

ADVANCED NEGOTIATION AND MEDIATION (LL300)

Course duration: 54 hours lecture and class time (Over three weeks)

Summer School Programme Area: Law

LSE Teaching Department: Department of Law

Lead Faculty: Professor Linda Mulcahy (Dept. of Law)

Pre-requisites: Introduction to legal methods or equivalent.

Course Introduction:

Welcome to the course! The course convenor is Linda Mulcahy and she can be contacted by email (l.mulcahy@lse.ac.uk). Her office is room 7.15 of the New Academic Building.

This course introduces students to a range of issues surrounding the dynamics of disputes and to advanced models of negotiation and mediation which will assist in their resolution. The focus of the course, which draws on insights from a range of academic disciplines including law, anthropology, psychology and economics, is on looking at contemporary dispute resolution across a range of conflict settings including commercial, family, community and personal injury. An important feature of the course is the way in which it examines the interface between theory and practice. Academic staff will draw on their own research in the field of dispute resolution and will also be joined by a practitioner in identifying a range of dispute resolution strategies and exposing students to the everyday realities of negotiation and mediation.

Teaching will be delivered through interactive lectures and small group classes. You will normally be asked to read one academic article and one book chapter in advance of each class.

At the end of the course, students should be able to:

- Critically evaluate on-going developments in law relating to alternative dispute resolution;
- Discuss the socio-legal dynamics of disputes and the reasons why people embark on and pursue grievances;
- Understand the distinctions between different types of dispute resolution processes;
- Appreciate how negotiation and mediation theories offer insights to the analysis and resolution of disputes; and
- Explain how negotiation and mediation theories can be used in practical situations.

The course is taught at 300 level which means that it is equivalent to the third year of undergraduate academic study in a UK university.

What do we expect of you?

- That you attend lectures and classes
- That you download the set texts and read them in advance of class
- That you bring the readings to the class

About the core course team:

Professor Linda Mulcahy

Professor Linda Mulcahy joined the Law Department in 2010. She has degrees in law, sociology and art history. Her research focuses on disputes and their resolution and she has researched disputes in a range of different settings including commercial, matrimonial, community and personal injury. Linda has received a number of grants from the Leverhulme Trust, Economic and Social Research Council, Arts and Humanities Research Council, Ministry of Justice, Department of Health, Nuffield Foundation and Lotteries Fund in support of her work. Her research on disputes between doctors and patients has resulted in a number of publications and in her appointment as an expert consultant on several NHS bodies including the Neale, Kerr Haslam and Ayling Inquiries, the Health Care Commission, The Commission for the Regulation of Healthcare Professions as well as The Public Law Project and Judicial Studies Board. More recently her interest in dispute resolution has led her to develop an interest in the relationship between the design of the law courts and due process. A former chair of the UK Socio-legal Studies Association and editor of *The International Journal of Social and Legal Studies*, Linda's work has a strong interdisciplinary flavour. Linda is the winner of the 2017 annual Socio-Legal Studies Association prize for her contribution to the discipline.

Henrietta Zeffert

Henrietta is a lecturer at the University of Leeds, having completed her PhD at the LSE. She is a qualified barrister and solicitor of the Supreme Court of Victoria and the High Court of Australia. She studied arts and laws at the University of Melbourne and then practised law at Ashurst before completing the Bachelor of Civil Law at the University of Oxford. Following this, Henrietta worked as associate to the Honourable Justice Susan Crennan AO, High Court of Australia. Henrietta also teaches in the Melbourne Law School juris doctor program in Alternative Dispute Resolution and Legal Method and Reasoning. Henrietta's research interest is law in everyday life.

2

Books for the course

Essential Reading:

Students must purchase the following books in advance of the course:

Henry Brown and Arthur Marriot, (2012) *ADR: Principles and Practice*, London: Sweet and Maxwell. This is written by practitioners but also makes reference to a number of seminal academic studies. It provides a good framework within which to position the more in-depth arguments contained in the academic articles set each week.

Hazel Genn, (2009) *Judging Civil Justice* (The Hamlyn Lectures) Cambridge, Cambridge University Press. This book provides a really good overview of civil justice reforms across developed legal systems and will alert you to many of the academic and policy debates which have surrounded reform.

Roger Fisher and William Ury, (2012) *Getting to Yes: Negotiating an Agreement Without Giving In*, Random House. This is a classic text in the field and very simple to read. You can purchase copies very cheaply on Amazon and for present purposes it does not matter if you buy an old edition. This book will also help you when we come to study mediation which is often described as a form of facilitated negotiation.

Compulsory reading for class:

Felstiner W., R. Abel, & A. Sarat (1980-1) 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming etc.', *Law and Society Review*, Vol 15, pp 631-654.

Chapter Twenty-One: Introduction to dispute resolution psychology" Henry Brown and Arthur Marriot, (2012) *ADR: Principles and Practice*, London: Sweet and Maxwell

"Chapter Two: The Dispute Resolution Toolkit: A Process Overview" *ADR Principles and Practice*, Henry Brown and Arthur Marriot, London: Sweet and Maxwell.

Menkel-Meadow, C., (2015) Mediation, Arbitration, and Alternative Dispute Resolution (ADR) *International Encyclopedia of the Social and Behavioral Sciences*, Elsevier Ltd. 2015 , [UC Irvine School of Law Research Paper No. 2015-59](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2608140) accessed at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2608140

Beron, B., Litigation Risk management and ADR <http://litigationriskmanagement.com/wp-content/uploads/2014/01/Litigation-Risk-Management-and-ADR.pdf>

Galanter, Marc (1974) 'Why the Haves Come out Ahead: Speculations on the Limits of Legal Change' 9 *Law and Society Review* p.95 et seq. A version of this paper is also available from the author's website at:

http://marcgalanter.net/Documents/adjudication_litigation.htm

David Luban, 1994-5, Settlements and the Erosion of the Public Realm, 83 *Georgetown LJ* 2619.

"Chapter Four: Negotiation" Henry Brown and Arthur Marriot, (2012) *ADR: Principles and Practice*, London: Sweet and Maxwell

De Girolamo, D., "The Negotiation Process: Exploring Negotiator Moves Through a Processual Framework" (2013) 28 *Ohio State Journal on Dispute Resolution* 353.

Roger Fisher and William Ury (2012) *Getting to Yes: Negotiating an Agreement Without Giving In* by Random House

Mnookin, R., 1993, "Why negotiations fail: An exploration of barriers to the resolution of conflict" *Ohio State Journal of Dispute Resolution*, Vol 8(2) pp 235.

Chapter Nine: Mediation – Practice Overview" Henry Brown and Arthur Marriot, (2012) *ADR: Principles and Practice*, London: Sweet and Maxwell

Chapter Sixteen: Mediator Attributes, Skills and Roles" Henry Brown and Arthur Marriot, (2012) *ADR: Principles and Practice*, London: Sweet and Maxwell

Bush, R., 1996 "What do we need a mediator for? Mediation's value added for negotiators' *Ohio State Journal on Dispute Resolution*, Vol 12(1) pp 1-36.

Riskin, Leonard, "Understanding Mediators' orientations, strategies and techniques: A grid for the perplexed' 1 *Harvard Negotiation Law Review*, 1996, pp7-51. This article is available through the LSE electronic library.

Stulberg, Joseph "Facilitative versus evaluative mediation orientations: Piercing the Gridlock" 24 *Florida State University Law Review*, 1996-1997, pp 985-1006. This article is available through the LSE electronic library.

Paquin, G., and Harvey, Linda "Therapeutic Jurisprudence, Transformative mediation and narrative mediation: A natural connection, 3 *Florida Coastal Law Review*, 2001-2002, p167. This article is available through the LSE electronic library.

Love, Lela, "The top ten reasons why mediators should not evaluate" 24 *Florida State University Law Review*, 1996-1997 pp937-947. This article is available through the LSE electronic library.

Chapter Twenty four: Ethics and Values, Fairness and Power"" Henry Brown and Arthur Marriot, (2012) *ADR: Principles and Practice*, London: Sweet and Maxwell

Grillo, T., (1991) 'The Mediation Alternative: Process Dangers for Women' 100 *Yale Law Journal* 1545-1610.

Mulcahy, L., (2001) 'The Possibilities and Desirability of Mediator Neutrality – Towards an Ethics of Partiality?' *Journal of Social and Legal Studies*, Vol. 10(4) pp.505-527.

Non-compulsory purchase

The following book may also be of interest as background reading. Simon Roberts and Michael Palmer's 2005 (second edition) *Dispute Processes: ADR and the Primary Forms of Dispute Resolution*, Cambridge, Cambridge University Press. This is the most theoretical book in this list but provides extracts from many of the seminal works in the field that we will be studying. It adopts a very inter-disciplinary approach.

Electronic Resources:

Updates and other announcements will be posted on the course Moodle page. This is also where you will find compulsory readings which are not readily available through LSE e-journals or in the course collection. The PowerPoint presentation for lectures will be loaded on to Moodle prior to the seminar so that you can make notes on a printed version should you wish.

The majority of articles which have been set for your course are available via the LSE e-journals system which can be accessed via the library website.

Useful websites:

- ACAS: <http://www.acas.org.uk/index.aspx?articleid=1461>
- ADR Now: http://www.asauk.org.uk/go/Section_15.html
- Centre for Effective Dispute Resolution: <http://www.cedr.com/>
- Chartered Institute Arbitrators: <http://www.ciarb.org>
- Civil Justice Council: <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc>
- International Chamber of Commerce: <http://www.iccwbo.org/>
- Judicial Statistics: <https://www.gov.uk/government/publications/judicial-and-court-statistics-annual>
- Marc Galanter: <http://www.marcgalanter.net/index.htm>
- National Family Mediation: <http://www.nfm.org.uk/>

5

Assessment:

Formative Assessment

The formative assessment is designed to give you feedback which will help you to understand what is required of you in the summative assessments. It will not count towards your final mark. Students will be asked to write an essay plan and attend a workshop where they present and discuss their plan.

Students should come to class prepared to discuss the following essay question:

“The disputes that reach the courts are largely unrepresentative of the justiciable issues which arise in everyday life”. Discuss.

The essay plan should be one page (A4) (12pt). The essay plan should take the form of a list of bullet points and headings.

Please note that when you are asked to ‘discuss’ you should consider arguments for and against this proposition. When answering questions we expect students to refer to relevant readings they have been assigned for the course.

In preparing the essay plan it may be useful for you to consider the following:

1. What key terms need to be explained?

2. What materials have you have studied on the course that are relevant to this essay topic?
3. What information and arguments from these materials is it important for you to summarise for your essay?
4. How do you plan to order your arguments and counter arguments?
5. What is there to discuss (argue from different positions)?

Summative Assessment

Assessment is by one 2,000 word essay (50%) and one examination (50%). Both these assessments will count towards the final mark that you receive.

Essay

The title for of your essay is:

There are so many factors that one has to take into account when considering the most appropriate dispute resolution forum for a client, that knowing the law is only a very small part of the puzzle to be solved. Discuss.

Additional guidance on what we are looking for in this assessment will be given in lectures in week one. You will have plenty of time to ask questions about the essay then.

You can use any recognised referencing system you choose, but you must be consistent throughout the text. The preferred referencing style is Harvard. For guidance on this system of referencing see:

<http://www.library.dmu.ac.uk/Images/Selfstudy/Harvard.pdf>

The essay should be submitted to the class tutor on Thursday 28th June, grades and feedback will be distributed on Monday 2nd July.

Exam

Students are required to sit a two-hour examination at the end of the course (Friday 6th July). You will be informed of the exact time and location of your exam during the programme.

Last year's exam paper and a mock exam paper can be found on the Moodle site. You will also have one revision lecture and one revision class which are specifically geared towards preparation for the exam.

Overview of the teaching programme:

Topic	Session
The dynamics of disputes: What do you need to know to understand a dispute?	Day 1 Three hour interactive lecture One seminar
What forms of dispute resolution are available and how can they be distinguished?	Day 2 Three hour interactive lecture

	One seminar
Litigation, the trial and shifts towards negotiated settlement and mediation	Day 3 Three hour interactive lecture One seminar
Negotiating risk: How to determine the best choice of resolution system for your client	Day 4 Three hour interactive lecture One seminar
Theories of negotiation	Day 5 Three hour interactive lecture One seminar
Operationalising Theory: Getting to yes	Day 6 Three hour interactive lecture One seminar
Mediation: A form of facilitated negotiation	Day 7 Three hour interactive lecture One seminar
Anatomy of a mediation	Day 8 Three hour interactive lecture One seminar
Evaluative and transformative mediation	Day 9 Three hour interactive lecture One seminar
Critiques of mediation	Day 10 Three hour interactive lecture One seminar
The dispute resolution challenge	Day 11 Three hour interactive lecture One seminar
Overview and revision	Day 12 Three hour interactive lecture One seminar
Exam	Week Three: Friday



Credit Transfer: If you are hoping to earn credit by taking this course, please ensure that you confirm it is eligible for credit transfer well in advance of the start date. Please discuss this directly with your home institution or Study Abroad Advisor.

As a guide, our LSE Summer School courses are typically eligible for three or four credits within the US system and 7.5 ECTS in Europe. Different institutions and countries can, and will, vary. You will receive a digital transcript and a printed certificate following your successful completion of the course in order to make arrangements for transfer of credit.

If you have any queries, please direct them to summer.school@lse.ac.uk