

UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet:	
Course title:	Mediation and Negotiation (Week 2)

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester

Vrsta predmeta / Course type

Univerzitetna koda predmeta / University course code:

Predavanja Lectures	Seminar Seminar	Vaje Tutorial	Klinične vaje Work	Druge oblike Other forms	Samost. delo Individ. work	ECTS
8						

Nosilec predmeta / Lecturer: **Joseph D. Steinfield**

Jeziki / Languages:	Predavanja / Lectures: Vaje / Tutorial:	English
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Pogoji za vključitev v delo oz. za opravljanje študijskih obveznosti:

Prerequisites:

This course will be the second week of my classes. It is available mainly to students of the fourth year of the Bachelor programme and to Master students. However, students in earlier years are welcome to attend.

Vsebina:

Content (Syllabus outline):

The first three lectures will focus on alternative dispute resolution, commonly referred to as »ADR.« One kind of ADR is arbitration, which is essentially a substitute for the courts. Another kind of ADR is mediation, which is a fundamentally different approach to dispute resolution. Instead of placing decision-making responsibility in the hands of a third person, either a judge or an arbitrator (or, in certain types of civil cases in the U.S., a jury), the parties retain control but select a neutral »mediator« to assist them in trying to resolve their dispute.

Another method of dispute resolution is negotiation, a process familiar to all of us. As children we negotiate with our parents (and vice versa); married couples negotiate with each other; and lawyers negotiate on

behalf of their clients.

Parties to a dispute can agree to mediation at any time, either before one of them starts a lawsuit or at some point between filing the complaint in court and the trial. They must first select a mediator, which is itself a negotiation. When they meet with the mediator, each side will have an opportunity to consider what the other side proposes. The mediator is not simply a referee. He or she will meet with each side privately, evaluate conflicting positions, and perhaps make recommendations. Unlike court or arbitration, however, the parties remain in control. Either side can walk away at any time in favor of his or her »BATNA,« which stands for »Best Alternative to a Negotiated Agreement.«

The mediation process is designed to produce a »win-win« result where each side is satisfied with the outcome. We will use, as an example, the problem of the mother whose two children are fighting over which one should have the only orange in the house.

Class 5 We will begin with an example of negotiation problems and techniques, using as an example how Nelson Mandela was able to negotiate from jail with the government of South Africa. We will then discuss the mediation process, which is essentially a form of negotiation in the presence of a third party.

At the end of this class we will create negotiation teams for classes 6 and 7. Each team will receive a short description of the dispute. In addition, each side will receive its own set of »additional facts« relevant to their side of the dispute

Class 6: We will have »real« negotiations. The teams will have a specified amount of time to negotiate face-to-face while the remainder of the class observes the process. The entire class will then discuss how the teams handled their side of the dispute. What strategies did they use? What seemed to work best? Did they reach agreement? If not, what prevented them from doing so?

Case 1: The first case will be a dispute between neighbors. One of them has a dog that barks at night and disturbs the neighbor; the other builds a fence 8 feet (2.44 meters) high between the two houses, casting a shadow on the dog owner's house.

Case 2: The second case involves a husband and wife who argue every day. The wife complains that the husband doesn't earn enough and drinks too much. The husband complains that the wife spends too much and should get a job. (He also complains that she is no longer the »beautiful woman« she used to be.) They have financial problems as well. They rarely have sex with each other and have discussed getting a divorce.

	<p><u>Class 7:</u> This class will be a continuation of the »real negotiations.«</p> <p><i>Case 3:</i> The third dispute is between two companies. One agreed to build an addition to the factory owned by the other. They agreed on a price and a completion date, but construction was six months late and 20% more expensive than the original price. Each side blames the other.</p> <p><u>Class 8:</u> This will be the final class. The students will take a short exam covering classes 1-7, and each student will correct (and keep) his or her own exam.</p> <p>The rest of the class will be left for »open discussion.« One possibility is a discussion of the U.S. Legal system, including federalism and the co-existence of state and federal courts. Certain constitutional areas will be mentioned, including trial by jury and "full faith and credit." This part of the lecture will provide an opportunity to cover last year's historic Supreme Court decision that same-sex marriage is a right protected by the United States Constitution.</p> <p>Another possibility will be to talk about politics in the United States and the upcoming November 2016 presidential election. (The instructor has been active in two presidential campaigns.)</p>
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Temeljni literatura in viri / Readings:

All of the following readings are **optional**, i.e. there will be no required reading. However, the student teams will need to meet between classes 5 and 6 or between classes 7 and 8 to plan their negotiation strategies.

The Slovenian Legislation Implementing The EU Mediation Directive

<http://www.europarl.europa.eu/document/activities/cont/201105/20110518ATT19582/20110518ATT19582EN.pdf>

Aleš Zalar ,What can governments do for development of mediation http://www.fbe.org/IMG/doc/Zalar_EN.doc

Polona Kovac, Mediation and Settlement in Administrative Matters in Slovenia, <http://hrcak.srce.hr/file/199633>

Mediation, <https://en.m.wikipedia.org/wiki/Mediation>

Cilji in kompetence:

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Objectives and competences:

The objective of these classes will be to help the students acquire a basic understanding of the alternative dispute resolution process.

Predvideni študijski rezultati:

Intended learning outcomes:

	Experience tells us that students learn by doing. The »real-time« in-class negotiations will give the students an opportunity to test their negotiating skills and to help them recognize the many different ways in which parties to a dispute can settle their differences. These classes will also help students appreciate when a negotiated settlement may not be possible, or even desirable.
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Metode poučevanja in učenja:

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Learning and teaching methods:

As with Week 1 (Freedom of Speech and of the Press), these classes will not be simply lectures but rather interactive learning experiences.

Načini ocenjevanja:	Delež (v %) / Weight (in %)	Assessment:
		Type (examination, oral, coursework, project): These classes will be ungraded. See Class 8.

Reference nosilca / Lecturer's references: Joseph D. Steinfield

<p>Bachelor's degree, Brown University (Concentration in English Literature) 1961 Law degree, Harvard Law School – 1964 Member of the Bar – Massachusetts, New York, New Hampshire Adjunct Professor of Law, Boston College Law School, Boston, Massachusetts Adjunct Professor of Law, University of New Hampshire Law School, Concord, New Hampshire Previous teaching abroad: Adyghe State University, Maykop, Adygheya (Russia), 2008 Herzen State Pedagogical University, St. Petersburg, Russia, 2011. Fellow, American College of Trial Lawyers Former Member and Chairman, Massachusetts Commission on Judicial Conduct Former Member and Chairman, Massachusetts Clients Security Board</p> <p>Joseph D. Steinfield is a trial lawyer specializing in complex business litigation. During his career he has tried many cases in the United States (Massachusetts, New Hampshire, Florida, Puerto Rico) in both state and federal courts, and he has argued many appeals. In addition, he has extensive experience with alternative dispute resolution ("ADR"), including both arbitration and mediation. He is a partner in a Boston law firm. See his online biography at http://www.princelobel.com/people-40.html</p>
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