

Course Outline Template

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| COURSE: | LAWS 3006A – Mediation |
| TERM: | Fall 2023 |
| PREREQUISITES: | 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: Monday from 6:05PM until 8:55PM Room: Please check Carleton Central for current Class Schedule |
| INSTRUCTOR: | Collin Fletcher |
| CONTACT: | Office: Zoom Office Hrs: <i>By Appointment</i> 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

Mediation is a multidisciplinary area of study. One could learn about mediation in gender studies, business, and psychology courses. In this course, we will examine the subject of mediation in the context of the law. Mediation as an alternative to our traditional court 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 roles of the parties, the lawyer, and the mediator in legal mediations. While this course will present a positive view of mediation and the potential it presents to the Canadian legal system, we will examine the

limitations and flaws of mediation. Who stands to benefit from justice becoming privatized?

The class strives to blend together theoretical concepts and ideas, along with the practical understanding of what a mediation of a legal issue involves. In the second half of the course, students will be exposed to several different areas of law and learn about how mediation is utilized in that area of law. Students will not only learn about mediation, but about how several different areas of law operate.

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 is 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 on students to answer questions.

Use of ChatGPT and other AI developed materials will not be permitted in the use of the class. The class has specifically been designed so that all assignments and exams cannot be completed by ChatGPT.

REQUIRED TEXTS

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

EVALUATION

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 (10%) - Ongoing
2. Annotated Course Paper Proposal (20%) – October 16, 2023
3. Course Paper (40%) – December 4, 2023
4. Final Examination (30%) – In Person Examination

All assignments must be typed or word-processed and submitted by email 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, a 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 (10%) - Ongoing

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. Open-ended or probing questions are just as valid a form of participation as analysis.

Attendance will be taken in every class. Perfect attendance is not required. It is fine if a student misses one class during the semester due to personal issues.

Participation is about a constructive dialogue **inside and outside** of the classroom. Students' participation in 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. This is the primary way students will engage with the course. 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 them 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. These instances of engaging outside of the confines of the classroom are just as valid forms of participation as those taking part in the classroom.

A necessary skill that students must obtain during their undergraduate degree is their oral advocacy skills. Students are encouraged to take risks and push themselves academically to speak in class.

The participation grade will be used to assess the quality of the student's engagement with the class. Quantity of discussion does not necessarily mean the 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 high 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 discussions, 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.

Annotated Course Paper Proposal (20%) & Course Paper (40%)

Students will be required to submit a Course Paper and a proposal for that 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 may change their topic after receiving feedback from the course paper proposal. Students are encouraged to think creatively and outside the box. In past years, the students who have refined and interesting thesis statements often succeed.

The Annotated Course Paper proposal will consist of 20% of your final grade and is due on **October 16, 2023**. The proposal cannot exceed five pages, double spaced, with a 12-sized Time News Roman font. The student is required to provide, at a bare minimum: a) the topic, b) the research question, c) the working thesis of your paper, d) proposed arguments in support of your thesis, and e) a proposed bibliography with at least 5 sources that you are planning to use for your paper. Students will be expected to provide an annotated bibliography describing how they found the sources they utilized in the paper proposal and how they will be utilized in their final paper. If students use online sources, they will need to use at least 2 different online databases. The five sources utilized cannot be sources used from the class. 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 consist of 40% of your final grade and will be due on **December 4, 2023**. 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, and sentence structure) used in the paper, and 5) the quantity and quality of the bibliography. Students will be required to use at least three sources from the course in their final paper. Students will additionally need to briefly describe in their bibliography how they went about finding each source they utilized in their final paper.

Final Examination (30%)

There will be an in-person examination that takes place during the regularly scheduled examination period. The final examination will be based on the required texts, in-class lectures and discussions, and any further materials distributed throughout the semester. There will be a

final exam review class scheduled for the final lecture.

All components must be successfully completed in order to get a passing grade.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

A deferred examination or essay assignment, following the same format, may be written upon application to/approval from the Registrar's Office.

Exams are not returned but may be reviewed with me upon request.

Essays will be returned during the exam schedule.

The Assignments (course paper proposal and the course paper) will be marked down one-half letter grade (eg. B to B-) for each day submitted after the due date without an authorized extension from me, subject to the discretion of the professor. Essays must be typed or word-processed and submitted by email. Handwritten papers, computer files, or email attachments will not be accepted. Please retain a photocopy or a secure file copy of the submitted essay. Essays will be submitted by way of an email. All assignments must be original. Prior approval of the instructor must be obtained if it is intended to submit work that has previously or concurrently been submitted for credit in this or another course. Please make careful note of regulations concerning academic integrity referred to above and related instructional offenses as described in the Undergraduate Calendar.

The granting of extensions is determined by the instructor, who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>.

Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

SCHEDULE

- **SEPTEMBER 11** - CONFLICT, LITIGATION AND THE RISE OF MEDIATION
 - Canadian Civil Justice: Relief in Small and Simple Matters in an Age of Efficiency by Jonathan Silver & Trevor C.W. Farrow
 - The International Evolution of Mediation: A Call for Dialogue and Deliberation by Thomas J Stipanowich
- **SEPTEMBER 18** - NEGOTIATION & NEGOTIATION THEORY
 - BATNAs in Negotiation: Common Errors and Three Kinds of “No” by James K. Sebenius
 - Interest-Based Negotiation: A Case Study by Susan R. Quinn, Debbie Bell, John Wells
 - The Past and Future Challenges of Negotiation Theory Andrea Kupfer Schneider and Roy J Lewicki
- **SEPTEMBER 25** - WHAT IS MEDIATION - THE ROLES OF THE MEDIATOR, THE PARTIES, THE LAWYERS
 - Family Mediation Canada Members Code of Professional Conduct
 - Lawyers, Clients, and Mediation by Jacqueline Nolan-Haley
 - Perspectives on the Mediation Process and Its Participants: How and Why People Mediate by Hon. Jack L. Lintner, Lynn T. Jenkins, Joseph M. Junfola, J. Scott Murphy, Michael J. Goldman
- **OCTOBER 2** - EMOTION, JUSTICE, AND OBSTACLES IN MEDIATION
 - Emotions in Mediation: Disputant Perceptions of the Mediator by Joshua Smilovitz
 - Exploring the Significance of Emotion for Mediation Practice by Cheryl Picard, Janet Siltanen
 - MEDIATION AND JUSTICE: WHAT STANDARDS GOVERN? by Joseph B. Stulberg
- **OCTOBER 9** – NO CLASS
- **OCTOBER 16** - DIVERSITY, POWER IMBALANCES AND INTERNATIONAL MEDIATION – **Course Paper Proposal is Due.**
 - Alternative Dispute Resolution Approaches and their Application by Yona Shamir
 - The Impact of Cultural and Religious Diversity in the Divorce Mediation Process by Nina R. Meierding
 - GENDER, POWER AND MEDIATION POST-STRUCTURAL POWER IN SOCIAL ANTIQUITY by Jamila Ahmed Chowdhury
- **OCTOBER 23** - NO CLASS READING BREAK

- **OCTOBER 30 - LABOUR & EMPLOYMENT LAW MEDIATIONS**
 - *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419 (CanLII)
 - Faster, Cheaper, and Unused: The Paradox of Grievance Mediation in Unionized Environments by Camille Monahan
 - RESOLVING RACE DISCRIMINATION IN EMPLOYMENT DISPUTES THROUGH MEDIATION: A WIN-WIN FOR ALL PARTIES by Floyd D. Weatherspoon and Kendall Isaac

- **NOVEMBER 6 - CIVIL LITIGATION & MEDIATION**
 - *Hagerman v. City of Niagara Falls et al.*, 29 O.R. (2d) 609 114 D.L.R. (3d) 184
 - Can leopards change their spots? An evaluation of the role of lawyers in medical negligence mediation by Linda Mulcahy
 - PROMETHEUS AND THE LITIGATORS A MEDIATION ODYSSEY by Edward A. Dauer, LL.B., Leonard J. Marcus, Ph.D., Susan M. C. Payne, Ph.D., M.P.H.

- **NOVEMBER 13 - FAMILY LAW MEDIATIONS**
 - *Rifai v. Green*, 2014 ONSC 1377
 - The Party of the Last Part: Ethical and Process Implications for Children in Divorce Mediation by Bruce Menin
 - Mandatory Family Mediation and the Settlement Mission: A Feminist Critique by Noel Semple

- **NOVEMBER 20 - CHILD PROTECTION MEDIATIONS**
 - *CAS v. JB and GM*, 2020 ONSC 7457
 - ASSOCIATION OF FAMILY AND CONCILIATION COURT GUIDELINES FOR CHILD PROTECTION MEDIATION by Marilou Giovannucci and Karen Largent

- **NOVEMBER 27 - RESTORATIVE JUSTICE & TRENDS IN MEDIATION**
 - *R. v. Bertacco*, 2020 BCSC 1275
 - REFLECTIONS ON THE PAST, PRESENT, AND FUTURE OF RESTORATIVE JUSTICE IN CANADA by Barbara Tomporowski, Manon Buck, Catherine Borgen, and Valarie Binder
 - Restorative Justice: Beyond Victim-Offender Mediation by Howard Zehr

- **DECEMBER 4 - MEDIATION IN THE COURTS - Course Paper is Due**
 - *Canfield v. Brockville Ontario Speedway*, 2018 ONSC 3288
 - *Raichura v Jones*, 2020 ABQB 139
 - *Laliberté v. Monteith*, 2021 ONSC 14

DECEMBER 8 - WRAP UP CLASSES

University and Departmental Policies

DEPARTMENT POLICIES AND REGULATIONS

Please review the following webpage to ensure that your practices meet our Department's expectations, particularly regarding standard departmental protocols and academic integrity requirements: <https://carleton.ca/law/student-experience-resources/>.

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: <https://carleton.ca/registrar/academic-integrity/>.

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

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 accommodation regarding a formally-scheduled final exam, you must complete the Pregnancy Accommodation Form that can be found at:

<https://carleton.ca/equity/contact/form-pregnancy-accommodation/>

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, please go to: <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>

Academic Accommodations for Students with Disabilities

The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

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 to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable).

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 where 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: <https://carleton.ca/equity/sexual-assault-support-services>

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. Read more here:

<https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit:

<https://students.carleton.ca/services/accommodation/>.