

# *Managing Conflict Course Syllabus*

## **MEDIATION AND OTHER METHODS TO FOSTER DEMOCRATIC DIALOGUE**

Central European University, Budapest 2003

Benjamin Cardozo School of Law and Hamline University School of Law

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### **Week 1**

July 7, 2003, Monday

BREAKS WILL BE SCHEDULED DURING EACH CLASS PERIOD.

9:00-12:15     **Introduction and Course Overview**  
                  **Principles of Dispute Settlement**

Lecture and general discussion examining assumptions about dispute settlement, analyzing various dispute settlement methodologies, and exploring the role of mediation within that context.

**The Voluntary Resolution of Disputes**

Group exercise designed to illuminate the principles and dynamics underlying negotiation of differences. The nature of the outcome, the importance of structuring the process, the role of information, preferences and priorities, the rationale of establishing trade-offs, the difference between interests and positions, and the facilitators and inhibitors of consensus-building will be stressed in the analysis.

12:15-1:30     LUNCH

1:30-2:10     **The Shift from Communism Towards the Rule of Law in Central and Eastern Europe: a Role for Mediation**

*Professor Csilla Kollonay Lehoczky*

2:15-3:00     Library Tour

3:00-3:30     Computer Lab Tour (for 20-25 students)

A tour of and introduction to services and facilities available in the library and computer lab.

6:30           Welcoming Cocktail Party at Kerepesi Dorm

Reading:     Getting to Yes, Fisher, Ury and Patton  
                  Taking Charge/Managing Conflict, Stulberg, pp. 5-27, Chapters 2 and 3

Supplemental Reader for Day 1:

*Images of Justice*, Love, 1 PEPPERDINE DISPUTE RES. J. 29 (2000), p. 1

*Dispute Resolution Processes*, from CONDUCTING THE MEDIATOR SKILL-BUILDING TRAINING PROGRAM, Stulberg and Love (Michigan Supreme Court 1997), p. 5

*Constructive Responses to Conflict in Emerging Democracies*, Shonholtz, PARTNERS FOR DEMOCRATIC CHANGE/UNDP CONFERENCE PAPER (2-14-01), p. 9

*Intervenor Orientations & Related Tasks and Outcomes*, chart from *Mapping Mediation*, Kovach and Love, 3 HARV. NEG. L. REV. 71, 107 (1998), p. 18  
Process Continuum (chart), p. 19

Assignment:   **Cross-cultural interviews.**

Working in groups of 4 or more, with students from as many different countries as possible, students will discuss and determine the most important similarities and differences between the national negotiating styles and other ways of resolving conflicts of the countries and cultures represented in the group. Each

student should write a short (no more than 2 typed pages, double-spaced) summary describing lessons learned from this conversation. [The written assignment is due in class on Friday, July 11, 2003.](#)

July 8, 2003, Tuesday

9:00-12:15 **The Mediator at Work**

A demonstration of how a mediator works to resolve a dispute.

**Overview of Mediation**

An examination of the various functions the mediator fulfills and the types of traits/interpersonal skills required of the persons discharging these functions.

**Beginning the Mediation Conference**

An examination of the impact of different seating arrangements. Participants will examine the components of an opening statement. Interpersonal skills with regard to eye contact, language use, and creating a structured but comfortable environment will be the focus of the analysis that follows.

12:15-1:30 LUNCH

1:30-2:10 **Collaborative Processes in Eastern and Central Eastern European Countries**

*Professor Kinga Göncz*

2:30-3:00 Computer Lab Tour (for 20-25 students)

Reading: Taking Charge/Managing Conflict, Stulberg, pp. 31-68, Chapters 4, 5 and 6  
Supplemental Reader for day 2:

*Applying the Hawaiian Mediation Model to Disputes and Conflicts*, Barkai, p. 20  
*Mediator Orientations, Strategies and Techniques*, Riskin, ALTERNATIVES (1994), p. 24

*Applying Collaborative Processes in Former Communist Countries*, Göncz and Shonholtz, IAP2 (First Quarter 2000), p. 28

July 9, 2003, Wednesday

9:00-12:15 **Accumulating Information and Listening Constructively**

Demonstration and analysis focusing on fact-gathering techniques, note-taking skills, and questioning skills. Interactive exercises will illuminate the task of translating hostile and adversarial communication into building blocks of collaborative dialogue.

**Framing Interests and Issues to Construct the Agenda**

Lecture and discussion examining the mediator's role in, and responsibility for, identifying, framing and ordering the issues in dispute. Exercises will follow.

12:15-1:30 LUNCH

1:30-2:10 **Exploration of Dynamics and Issues in a Multi-Party, Multi-Ethnic Dispute**

A case study focusing on managing diverse components of multi-party disputes, from pre-negotiation arrangements through post-settlement closure.

*Professor Kinga Göncz*

Reading: Taking Charge/Managing Conflict, Stulberg, pp. 69-94, chapters 7 and 8  
Supplemental Reader for Day 3:

*Training Mediators to Listen*, Love, 38 FAMILY AND CONCILIATION COURTS REVIEW 27 (2000), p. 32

*Constructing Understanding, Agendas, and Agreements: The Building Blocks*, Appendix A from *Training Mediators to Listen*, p. 40

July 10, 2003, Thursday

9:00-1:10 **Dealing Effectively with Diversity**

Discussion, analysis and exercises focusing on interpersonal and communication skills critical to facilitating dialogue in contexts in which issues of personal, cultural, gender and ethnic diversity are pervasive.

2:30 TOUR OF PARLIAMENT

Reading: Supplemental Reader for day 4:

*Mediation as Parallel Seminars: Lessons from the Student Takeover of Columbia University's Hamilton Hall*, Liebman, 16 NEGOTIATION JOURNAL 157 (April 2000), p. 41

*Intercultural Communication and the Organizing Facets of Culture*, Dodd, DYNAMICS OF INTERCULTURAL COMMUNICATION, 36-45 (Brown and Benchmark 1987), p. 55

*Managing Differences*, from MEDIATION SKILLS TRAINING MANUAL (Mediation Center for Dispute Resolution 2000), p. 65

*Ruminations on the 'Culture' of Law: Recognizing an Inevitable Influence on the Evolution of Dispute Resolution Alternatives*, Coben, Volume 2, No. 1 JOURNAL OF ALTERNATIVE DISPUTE RESOLUTION IN EMPLOYMENT 4 (Spring 2000), p. 70

July 11, 2003, Friday

9:00-1:10 **Considerations and Strategies in Dealing with Complex, Multi-Ethnic Cases**

Professors will "accompany" participants through a conflict analysis to determine the propriety and nature of a mediation intervention in a multi-party, multi-ethnic community conflict. Elements of the analysis will include: party identification; ripeness for intervention; mediator qualifications relevant for effective service; and pre-dispute entry issues and responsibilities. In small groups, participants will analyze a case study to develop performance skills for conducting a multiparty mediation. Elements of the analysis will include: structuring the sessions, capitalizing on role of advocates and spokespersons, planning considerations when cultural diversity is present, and using translators effectively.

**An Exploration of Justice and Dispute Resolution Processes: Qiu Ju** (a movie) (approximately 100 min.)

Reading: Supplemental Reader for Day 5:

*Ethnic Minorities in Hungary: Democracy and Conflict Resolution*, Göncz and Gesko. 552 ANNALS OF THE AM. ACADEMY OF POL. AND SOC. SCI. 28 (July 1997), p. 73

*A Tale of Two Cities*, Love and McDonald, DISPUTE RESOLUTION MAGAZINE (Fall 1997), p. 79

*Multi-Party Public Policy Mediation*, Susskind, DISPUTE RESOLUTION MAGAZINE (Fall 1997), p. 82

Assignment: In light of *Qiu Ju*, write an analysis of the meaning of justice as perceived both by you and by Qiu Ju. Did either mediation or litigation help secure a "just" outcome? Why or why not? **The written assignment is due in class on Tuesday, July 15.** (maximum of 500 words/approximately 2 typewritten pages, double-spaced and using standard fonts and margins).

July 12 and 13, 2003, Saturday and Sunday

No Classes

July 13, 2003, Sunday

10:00-4:00 BOAT TRIP TO SZENTENDRE (optional)

## **Week 2**

July 14, 2003, Monday

9:00-1:10

### **Mediator Strategies for Generating Settlement**

Lecture, discussion, and exercises examining the rationale of various settlement strategies that a mediator can use to move the parties towards agreement. Analysis will highlight persuasive techniques for moving parties from impasse to settlement.

### **Meeting Separately with the Parties**

Examination of the purposes and strategies of meeting in caucus sessions with the parties. Participants will assume either the mediator's or a party's role and conduct a caucus. Analysis will follow.

Reading: Taking Charge/Managing Conflict, Stulberg, pp. 95-122, chapters 9 and 10.

July 15, 2003, Tuesday

9:00-1:10

### **Co-Mediation Orientation**

Discussion and analysis of strengths and weaknesses of a co-mediation approach and the principles guiding the effective execution of team mediation. Practice will follow.

### **Facilitation Skills and Techniques to Foster Constructive Dialogue**

An examination of the relationship between facilitation and mediation and of the tasks and tools used by facilitators. Practice will follow.

Reading: Supplemental Reader for day 7:

*Practice Guidelines for Co-Mediation: Making Certain That "Two Heads Are Better Than One"*, Love and Stulberg, 13 *MEDIATION QUARTERLY* 179 (Spring 1996), p. 86

*Meeting Facilitation*, Barkai, p. 92

2:30

TOUR OF COURTS

July 16, 2003, Wednesday

9:00-1:10

### **Bringing Closure to the Session**

Discussion and exercises regarding the procedure for and components of the construction of a mediation agreement. Strategies for effectively closing a session will be explored and practiced.

### **Writing an Effective Agreement**

Discussion and exercises regarding what should or should not be committed to the written agreement. Particular attention will be focused on format, language, "traps" to avoid, and other principles of good drafting.

Reading: Taking Charge/Managing Conflict, Stulberg, pp. 123-133, chapter 11

Supplemental Reader for day 8:

*The Mediating Future*, Shonholtz, 552 *ANNALS OF THE AM. ACADEMY OF POL. AND SOC. SCI.* 139 (1997), p. 108

July 17, 2003, Thursday

9:00-1:10

### **Ethics in Mediation**

Discussion and exercises focusing attention on ethical dilemmas faced by mediators, particularly challenges to a mediator's impartiality, and the potential for abuse of discretion and power.

### **Mediation Review**

A critical review of a mediation session.

### **Building A Career in Dispute Resolution**

Working Lunch (optional): informal discussion and advice regarding study and business-building opportunities in the field of conflict resolution.

Reading: Taking Charge/Managing Conflict, Stulberg, pp. 137-168, chapter 12 and conclusion  
 Supplemental Reader for day 9:  
*Model Standards of Conduct for Mediators* (1994), p. 115  
*Uniform Mediation Act Executive Summary and Text* (as approved and adopted by the National Conference of Commissioners on Uniform State Laws and the American Bar Association); and *comments in opposition to the UMA by the International Academy of Mediators* (as reported in ADRWorld.com, November 6, 2001), p. 121  
*Misrepresentation in Mediation: Efficacy, Expectations, and Ethical Norms*, Coben, Volume 2, No. 3 JOURNAL OF ALTERNATIVE DISPUTE RESOLUTION IN EMPLOYMENT 4 (Fall 2000), p. 138  
*Mediation's Dirty Little Secret: Straight Talk About Mediator Manipulation and Deception*, Coben, Volume 2, No. 4, JOURNAL OF ALTERNATIVE DISPUTE RESOLUTION IN EMPLOYMENT 4 (Winter 2000), p. 142  
Recommended but not required  
*CPR Georgetown Commission on Ethics and Standards in ADR, Rule 4.5.4 (Conflict of Interest)* (April 1999), p. 146

July 18, 2003, Friday

9:00-1:10

**Mediation Simulations**

Participants will conduct a complete mediation conference, beginning with the opening statement and concluding with the written agreement. Both participants and professors will provide feedback to the mediator. Analysis will follow completion of each simulation.

**Reflections and Closure**

2:30-4:30

Final paper. Students will write an in-class, open-book analysis of their final mediation simulation in which they served as the mediator and respond to other question(s).

Preparation:

Review mediator training material.

**Week 3**

<b>Monday, 21<sup>st</sup> of July</b>		
<b>Session no.</b>		
<b>1</b>	<b>Teachers' Names</b>	Adler, Kollonay
	<b>Topic/Title</b>	Introduction to the course
	<b>Rationale/ Objectives/ Summary</b>	Participants and lecturers familiarize themselves with each other and the subject to be covered
<b>2</b>	<b>Teachers' Names</b>	Adler, <b>Kollonay</b>
	<b>Topic/Title</b>	Specificities of industrial conflicts in the transitional democracies of the CEE countries – the role of industrial conflicts and conflict resolution in the post-authoritarian states
	<b>Rationale/ Objectives/ Summary</b>	Raise awareness of historic antecedents and the cultural marks of the collectivist society.
	<b>Reading and/or writing Assignments</b>	<b>Vol. I</b> : M. McAuley: Labour Disputes in Soviet Russia 1957-1965, L.Trócsányi: Settlement of Labour Disputes
<b>3</b>	<b>Teachers' Names</b>	<b>Adler</b> , Kollonay
	<b>Topic/Title</b>	The Catalogue of the Methods of Extrajudicial Dispute Settlement
	<b>Rationale/ Objectives/ Summary</b>	Clarification and increasing knowledge on similarities and differences between family, ethnic and residential conflicts on the one hand and labour disputes on the other.
	<b>Reading and/or writing Assignments</b>	<b>Vol. I.:</b> A. Goldman: Alternative Judicial and Extrajudicial Solutions for Labour Conflicts
<b>4-5.</b>	<b>Teachers' Names</b>	<b>Adler, Kollonay</b>
	<b>Topic/Title</b>	Cultural variables in negotiation and conflict resolution
	<b>Rationale/ Objectives/ Summary</b>	Knowledge and awareness on Comparison between general and special (national situation).
	<b>Reading and/or writing Assignments</b>	<b>Vol. I.:</b> Alvin Goldman: The Effect of Cultural Variables upon Negotiated Outcomes, G. and R. Caplan: Arab and Jew in Jerusalem. (Bargaining in the Marketplace, Bargaining in the Tax Conflict.)
<b>Tuesday, 22<sup>nd</sup> of July</b>		
<b>6.</b>	<b>Teachers' Names</b>	Adler, Kollonay, <b>Weiss</b>
	<b>Topic/Title</b>	Special features of labour relations and labour dispute resolution in comparison to other frequent conflicts, with particular regard to "weak party relationships".
	<b>Rationale/ Objectives/ Summary</b>	Increasing awareness and knowledge about the importance of peaceful industrial relations as well as on the own systems with particular regards to the interrelationship between industrial relations and conflicts and their resolution and other (residential, ethnic, family) conflicts and their resolution.
	<b>Reading and/or writing Assignments</b>	<b>Vol. I.:</b> T.Hanami – R. Blanpain: Introductory Remarks and a Comparative Overview to "Industrial Conflict Resolution in Market Economies".



<b>7-8.</b>	<b>Teachers' Names</b>	Adler, Kollonay, <b>Weiss</b>
	<b>Topic/Title</b>	Preventing and early settling of industrial conflicts: negotiating type industrial relations. The German model of participatory and co-operative industrial relations.
	<b>Reading and/or writing Assignments</b>	<b>Vol. II.:</b> M. Weiss: Industrial Conflict Resolution – Germany. (Comparative Labor Law Journal)
<b>9-10.</b>	<b>Teachers' Names</b>	<b>Adler, Kollonay, Weiss</b>
	<b>Topic/Title</b>	State/Third party intervention into industrial conflicts. General issues; intervention by courts and administrative tribunals
	<b>Reading and/or writing Assignments</b>	<b>Vol. II.:</b> ADR offerings by the Northern District of California, United States District Court. M. Weiss: The Role of Neutrals in the Resolution of Interest Disputes in The Federal Republic of Germany.
<b><i>Wednesday, 23<sup>rd</sup> of July</i></b>		
<b>11</b>	<b>Teachers' Names</b>	Adler, <b>Kollonay, Weiss</b>
	<b>Topic/Titles</b>	The Hungarian system of alternative dispute settlement.
	<b>Reading and/or writing Assignments</b>	Home assignment: Short presentation of third party participation in conflict resolution (except commercial arbitration) in the home country with special regard to state involvement and to industrial conflicts. Read: <b>Vol. I.:</b> Gulyas-Lado: Labour Mediation and Arbitration Service, Hungary
<b>12-13</b>	<b>Teachers' Names</b>	Adler, Kollonay, Weiss. – Laszlo Herczog (undersecretary of state in charge of – among others – industrial relations, conflicts and dispute resolution in the last 10-12 years)
	<b>Topic/Title</b>	Alternative dispute resolution in Hungary – the background of the regulation and a focus on the possibilities and limits of state involvement
	<b>Rationale/ Objectives/ Summary</b>	Introduction to the background and experience of an operating institution in the field of alternative conflict resolution.
	<b>Reading and/or writing Assignments</b>	<b>Vol. I.</b> Gulyas-Lado: Labour Mediation and Arbitration Service, Hungary.
<b>14-15</b>	<b>Teachers' Names</b>	Adler, Kollonay, <b>Weiss</b>
	<b>Topic/Title</b>	Forms and methods of state/third party intervention and protection of public interest. (The German Case.)
	<b>Rationale/ Objectives/ Summary</b>	Understanding and analysing the possible forms, significance and limits of state involvement.
	<b>Reading and/or writing Assignments</b>	<b>Vol. I.:</b> M. Weiss: Neutral and Public Interests in Resolving Disputes in Germany

<b>Thursday, 24<sup>th</sup> of July</b>		
<b>16</b>	<b>Teachers' Names</b>	<b>Adler, Kollonay, Weiss</b>
	<b>Topic/Title</b>	Hard balance – Mediation and arbitration by courts in Israel. Mediation techniques applicable by courts.
	<b>Reading and/or writing Assignments</b>	<b>Vol.II.:</b> General Strike in Israel. December, 1997. Selected Newspaper Articles from Ha'aretz Daily Newspaper and The Jerusalem Post.
<b>17</b>	<b>Teachers' Names</b>	<b>Adler, Kollonay, Weiss</b>
	<b>Topic/Title</b>	The "multi-door courthouse".
	<b>Reading and/or writing Assignments</b>	<b>Vol.II.:</b> Regulations, 5539. 10 August 1993. The State of Israel. Courts Regulations (Mediation) 5753 (Unofficial translation.)
<b>18</b>	<b>Teachers' Names</b>	Adler, Kollonay, <b>Weiss</b>
	<b>Topic/Title</b>	ADR in industrial disputes in the European Union.
	<b>Reading and/or writing Assignments</b>	<b>Vol. II.:</b> F. V. Dal-Ré: Synthesis Report on Conciliation, Mediation and Arbitration in the European Union Countries.
<b>19-20</b>	<b>Teachers' Names</b>	Adler, <b>Kollonay, Weiss</b>
	<b>Topic/Title</b>	History and legal status of labour arbitration in the US – the Steelworkers' Trilogy, the Gardner-Denver and the Gilmer case
	<b>Rationale/ Objectives/ Summary</b>	Overview of the legal position of the private and public arbitration decisions, the need for compulsory arbitration.
	<b>Reading and/or writing Assignments</b>	<b>Vol. II.:</b> J.G. Getman-J.D. Blackburn: Legal Aspects of Labor Arbitration; Alexander v. Gardner-Denver Co. (from Elkouri & Elkouri)
<b>Friday, 25<sup>th</sup> of July</b>		
<b>21</b>	<b>Teachers' Names</b>	Adler, <b>Kollonay, Weiss</b>
	<b>Topic/Title</b>	The Arbitrator – Qualification requirements, selection of arbitrators, the powers of arbitrators in the arbitration process.
	<b>Reading and/or writing Assignments</b>	U.S.S.C. Statements Regarding Arbitral Consideration of External Law. (from Elkouri & Elkouri).
<b>22-23</b>	<b>Teachers' Names</b>	<b>Adler, Kollonay, Weiss</b>
	<b>Topic/Title</b>	Arbitration in statutory rights. – Protection of the weak party in the arbitration process. Fairness and due process in labour arbitration.
	<b>Reading and/or writing Assignments</b>	<b>Vol.II.:</b> A Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising Out of the Employment Relationship (A Protocol by the Task Force on ADR in Emplmt.); A. M. Zack: Bringing Fairness and Due Process to Employment Arbitration
<b>24</b>	<b>Teachers' Names</b>	Adler, Kollonay, Weiss
	<b>Topic/Title</b>	Summary of labour dispute resolutions and labour arbitration