Negotiation exercise & paper ASSIGNED (graded)**

10/15 **Negotiation Simulation in Class**

10/20 **Negotiation - Discuss Simulation**

10/22 **Negotiation: Legal and Ethical Obligations in Negotiation; Implicit Bias**
K&N §§ 23.5, 28.1; 28.2
**Negotiation paper DUE** **Be sure to note ethical issues based on the readings and our discussions!!**
10/27 **Mediation: Introduction**  
ABA Section of Dispute Resolution, Preparing for Mediation,  
*Skim: Model Standards of Conduct for Mediators (on Canvas)*

10/29 **Mediation: Videotape & Discussion**  
****Mediation exercise & paper ASSIGNED (graded)**

11/3 **Mediation: Effective Advocacy & Ethics**
- **COMMON MEDIATOR ERRORS** (On CANVAS --Adapted from: (i) Tom Arnold, 20 Common Errors in Mediation Advocacy, 13 Alternatives to the High Cost of Litigation 69 (CPR Institute for Dispute Resolution, 1995);  
  - Robert Mnookin - Mediation Secrets Exposed: Three Tips You Need to Know, at [https://www.youtube.com/watch?v=fS0T-Bbq5tU](https://www.youtube.com/watch?v=fS0T-Bbq5tU)

11/5 **Mediation—continued/see Canvas for updates**

11/10 **Mediation – continued/see Canvas for updates**

11/12 **Mediation – Discussion of the Simulation!** Come prepared for in-depth discussion regarding the experience!

11/17 **Arbitration: Nature of Arbitration**
- Basics of Arbitration: [https://www.youtube.com/watch?v=mFt2qOjO4Jc](https://www.youtube.com/watch?v=mFt2qOjO4Jc)  

11/19 **Arbitration in Practice**
- Presenting your case: [https://www.youtube.com/watch?v=pNpn9_Vf-A](https://www.youtube.com/watch?v=pNpn9_Vf-A)  
- Stages in arbitration: [https://www.youtube.com/watch?v=bDJhrP7r-uM](https://www.youtube.com/watch?v=bDJhrP7r-uM)  
- Asleep or Not Exercise in class

12/1 **Lawyer ing in the Digital Age: Transition from ADR to ODR**  
*Mediation exercise & paper DUE (graded)*

12/5 **Review; Talk About Exam; My Exam Tips and Tricks!**

**FINAL EXAM:** Please Check Exam Schedule! Take home exam.