

**COURSE:** LAWS 3006B - Mediation

**TERM:** Winter 2017

**PREREQUISITES** LAWS 1000 and 1.0 credit from LAWS 2105, LAWS 2201, LAWS 2202, LAWS 2301, LAWS 2302, LAWS 2501, LAWS 2502, LAWS 2601, BUSI 2601.

**CLASS:** **Day & Time:** Friday, 14:35 to 17:35.  
**Room:** Please check Carleton Central for current room location

**INSTRUCTOR:** Collin Fletcher

**CONTACT:** **Office:** B442 Loeb Building (CI office)  
**Office Hrs:** Friday 17:35PM-19:00PM or by appointment  
**Telephone:** 613-806-3293  
**Email:** [collin.fletcher@carleton.ca](mailto:collin.fletcher@carleton.ca)

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## 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 more details visit the Equity Services website: <http://carleton.ca/equity/>

**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: <http://carleton.ca/equity/>

**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](mailto: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*). **Requests made within two weeks will be reviewed on a case-by-case basis.** After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website ([www.carleton.ca/pmc](http://www.carleton.ca/pmc)) for the deadline to request accommodations for the formally-scheduled exam (*if applicable*).

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You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/>

### **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/>

### **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/>

## **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.

## **EVALUATION**

Standing in a course is determined by the course instructor subject to the approval of the Department and of the

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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 (30%)**

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 & Mock Mediations (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 class 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.

Near the end of the semester, we will have a series of mock mediations where students can voluntarily participate. The mediations will have one mediator, at least two parties and their lawyers. No one will be docked grades if they do not participate in a mock mediation. However, participation in a mock mediation will count towards the participation mark. Students should prepare to take part in an one hour mediation and for each lawyer/party pairing to submit a one page mediation brief to the mediator ahead of the mediation. Sign ups for

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these mediations will take place several weeks before the mediations occur.

## **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 may change their topic after receiving feedback from the course paper proposal.

**The Course Paper Proposal will be due February 9th, 2017.** The Course Paper proposal will consist of 10% of your final grade. The proposal cannot exceed two pages, double space, 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. 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 6th, 2017.** 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.

## **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

## **Notes about Assessment and Evaluation**

**All components must be completed in order to get a passing grade--Failure to complete any portion of the required course assessment will result in a final grade of F.**

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 during office hours the following term. Essays will be returned at the final exam at the end of term. They may also be picked up from me during office hours or returned by post where a stamped self-addressed envelope is provided.

Late essays will be marked down one-half letter grade (eg. B to B-) for each day submitted after the due date without authorized extension from me. Essays must be typed or word-processed and submitted in hard copy. 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 should be submitted in person to me in class on the due date,

during my office hours at Kroeger College or deposited in the essay drop box located outside the Law Department General Office, C473 Loeb Building, by 4:00 pm (the Department of Law assumes no responsibility for essays or assignments submitted in an irregular manner). 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 offences as described in the Undergraduate Calendar.

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.

## SCHEDULE

As noted, all readings will be posted on CULearn. If students are having difficulty accessing these readings, they should contact the professor immediately. In addition to the readings below, discussion pieces will be provided a week prior to class.

## JANUARY 12th

## INTRODUCTION & UNDERSTANDING CONFLICT

- 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 19th**

## NO CLASS

JANUARY 26th

## 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

## FEBRUARY 2ND

## 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 9TH**

## EMOTION, JUSTICE AND MEDIATION

**Course paper proposal is due February 9th, 2018**

- 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 16TH

## READING BREAK - NO CLASS

FEBRUARY 23RD

## 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.
- **MOCK MEDIATION #1**

**MARCH 2ND****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.
- **MOCK MEDIATION #2**

**MARCH 9TH****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
- **MOCK MEDIATION #3**

**MARCH 16TH****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
- **MOCK MEDIATION #4**

**MARCH 23****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
- **MOCK MEDIATION #5**

**MARCH 30TH****EASTER FRIDAY - NO CLASS****APRIL 6TH****MEDIATION IN THE CRIMINAL LAW CONTEXT****Course paper proposal is due April 6th, 2018**

- Howard Zehr, Commentary: Restorative Justice: Beyond Victim-Offender Mediation, *Conflict Resolution Quarterly*, vol. 22. no 1-2, Fall-Winter 2004
- TBD
- **MOCK MEDIATION #6**

**APRIL 11TH****REVIEW CLASS**

No readings for the final class.