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*Legal Studies*

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

**June 11-22, 2007**

*In co-operation with Benjamin N. Cardozo School of Law, New York  
and Hamline University School of Law, Minnesota*

**Course Directors:** **James Coben**, Dispute Resolution Institute, Hamline University School of Law  
**Lela P. Love**, Kukin Program for Conflict Resolution, Benjamin N. Cardozo School of Law/Yeshiva University

**Faculty:** **Dana Potockova**, Conflict Management International, Prague

**James R. Coben** is Associate Professor and Director of the Dispute Resolution Institute at Hamline University School of Law, where he has focused his energies on development of international alternative dispute resolution (ADR) programs in Europe, the Middle East, and India. Professor Coben recently created the Mediation Case Law Project - a systematic attempt to catalogue litigation trends about mediation, as well as to produce and distribute innovative mediation teaching videos, and other resources to ADR academics, practitioners, and trainers. He is the domestic mediation editor for the *World Arbitration & Mediation Report*, and is co-authoring the third edition of *Mediation: Law Policy & Practice* (West Group, forthcoming 2008). Between 1999 and 2005, Professor Coben was a member of the Minnesota Supreme Court's ADR Review Board, charged with regulating the performance of court appointed neutrals. He received his J.D. from Northeastern University School of Law in 1986 and his B.A. from Williams College in 1979.

**Lela P. Love** is Professor of Law and Director of the Kukin Program for Conflict Resolution at Benjamin N. Cardozo School of Law/Yeshiva University. Professor Love has served as a mediator, arbitrator, and dispute resolution consultant in a variety of community, family, commercial and public disputes. In 1993, she was awarded a citation by the City of Glen Cove for successfully mediating a long-standing dispute between the city and its Salvadoran community. Professor Love is Vice-Chair of the Section of Dispute Resolution of the American Bar Association. She serves the N.Y.S. Unified Court System on its Mediation Ethics Advisory Committee. She has assisted the states of Florida, Michigan and Louisiana in developing mediation programs. She received her J.D. from Georgetown University in 1979, her M.Ed. from Virginia Commonwealth University in 1975, and her B.A. from Harvard University in 1973. She has written extensively about dispute resolution topics, including three law school textbooks.

**Dana Potockova** received a Masters in Dispute Resolution from Pepperdine University School of Law (USA), a Masters in Peace Studies from the University of Notre Dame (USA), and a Masters in Social Policy from Charles University (Czech Republic). A former Fulbright scholar, she is the co-founder of the Czech Association of Mediators. As the principal of Conflict Management International, she is currently a consultant for dispute resolution systems design and a conflict resolution trainer and teacher. She has served as a trainer for Partners for Democratic Change in the Czech Republic where she also facilitated public meetings in situations involving ethnic tension.

## COURSE OBJECTIVES

This course is designed to facilitate the exchange of ideas and cooperative projects among academics, professionals and students in the East and West who are pursuing the study of conflict and conflict resolution processes. The program, set in the context of Central and Eastern Europe's emerging democracies, will focus on both theory and skills connected to mediation and democratic dialogue, two well-established consensual methods for addressing and resolving conflict and promoting understanding between peoples.

CEU participants will be joined by American law students to explore these topics. The course will offer multi-national perspectives and examples as well as enable students to critically examine the challenges of the design and delivery of ADR (appropriate dispute resolution) initiatives in multiple contexts, including countries where the "rule of law" is emerging.

Through lecture, discussion, demonstration and role-play, students will be introduced to mediation theory and skills and examine the impact of culture and context on the mediation approach adopted. Examples will focus on mediation models and scenarios from both the United States and Central and Eastern Europe. The task of translating hostile and adversarial communication into building blocks of collaborative dialogue will be explored, as well as the mediator's role in identifying, framing, and ordering the issues in dispute. Analysis will highlight persuasive techniques for moving parties from impasse to settlement. Special attention will be directed to the ethical dilemmas faced by mediators, particularly challenges to a mediator's impartiality, and the potential for abuse of discretion and power. The course also will examine a variety of strategies to foster and support democratic and constructive dialogue, particularly focusing on "high-conflict" situations involving inter-ethnic tensions. Students will study efforts in Central and Eastern Europe to promote meaningful democratic dialogue in times of national and international crisis. Participants should come prepared for a highly interactive learning experience.

## WEEK ONE

### MONDAY

#### **Principles of Dispute Settlement and Introduction to Negotiation Theory**

Lecture and general discussion examining assumptions about dispute settlement, analyzing various dispute settlement methodologies, and exploring the role of mediation within that context. A small group negotiation exercise will illuminate the principles and dynamics underlying voluntary dispute settlement procedures. The class concludes with a lecture after lunch on the role of mediation and consensual dispute resolution processes in relation to the rule of law in developing democracies.

### TUESDAY

#### **An Overview of the Mediation Process and Related Mediator Skills. Beginning the Mediation Conference**

A demonstration of a mediator at work will be followed by an examination of the various functions the mediator fulfills and the types of traits and interpersonal skills required of persons discharging these functions. A presentation on how mediators create a constructive environment and open a session will be followed by practice. An afternoon talk featuring case studies from Central Europe will explore the dynamics of multi-party and multi-ethnic disputes.

### WEDNESDAY

#### **Listening Constructively to Disputing Parties and Crafting a Discussion Agenda**

Lecture and interactive exercises will focus on fact-gathering, note-taking and questioning techniques. The task of translating hostile and adversarial communication into building blocks of collaborative dialogue will be explored, as well as the mediator's role in identifying, framing and ordering the issues in dispute.

### THURSDAY

#### **Using Facilitation to Foster Democratic and Constructive Dialogue**

An examination of the relationship between facilitation and mediation and of the tasks and tools used by facilitators. Overview of dispute resolution initiatives and opportunities in Eastern Europe. Class will be followed by a working lunch exploring study and business-building opportunities in the field of conflict resolution.

FRIDAY

**Dealing Effectively with Diversity and Exploring the Justice Implications of Various Processes**

Discussion, analysis and exercises focusing on interpersonal and communication skills critical to mediating in contexts in which issues of personal, cultural, gender and ethnic diversity are pervasive. The class will view a movie portraying a variety of conflict resolution processes and analyze their impact on individual characters portrayed.

**WEEK TWO**

MONDAY

**Generating Movement Towards Understanding and Agreement and Meeting Separately with the Parties**

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. Students will examine the purposes and strategies of meeting in caucus sessions with the parties.

TUESDAY

**Bringing Closure to Sessions and Capturing Agreements between Parties**

Participants will review procedures for closing a mediation session and drafting mediation agreements. Discussion regarding the comparative law of enforcement of mediated settlements, the role of institutional providers of mediation services, and global trends in evolution of mediation models.

WEDNESDAY

**Dealing with Ethical Issues and Working with a Mediation Team**

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, together with an examination of confidentiality in mediation. Discussion and analysis of strengths and weaknesses of a co-mediation approach and the principles guiding the effective execution of team mediation.

THURSDAY

**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 the case to develop performance skills for conducting a multi-party mediation. Elements of the analysis will include: structuring the sessions, capitalizing on the role of advocates and spokespersons, planning considerations when cultural diversity is present, and using translators effectively. Finally, students will conduct a portion of a multi-party, multi-ethnic community conflict based on an actual dispute in Central Europe.

FRIDAY

**Pulling the Pieces Together: Final Mediation Simulations**

Participants will complete several mediations; analysis will follow the completion of each simulation. Course closure and evaluation.

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***Non-discrimination policy statement***

*Central European University does not discriminate on the basis of— including, but not limited to — race, color, national and ethnic origin, religion, gender or sexual orientation in administering its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.*