

MEDIATION – LAW 5765 – SPRING 2024 COURSE INFORMATION AND SYLLABUS

Instructor: Paul H. Ladehoff Phone: 573-884-7813
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Office hours: Tuesdays & Thursdays 1:00 to 2:00 p.m. and by appointment.
In person or via Zoom: <https://mizzou.zoom.us/j/5738847813>

COURSE DESCRIPTION: A study of the process in which a neutral third party assists others in resolving a dispute or planning a transaction through facilitated negotiation. Students will explore mediation theory, law, policy and practice through readings, classroom discussion and exercises, demonstrations, simulations, and a reflective journal. Topics include the nature of mediation and its relationship to other forms of dispute resolution, the mediation process, models and styles of mediation, the effective representation of clients in mediation, and special issues and standards relating to attorney mediators including ethics and professional responsibility.

CLASS MEETINGS: Tuesdays & Thursdays 9:00 to 10:15 a.m., Hulston Hall Room 5

- The Instructor may record class meetings for the sole purpose of sharing the recording with students who can't attend class. The instructor will take care not to disclose personally identifiable information from the student education records during the recorded lesson.
- In the event that all Law School courses pivot fully online, we will convert to a 100% online course with synchronous lectures on Zoom at our regular times.
- See the "Communication, Accommodation, and Pivot Plan" below for details.

REQUIRED TEXTS:

Mediation: The Roles of Advocate and Neutral, Fourth Edition, Dwight Golann, Jay Folberg, ISBN: 9781543809091. (The Third Edition ISBN: 9781454852056 is also acceptable if are unable to get the Fourth Edition.)

Articles placed in the "Required Reading" folders in Modules on the course Canvas site. There will also be recommended but optional articles and reports on the Canvas site.

RECOMMENDED TEXTS: These optional texts may be available in the Law Library or may be purchased from many booksellers in stores or online.

Jennifer K. Robbennolt and Jean R. Sternlight, *Psychology for Lawyers: Understanding the Human Factors in Negotiation, Litigation, and Decision Making*, ABA (2012), especially chapter 11.

Michaela Keet, Heather D. Heavin, and John Lande, *Litigation Interest and Risk Assessment: Help Your Clients Make Good Litigation Decisions* ABA (2020)

COURSE GOALS AND LEARNING OBJECTIVES: By the end of the course, you will:

1. Understand and use conceptual and analytic models of mediation, drawing from legal studies, behavioral sciences, and other disciplines.
2. Analyze mediation problems to determine which models are most appropriate in which contexts.
3. Effectively plan for mediation in a legal context, considering the interests of all parties and others affected by the outcome, as well as their legal positions.
4. Demonstrate ability to create value and problem solve in mediation contexts.
5. Understand and plan for strategic behaviors and effectively implement appropriate responses.
6. Understand and address common cognitive, affective, and merit-based barriers to mediated agreements.
7. Identify ethical and legal issues in mediation and make choices that are ethical and appropriate.
8. Appreciate the role and impact of culture, values, personality, race, class, gender and other differences in mediation.
9. Understand the differences in dyadic and multi-party mediation.
10. Develop their capacity and the habit of reflective practice critiquing and learning from their own negotiation and mediation experiences.
11. Articulate policy issues in the use of negotiation and mediation processes in a variety of practice contexts.

CLASS EXERCISES AND SIMULATIONS

This course combines theory, law, and skills. There will be numerous exercises and simulations designed to give you an opportunity to experience the process, to experiment with strategies and techniques, and to observe and critique your own and others' performance. You and your classmates will derive the most benefit from the exercises and simulations if you prepare for them and play your role as realistically as you can. Since this class provides a relatively risk-free learning environment, feel free to experiment with different approaches and tactics, remembering that learning new skills takes time, practice and patience.

Unless instructed otherwise, your simulation preparations are to be completed individually. All confidential information is to be kept confidential. To preserve the quality and confidentiality of the role plays from year to year, it is equally important that you do not discuss any aspect of your role plays with students outside of this course.

Your honesty, integrity, and ethical conduct in this regard will not only count in your grade but it will also affect your reputation with your peers and your instructor. If you have any questions about the confidentiality of any facts, please ask me.

COURSE GRADING: Your grade will be based on the following:

Reflective journal on course material and simulations	40%
Class attendance, participation and contribution	10%
Final Exam	50%

REFLECTIVE JOURNAL (40%)

You are required to keep a reflective journal for this course. Journaling can provide many benefits such as increasing your awareness and understanding of negotiation and mediation behaviors, others' as well as your own, and the effectiveness of strategies and techniques.¹ Create a journal entry for each week of class and discuss one or more key points from the presentations, discussions, readings, exercises, or simulations. Journal entries should be concise, thoughtful and typically one page in length. For example, you might relate a reading to what was discussed in class, your own views on mediation, or questions and concerns a reading raised for you. After a simulation, your reflection might focus on the communication and behavioral aspects of the experience. What worked and what didn't? What was problematic for you? How could you improve the outcome in a similar dispute in the future?

CLASS PARTICIPATION AND CONTRIBUTION (10%):

You are expected to read the assigned material before class, to prepare for and participate in class discussion and in class exercises and simulations. Because this is a participatory and experiential class, your classmates and I must depend on your attendance and preparation for each class. If you must miss a class or arrive late, please communicate this to me prior to class.

You will be evaluated on the *quality* of your participation and contributions in class. A quality comment usually possesses one or more of the following attributes:

- It offers a relevant perspective;
- It contributes to moving the discussion and analysis forward;
- It builds on (rather than repeating or ignoring) other comments;
- It transcends mere opinion as it includes some evidence, demonstrates recognition of basic concepts, integrates concepts, reading, and/or current events with reflective thinking.

Similarly, for your feedback to colleagues, you will be evaluated on the *quality* of such feedback. Quality feedback generally:

¹ See, e.g., Michael Moffit, Lights, Camera, Begin Final Exam: Testing what we Teach in Negotiation Courses 54 J. Legal Educ. 91 at p. 97 (March 2004)

- is honest and respectful;
- includes positive and constructive negative feedback;
- is specific (i.e., it identifies the specific language or behavior which triggered your observations);
- relates to the concepts we are studying;
- is constructive (i.e., it includes a suggestion of other language or other behavior that might have worked better for your character in this situation).

COMPREHENSIVE FINAL EXAM (50%):

There will be a written, comprehensive final examination for this course. The format of exam questions will be essay or short answer. It will be an open book exam, meaning that you may use your text book and a self-prepared outline, but you may not use other sources or consult with others. E.g. No Google or AI. The examination will be based on the reading assignments and class discussions, exercises and simulations.

POLICIES

NOTEBOOK COMPUTERS AND SMART PHONES:

Computers and smart phones may be used in class only for purposes directly related to the class such as note taking, reading course materials, or capturing video of simulations. Social networking, reading or sending email messages, surfing the Internet, game playing, or doing any work not related to this class is not permitted. Likewise, the use of cell phones and pagers for non-class activities is prohibited. If you have an extraordinary situation which might require you to answer your cell phone during class (e.g., child care issues or a family health situation), please let me know before class and exit the classroom quietly if a call comes.

AUDIO OR VIDEO RECORDINGS:

Classes may not be recorded by students, except in cases of special need with the instructor's express permission. To foster a safe environment for learning, 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 instructor and of any students who are recorded. In accordance with Executive Order #38, the unauthorized distribution of such materials is a violation of academic standards and may violate copyright laws and/or privacy rights. Students found to have violated this policy are subject to discipline in accordance with the provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri.

STATEMENT OF INTELLECTUAL PLURALISM:

The University and this instructor welcome intellectual diversity and respect student rights. I encourage free discussion, inquiry, and expression in this course. Student performance shall be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean of the Law School or the 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 HONESTY:

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. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or whether something might be seen as a form of cheating, consult the course instructor. Please understand that the instructor will follow university procedures on cases of academic dishonesty, and in such cases it may be necessary to assign a failing grade for the assignment or even the entire course.

INCOMPLETES:

My general policy is not to grant incompletes unless the following three conditions are met: 1) that the student has a verifiable emergency situation that makes it impossible to complete the coursework on time, 2) that the student sign an agreement with the instructor prior to the final examination period about the requirements to be met for completing the class, and 3) that all required work be completed within a short period of time, usually not to exceed 3 months. Otherwise, I will turn in a grade reflecting the work completed, including a zero for any incomplete assignments.

STATEMENT FOR ADA-STUDENTS WITH DISABILITIES:

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability-related accommodations are necessary, please contact the Law School Associate Dean or Registrar. You may also register with the MU Disability Center, S5 Memorial Union, 882-4696. Please note that unlike the rest of campus, the Law School does not rely on the Disability Center for the administration of exams to students in need of accommodation; but rather handles accommodation issues internally. For other resources for students with disabilities, visit <http://disabilitycenter.missouri.edu>.

STATEMENT FOR 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 our website at <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.

Decreasing the Risk of COVID-19 in Classrooms and Labs

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 observe all Covid protocols required by the University and Law School which may include wearing **face coverings while in the classroom**, maintaining a **6-foot distance from each other at all times** (including during simulated negotiations and other in class exercises.).
- Online office hours will be available for all students. I have set aside Tuesdays and Thursdays from 1:00 to 2:00 p.m. for formal office hours to meet with Mediation students. At other times, I am happy to schedule an appointment to meet with you. Office hours will be via Zoom at <https://mizzou.zoom.us/j/5738847813>.
- The instructor may record course lectures for the sole purpose of sharing the recording with students who can't attend class. The instructor will take care not to disclose personally identifiable information from the student education records during the recorded lesson.

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.

Communication, Accommodation, and Pivot Plan

This is an in-person course with class meetings on Tuesdays and Thursdays in Hulston Hall Room 3. We will follow all Covid protocols required by the Law School and University. Students will access course content via the Canvas course site. Class meetings will be recorded and posted on the Canvas course site for the benefit of those unable to attend F2F classes. Likewise, students may conduct in class exercises such as simulated negotiations via Zoom, if unable to attend F2F classes. Students may contact me via email at ladehoffp@missouri.edu for both regular communication and in case of emergency. In the event that all Law School courses pivot fully online, we will convert to a 100% online course with synchronous lectures on Zoom at our regular times.

SYLLABUS: MEDIATION – LAW 5975 – SPRING 2024

(Subject to Revision)

Instructor: Paul Ladehoff

Text: Mediation: The Roles of Advocate and Neutral, Fourth Edition, Dwight Golann, Jay Folberg, ISBN: 9781543809091. (hereafter “MTRAN”)

Week / Date	Topic / Activity	Reading / Prep
1 – 1/16	The Nature of Disputing and the DR Spectrum	MTRAN Ch. 1
1 – 1/18	Mediation Goals, Mediator Styles	MTRAN Ch. 5
2 – 1/23	Negotiation Primer / Reminder	MTRAN Chs. 2 & 3
2 – 1/25	Negotiate and Debrief “When the Chips are Down”	Simulation Rolls on Canvas
3 – 1/30	Mediation Process and Stages	MTRAN Ch. 6
3 – 2/1	Mediate and Debrief “The Partnership Dispute”	Simulation Rolls on Canvas
4 – 2/6	Mediation Process Skills and Impasse Techniques	MTRAN Ch. 7
4 – 2/8	Mediate and Debrief “Allied v. CAS”	Simulation Rolls on Canvas
5 – 2/13	Emotional Issues and Cognitive Barriers	MTRAN Chs. 4 & 8
5 – 2/15	Mediate and Debrief “The Termination Tempest”	Simulation Rolls on Canvas
6 – 2/20	Managing Merits Based Barriers	MTRAN Ch. 9
6 – 2/22	Mediate and Debrief “Waltham v Foster Fuels”	Simulation Rolls on Canvas
7 – 2/27	Representing Clients in Mediation	MTRAN Chs. 10 & 11
7 – 2/29	Mediate and Debrief “Culture Bubble v FAF”	Simulation Rolls on Canvas
8 – 3/5	Specific Applications and Approaches: Family, Narrative Mediation	MTRAN Ch. 12 pp. 239-245
8 – 3/7	Mediate and Debrief “Lynn and Mike Divorce”	Simulation Rolls on Canvas
9 – 3/12	Specific Applications and Approaches: Employment, Transformative Mediation	MTRAN Ch. 12 pp. 245-262
9 – 3/14	Mediate and Debrief “Claudia v. PMG”	Simulation Rolls on Canvas
10 – 3/19	Specific Applications and Approaches: International Commercial, Implicit Bias and Cross-Cultural Issues	MTRAN Ch. 12 pp. 262-275
10 – 3/21	Mediate and Debrief “Mumbai v. MedPro”	Simulation Rolls on Canvas
11 – 3/26	Spring Break No Class	
11 – 3/28	Spring Break No Class	

12 – 4/2	The Law of Mediation	MTRAN Ch. 13
12 – 4/4	Mediate and Debrief “Ceiling Collapse”	Simulation Rolls on Canvas
13 – 4/9	Court-Connected Mediation and Policy Concerns	MTRAN Ch. 14
13 – 4/11	Facilitate and Debrief “Good Faith Policy”	Simulation Rolls on Canvas
14 – 4/16	Ethical Issues for Advocates and Mediators	MTRAN Ch. 15
14 – 4/18	Small Group Discussion and Report on Scenarios	
15 – 4/23	Hybrid Processes and System Design	MTRAN Ch. 16
15 – 4/25	Final Q & A, Catch up, Course Evaluation	
May ???	Final Exam	