

Course Outline

COURSE NUMBER: LAWS 5704
COURSE TITLE: FAMILY MEDIATION
TERM: FALL, 2010
PLACE: LOEB B 454
DATES: SEPTEMBER 11, 12; 17,18,19 -- 2010
TIME: 9:00 A.M. TO 5:00 P.M.
INSTRUCTOR: KENT SWINBURNE
OFFICE: LOEB D 482 (SESSIONAL OFFICE)
OR LAW OFFICE LOEB C 473
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FAX:
EMAIL: Kent.Swinburne@magma.ca

The instructor will be available half an hour before class in B454 Loeb for assistance or consultation. Students can also set appointments at that time. At other times, the instructor will endeavour to respond promptly to students' questions by telephone, fax, or email.

COURSE DESCRIPTION

This course will explore conflict faced by families of all types – traditional 2-parent; single-parent; same-sex parents; extended family. While emphasis will be placed upon conflicts arising due to family separation, other causes of family conflict will be examined such as inter-generational care issues, and family business disputes. The interplay of emotional, social and legal forces will be illuminated. Models of practice and their implications for working with families in conflict will be examined.

Students will be given the opportunity to demonstrate their grasp of theoretical concepts in family work through written assignments. They will also have an opportunity to experience family mediation through role play exercises.

RELATIONSHIP TO CCR PROGRAM GOALS AND COMPETENCIES

The course will teach specifically to competencies 1.1, 2.3, 2.6, 2.6, 2.7, 2.8, 4.1, 5.1, 5.2, 6.1, 6.3, 6.4, and 6.5. Students will be evaluated on these sets of competencies.

COURSE REQUIREMENTS

(i) Preparation for Class, Attendance, Participation in Exercises (10%)

This course will involve lectures, class discussion, small group work, and case studies. Students are expected to have read the required readings in advance of class and come prepared to offer informed and analytical comments. Students will be assessed on their willingness to participate in class activities, to ask questions that advance their own understanding and build knowledge for others, to participate in class discussions that deepen the conversation, to encourage the participation of others, and to attend to group process. Students will also be assessed on both the quality and the consistency of their participation in group activities and assignments. [Competencies: 1.1,2.3,2.6,6.3,6.5]

(ii) Independent Learning Initiative: Maintaining a Learning Journal (10%)
Students will be asked to maintain a learning journal throughout the course, beginning with the pre-course reading assignments and continuing as they complete the final written assignment. This journal is to be handed in on the last day of the course. [Competencies: 6.1, 6.3, 6.4, 6.5]

(iii) Case Analysis (20%)
Students will be given a case scenario describing a family conflict situation on Sunday, September 12 and asked to analyze the conflict and the interventions of the mediator. A written analysis of the case is due at or before at the beginning of class on Friday, September 17. Assignments submitted before September 17 should be submitted directly to the Law Office, C473 Loeb Building unless otherwise agreed by the instructor. No extensions will be granted except under extenuating circumstances. Late assignments will be penalized with 5 marks lost for each day late. Marked assignments will be returned to students on Sunday, September 19 and the case scenario will be discussed in class on that day. [Competencies: 1.1, 2.3, 2.5,2.6,2.7,2.8]

(iv) Skills Development (15%)
Students' awareness of their understanding of how to apply basic mediation skills to family mediation situations will be assessed through observation of their performance in the role plays and in the debrief discussions of the role play exercises. [Competencies: 5.1,5.2, 5.3]

(v) Take-Home Written Assignment (45%)
Students will be required to complete a take-home written assignment (15 pages, typed, double-spaced) on a topic chosen from among number of topics offered by the instructor. A list of suggested topics will be distributed to all students at the end of class on September 17, 2010. Should a student wish to develop an

assignment on an alternate topic s/he should contact the professor in person, by telephone or by email no later than September 20, 2010 in order to determine whether the topic is pertinent and acceptable. There will be time devoted to clarification of the assignment at the beginning of the last class on Sunday, September 19, 2010.

This assignment will require the integration of theoretical and practical knowledge of family conflict resolution and mediation in a reflective and creative way. This assignment is due no later than Monday, October 4, 2010 by 4:00 p.m. at the Law Office (C473 Loeb Building). Assignments may be submitted directly to the professor by email provided that prior approval is given. Faxed assignments are not acceptable. Late assignments will be penalized with 5 marks lost for each day late. [Competencies: 2.1, 2.2, 2.8, 3.1, 3.2, 5.1, 5.2, 5.3, 6.1, 6.5]

REQUIRED TEXT:

Landau, B., Wolfson, L., Landau, N. Family Mediation, Arbitration and Collaborative Practice Handbook, Fifth Edition. Markham, Ontario. LexisNexis, 2009.

I have linked specific chapters of the above text to parts of the curriculum, but students are encouraged to read the text in its entirety. Its particular value lies in its completeness and in its use of exclusive Canadian references.

SUPPLEMENTARY REFERENCE TEXTS:

The following contain much useful material pertaining to family mediation. Students would benefit from referring to some or all of these texts to add to their perspectives in areas that particularly interest them or to deepen their knowledge in matters of practice and policy.

Folberg, Jay, Milne, Ann and Salem, Peter. Editors. Divorce and Family Mediation: Models, Techniques and Applications. Guilford Publications: 2004

Irving, Howard H., Benjamin, Michael. Family Mediation. Toronto. Carswell. 1987.

Taylor, Allison. The Handbook of Family Dispute Resolution. San Francisco. Jossey-Bass. 2002.

Neuman, Dr. Gary. Helping Your Kids Cope with Divorce the Sandcastles Way. New York. Random House. 1999.

DAY ONE: Saturday, September 11, 2010

Readings:

Landau et al. Family Mediation, Arbitration and Collaborative Practice Handbook, Fifth Edition. Chapters 1,12,13; Appendix VIII.

Suggested Supplementary Readings – Optional:

Irving and Benjamin. *Family Mediation*. pp. 25 – 49.

Articles:

Della Noce, D., Bush, R. Baruch, Folger, J. “Clarifying the Theoretical Underpinnings of Mediation: Implications for Practice and Policy.” *Pepperdine Dispute Resolution Law Journal*. Vol.3, No. 1. Pepperdine University. 2003. pp. 67 – 96.

Della Noce, D. “Mediation as a Transformative Process: Insights on Structure and Movement.” *Designing Mediation*. New York. Institute for the Study of Conflict Transformation. 2001. pp. 71 – 84.

Bush, R. Baruch, and Pope, Sally Ganong. “Understanding Conflict and Human Capacity: The Role of Premises in Mediation Training.” *Designing Mediation*. New York. Institute for the Study of Conflict Transformation. 2001. pp. 61 – 67.

9:00 – 9:30

Introductions

9:30 – 10:30

Overview of Published Course Outline.
Students’ Objectives. Expectations.

10:30 – 10:45 Break

10:45 – 12:00

History of Family Mediation

Family Mediation in Canada and the USA

Separation and Divorce; Extended Families; Blended Families;
Same-gender Parents
Cultural Differences

Developments in Ontario (eg. Court-connected mediation services)

Does Mediation Fulfill a Unique Place in the Spectrum? First/Last Resort?

Discussion of the purpose, advantages and disadvantages of
mediation (open and closed)

Role of the mediator

Mediator as Expert

Alternatives/Complements to Family Mediation

Arbitration, “med-arb,” litigation and assessments

Collaborative Law

Parenting Co-ordination

Interventions in non-divorce family conflicts (family “circle”
conferences, parent-child contracts, marriage contracts, etc.)

12:00 – 1:00 Lunch

1:00 – 2:30

Family Mediation Practice: Overview of Major Issues

Mediator Qualifications

Training

Standards, Accreditation, Certification

OAFM; FMC; ACR Codes of Conduct
Family Relations Mediation, Family Financial Mediation, Family
Comprehensive Mediation
Private Practitioners; Court-Based Services
Collaborative Law
Should Family Mediation be Compulsory for Separating/Divorcing
Couples?
Domestic Violence; Power Imbalances
Closed and Open Family Mediation

2:30 – 2:45 Break

2:45 – 3:45

Video Presentation: “Moving Forward” and Discussion

3:45 – 4:30

Family Conflict

Journeys of Families in Conflict

Typical Stories

4:30 – Reflection/Journal Notes

DAY TWO: Sunday, September 12, 2010

Readings:

Landau, B. et al. Family Mediation, Arbitration and Collaborative Practice Handbook, Fifth Edition. Chapters 5,8,9,10,11, Appendices II,VI,VII

Suggested Supplementary Readings – Optional:

Grillo, Trina. “The Mediation Alternative: Process Dangers for Women.” 100 Yale Law Journal. 1545. 1990.

Irving, H and Benjamin, M. Family Mediation. Ch. Ch. 8, (esp. pp. 149 – 151), Ch. 11.

Folberg et al. (Eds). Divorce and Family Mediation; Models, Techniques and Applications. Chs. 7 to 12 inclusive.

Neuman, Dr. Gary. Helping Your Kids Cope with Divorce the Sandcastles Way. New York. Random House. 1999.

9:00 – 10:00

Check-In, Review, Questions and Comments

10:00 – 10:45

Family Mediation Practice: Separation and Divorce Work

Human Dimension of Family Breakdown

Experience of Separation

Effects on Parties—as Partners/Spouses; as Parents

Effects on Children

“Stage” Theories of Adjustment to Marital Breakdown

Implications for Mediation Practice

Participation of Children in the Process; Multi-party Family Mediation

Parent/Child Information Workshops/Counselling

10:45 – 11:00 Break

11:00 – 12:00

Family Mediation Practice: Process

Referral Sources

Information, Fees, Preliminary Screening, “Intake”

Agreements (Contracts) to Mediate/“Retainer Agreements”

Identification of the Issues; Collecting and/or Providing Information

Conducting the Sessions

Private, Individual Meetings (Caucus)

Documenting the Sessions

Transition from One Session to Next; Pace; Timing

12:00 – 1:00 Lunch

1:00 – 2:30

Family Law and Mediation:

Legislation: Family Law Act

Divorce Act

Children’s Law Reform Act

Mediator’s Professional Responsibility/Liability under the Legislation

Custody and Access

Factors Influencing Custody Orders

Different Custodial Arrangements Recognized by the Law

Parental Mobility Issues

Typical Access Provisions When Ordered by Court

Child Support

Federal Child Support Guidelines

Application of the Child Support Tables

Tax Implications

Spousal Support

2:30 – 2:45 Break

2:45 – 4:00

Financial Mediation

Equalization of Net Family Property and Division of Assets

Financial Disclosure

Role of Independent Financial Evaluators/Appraisers

Support

When the Mediator is Expert

Independent Legal Advice

Recent Court Decisions and the Impact on Family Law

Collaborative Law

Independent Legal Advice
Importance for Clients
Client Choice
What if Clients Do Not Want to Go To Lawyers?

Documenting

“Reports” at the End of the Mediation
Memoranda, Minutes of Settlement, Separation Agreements,
Domestic Contracts

4:00 – 4:30

Case Scenario

Students will be given a case scenario to analyze, considering alternatives available to the family, determine appropriateness of mediation, and suggest how a mediator might prepare for work with the family.

Students may treat the scenario from one practice framework, or choose to compare possible approaches from different frameworks.

The analyses will be written and handed in at beginning of the next class or before. A period in a subsequent class will be set aside for discussion of the case.

4:30 – 5:00 Reflection/Journal Notes

DAY THREE: Friday, September 17, 2010

Required Reading:

Landau, B. et al. Family Mediation, Arbitration and Collaborative Practice Handbook, Fifth Edition. Chapters 2,3,4, Appendix I.

Suggested Supplemental Reading – Optional:

Irving, H. and Benjamin, M. Family Mediation. Chapters 5,6,7,9,10

REMINDER: WRITTEN CASE ANALYSIS DUE TODAY

9:00 – 9:30

Check-In, Review, Questions and Comments

9:30 – 11:00

Family Mediation Practice: Mediation Skills

Preliminary Work

Pre-mediation Screening—Telephone or Face to Face?

Explaining the Process to the Potential Clients

Screening for Appropriateness of the Service; Power Imbalance;
Abuse; Use of Screening Questionnaires

11:00 – 11:15 Break

11:15 – 12:00

Family Mediation Practice: Conducting the Mediation Sessions

Review of Mediation Practice Skills

Opening Statement

Conducting the Sessions
Termination and/or Transition to the Next Session
How to Open Succeeding Sessions

12:00 – 1:00 Lunch

1:00 – 4:30 (including 15 minute break at 2:30)

Elder Care and Family Mediation

Evolution of mediation in elder care

Major Issues

Approaches to Practice

(Video presentation and experiential exercises will be used.)

4:30 – 5:00

Hand out of suggested topics for Final Written Assignment. There will be time at the beginning of the last class to discuss.

Reflection/Journal Notes

DAY FOUR: Saturday, September 18, 2010

Readings:

Landau, B., et al. *Family Mediation, Arbitration and Collaborative Practice Handbook, Fifth Edition. Chapters 6,7,9, Appendices IV, V, VI*

9:00 – 9:30

Check-In, Review, Questions and Comments

9:30 – 10:45

Video: “Family Ties” and/or “Two Sisters”

10:45 – 11:00

Break

11:00 – 12:00

Discussion of Video(s)

12:00 – 1:00 Lunch

1:00 – 2:30

Custody and Access: Developments in the Field

Family Assessments

Family Arbitration

2:30 – 2:45 Break

2:45 – 4:30

Parenting Co-ordination

Parent-Child Contact Facilitation

4:30 – 5:00

Hand Out Role Play Scenarios for Day 5.

Reflection/Journal Notes.

DAY FIVE: Sunday, September 19, 2010

9:00 – 10:00

Check-In, Review

Discussion of Case Scenario Assignment

Questions and Comments Concerning Final Assignment

10:00 – 10:15

Guidelines for Role Play Exercises

10:15 – 10:30

Break

10:30 – 11:30

Role Play #1

11:30 – 12:15

Debrief Role Play #1

12:15 – 1:15

Lunch

1:15 – 2:30

Role Play #2

2:30 – 3:15

Debrief Role Play #2

3:15 – 3:30

Break

3:30 – 4:00

Bringing It Together

Family Mediation Practice

Starting a Practice

Options for Family Practice

4:00 – 5:00

Wrap Up and Conclusion

Complete Journals