

Course Outline

COURSE:	LAWS 3006B - Mediation
TERM:	WINTER 2019
PREREQUISITES:	LAWS 1000 (no longer offered) LAWS 1001 and LAWS 1002 and (1.0 credit in LAWS at the 2000 level) OR (0.5 credit in LAWS at the 2000 level and BUSI 2601).
CLASS:	Day & Time: Mondays 18:05PM - 20:55PM Room: Please check Carleton Central for current room location
INSTRUCTOR: (CONTRACT)	Collin Fletcher
CONTACT:	Office: B442 Loeb Building (Contract Instructor's Office) Office Hrs: Friday 17:35PM-19:00PM or by appointment Telephone: 613-806-3293 Email: collin.fletcher@carleton.ca

CALENDAR COURSE DESCRIPTION

Theory and practice of mediation; historical roots and influences; contrasts with formal litigation and other dispute resolution processes; issues of social and legal control; critiques, including feminist, Marxist and critical race theory; issues of power, gender, race and class; application to contemporary issues and disputes.

COURSE DESCRIPTION

In this course, we will examine the subject of mediation in the context of the law. Mediation is a process that has gained popularity and attention in the last several decades. Mediation, like many forms of alternative dispute resolution, has the potential to transform our views on justice and how our legal system operates. This course will examine the history of conflict and the legal system and the factors that led to the rise of mediation and alternative dispute resolution. The course will also examine the mediation process from a number of different perspectives, looking at important issues such as emotion and justice, culture and diversity and the role of a lawyer in mediation. While this course will present a positive view of mediation and the potential it presents to the Canadian legal system, we will examine the limitation and flaws of mediation.

The course format is seminar style, with a heavy emphasis on class discussions and students' participation based on your readings of the papers and the academic views being discussed. You are expected to participate actively in class discussions. The professor will call on students during the class for their input - whether it be to respond to a question posed, offer critiques on a position put forward or to put forth their own topics for discussion. Students should attend class prepared for each class, as the professor will call students at random to engage in class discussion.

REQUIRED TEXTS

Readings will be placed on CULearn or links will be provided in the course outline. Some sources may be accessed through the Carleton library website.

SUPPLEMENTARY TEXTS

Readings will be placed on CULearn or links will be provided in the course outline. Some sources may be accessed through the Carleton library website.

EVALUATION

(All components must be completed in order to get a passing grade)

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

1. **Attendance and Participation (20%)**
2. **Course Paper Proposal (10%)**
3. **Course Paper (30%)**
4. **Final Examination (40%)**

All assignments must be typed or word-processed and submitted in hard copy on the date specified in the syllabus. Assignments will not be accepted by email. Always retain a copy of the submitted work. In the event of loss, theft, destruction, dispute over authorship, or any other eventuality, it will be your responsibility to provide a copy of your work. Keeping earlier drafts of your work and other materials is strongly encouraged.

Attendance & Participation (20%)

Students will be expected to attend every class. In addition to the student's attendance, the students are expected to read the required readings and discussion pieces in advance of the class. The expectation of students will be that when you attend class, you are prepared to identify and discuss the issues from these pieces. 10% of the grade will be for attendance and 10% of the grade will be for active participation in and out of the class.

As participation is encouraged in this class, a flawless understanding of the text and materials is not required. A student's uncertainty on the subjects being discussed can itself be used to develop discussion in the class. The privilege to opt out of discussion should only be used in extreme circumstances where the student does not feel comfortable participating in any discussion that week due to extenuating circumstances. Overuse of this privilege will have a negative impact on one's participation grade.

Attendance will be taken every class. Good attendance, however, is not participation itself. Participation is about a constructive dialogue **inside** and **outside** of the classroom. Student's participation inside the classroom will include answering and asking questions, sharing their own thoughts and critiques on subject matters and relating the course material to their own experiences and lives. Students who do not feel comfortable engaging in participation in the classroom may engage outside of the classroom as well. Students may send me their own questions and critiques that they may not feel comfortable presenting to the class themselves by email. Students may also send additional readings and articles to me so I can distribute amongst the class. Students may also make use of the professor's office hours to discuss subjects with the professor that can be brought up for future discussion.

The participation grade will be used to assess the quality of the student's engagement with the classroom. Quantity of discussion does not necessarily mean quality of discussion. A student who responds often to questions but fails

to participate in a manner that creates discussion will not be graded as highly as a student who participates less frequently but who consistently constructs a productive dialogue in the classroom.

Some of the topics that will be discussed are considered controversial and members of the class may have strongly held differences of opinion. This is the basis for a very robust discussion in the classroom. All discussion, however, should be respectful of others, of differently held views and of the classroom space. The use of offensive terminology or personal attacks will not be tolerated in the classroom and will result in a reduced participation grade.

Students routinely question near the end of the semester how they can best improve their participation grade. The key is attending every class, asking relevant questions to the discussion at hand, answering probative questions asked by the professor and engaging with the professor outside of the classroom. Participation does not require a student to dominate the in-class discussion. A thoughtful or poignant question posed at the right time during class is as beneficial as a student's views on a subject matter. Participation is an important skill that students should work on in their academic lives.

Course Paper Proposal (10%) & Course Paper (30%)

Students will be required to submit a Course Paper. The Course Paper will be on the subject of the student's choosing as it relates to Mediation. Students may write on any of the subjects covered in the readings and lectures OR may research a topic not covered during the lectures. Students are given free rein to discuss any topic that applies to both mediation and legal studies. Students may change their topic after receiving feedback from the course paper proposal.

The Course Paper Proposal will be due February 4th, 2018. The Course Paper proposal will consist of 10% of your final grade. The proposal cannot exceed two pages, double spaced, with a 12-sized Time News Roman font. The student is required to provide, at bare minimum: a) the topic, b) the research question, c) the working thesis of your paper, d) proposed arguments in support of your thesis, e) a proposed bibliography with at least 5 sources that you are planning to use for your paper. These 5 sources should not be sources contained in this syllabus. Students will be expected to sufficiently explain their thesis, arguments and purpose of the paper. Students will be assessed on their understanding of the topic in question, their engagement with the subject matter proposed and their ability to briefly explain their proposed paper to the professor. Students will receive constructive feedback on their proposals to assist them in the writing of their Course Paper.

The Course Paper will be due April 1st, 2018. The Course Paper will consist of 30% of your final grade. The Course Paper cannot exceed fifteen pages, double spaced with a 12-sized Time News Roman font. There is no minimum page requirement for the Course Paper. The Course Paper will be assessed for the student's: 1) understanding of subject matter, 2) the strength of their argument, 3) the organization and coherence of the essay and its arguments, 4) the writing style (spelling, grammar, sentence structure) used in the paper, and 5) the quantity and quality of the bibliography. Students will be expected to have a bibliography exceeding the 5 sources in their course paper proposal.

Final Exam (40%)

This final examination will be a three hour, open book examination with short answer and essay questions. Students will be permitted to bring in copies of their notes, but will not be permitted to bring in copies of the class readings. The final examination will be based on the required texts, in-class lectures and discussion and any further materials distributed throughout the semester. There will be a final exam review class scheduled for the final

lecture. The final examination date will be available online and will take place during the formal examination period

SCHEDULE

JANUARY 7 INTRODUCTION

No readings for the first class.

JANUARY 14 UNDERSTANDING CONFLICT AND THE RISE OF MEDIATION

- Thomas Stipanowich, The International Evolution of Mediation: A Call for Dialogue and Deliberation, 46 Victoria University of Wellington Law Review 1191 (2015)
- Jonathan Silver & Trevor C.W Farrow, Canadian Civil Justice: Relief in Small and Simple Matters in an Age of Efficiency, *Erasmus Law Review*, Vol. 8, No. 4, (2015)

JANUARY 21 NEGOTIATION & NEGOTIATION THEORY

- James K. Sebenius, BATNAs in Negotiation: Common Errors and Three Kinds of ‘No’, *Negotiation Journal*, Volume 33, Issue 2, April 2017, Pages 89–99
- Andrea Kupfer Schneider & Roy J. Lewicki, The Past and Future Challenges of Negotiation Theory, *Ohio State Journal on Dispute Resolution*, Vol. 31, No. 1, 2016

JANUARY 28 THE MEDIATION PROCESS

- Jacqueline Nolan-Haley, Mediation: The "New Arbitration", *Harvard Negotiation Law Review*, Spring 2012, Vol. 17, p61-95. 35p.
- Giulio Zanolla, 5 Mediation Myths Debunked, *Dispute Resolution Journal*, Vol 71, No 4

FEBRUARY 4 EMOTION, JUSTICE AND MEDIATION

Paper Proposal is due

- Cheryl Picard & Janet Siltanen, Exploring the Significance of Emotion for Mediation Practice, *Conflict Resolution Quarterly*, Volume 31, Issue 1, Autumn (Fall) 2013, Pages 31–55
- Joseph P. Stulberg, Mediation and Justice: What Standards Govern?, *Cardozo Journal of Conflict Resolution*, Vol. 6, 2005

FEBRUARY 11 LAWYER’S ROLE IN MEDIATION

- Jacqueline Nolan-Haley, Lawyers, Clients, and Mediation, 73 *Notre Dame L. Rev.* 1369 (1997-1998)
- Dwight Golann, Mediation Advocacy: The Roles of Lawyers in Mediation.

FEBRUARY 18 READING BREAK – NO CLASS

FEBRUARY 25**CULTURE, DIVERSITY AND POWER IMBALANCES IN MEDIATION**

- Nina R. Meierding, The impact of cultural and religious diversity in the divorce mediation process, *Dispute Resolution Quarterly*, Volume 9, Issue 4, Summer 1992, Pages 297–305.
- Chowdhury, Jamila Ahmed, Gender, Power, and Mediation Post Structural Power in Social Antiquity, *Pakistan Journal of Women's Studies Karachi* 15.2 (2008): 101-116.

MARCH 4**LABOUR DISPUTES AND MEDIATION**

- Camille Monahan, Faster, cheaper, and unused: The paradox of grievance mediation in unionized environments, *Conflict Resolution Quarterly*, Volume 25, Issue 4, Summer 2008, Pages 479–496
- Kendall D. Isaac, Resolving Race Discrimination in Employment Disputes Through Mediation: A Win-Win for All Parties, *American Journal of Mediation* Volume 5 2011

MARCH 11**CIVIL LITIGATION & MEDIATION**

- Linda Mulcahy, Can leopards change their spots? An evaluation of the role of lawyers in medical negligence mediation, *International Journal of the Legal Profession*, Vol. 8, No 3, 2001
- Edward A. Dauer, Leonard J. Marcus & Susan M. C. Payne, Prometheus and the Litigators A Mediation Odyssey, *The Journal of Legal Medicine*, 21:159–186

MARCH 18**FAMILY LAW & MEDIATION**

- Bruce Menin, The party of the last part: Ethical and process implications for children in divorce mediation, *Dispute Resolution Quarterly*, Volume 17, Issue 3, Spring 2000, Pages 281–293
- Noel Semple, Mandatory Family Mediation and the Settlement Mission: A Feminist Critique, *Canadian Journal of Women and the Law* Vol 24, Issue, 1

MARCH 25**MEDIATION IN OTHER AREAS OF LAW**

- Howard Zehr, Commentary: Restorative Justice: Beyond Victim-Offender Mediation, *Conflict Resolution Quarterly*, vol. 22. no 1-2, Fall-Winter 2004.
- Shamir, Yona, Kutner, Dan: Alternative Dispute Resolution Approaches and their Application in Water Management: A Focus on Negotiation, Mediation and Consensus Building.
- Giovannucci, Marilou; Largent, Karen, Association of Family and Conciliation Court Guidelines for Child Protection Mediation, *Family Court Review*. Oct2013, Vol. 51 Issue 4, p605-636. 32p

APRIL 1**ETHICAL ISSUES IN MEDIATION – THE FUTURE OF MEDIATION**

Final Paper is due

- **TBD**

APRIL 8**REVIEW CLASS**

No readings for the final class.

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) www.carleton.ca/pmc

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's Academic Integrity Policy can be found at: <http://carleton.ca/studentaffairs/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: carleton.ca/sexual-violence-support

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: students.carleton.ca/course-outline

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>