COMMERCIAL NEGOTIATION AND MEDIATION

LIST OF ITEMS FOR THE EXAMINATION ROOM IN 2019

Lecture 1: Disputes and methods of dispute resolution


Lecture 2: Communication (theory) and disputes


Lecture 3: Rationality and irrationality in disputing


C. R. Fox and R. Birke, Forecasting Trial Outcomes: Lawyers Assign Higher Probability to Possibilities that are Described in Greater Detail, 26 *Law & Human Behavior* 159 (2002).


Lecture 4: Negotiation analysis


Lecture 5: Negotiation dynamic and management


Lecture 6: Negotiation Strategy and Design

Oren Sussman, Cutting Deals, Draft Textbook Chapter (8 May 2013).


Lecture 7: Mediation structure, function, and forms


The White Book 2015, Section 14 – Alternative Dispute Resolution (available on Weblearn).


L. L. Risikin, Mediator orientations, strategies and techniques, 12 Alternatives 111 (1994).


K. F. Dunham, Practical Considerations in Mediation Training: Should Mediators be Trained to Adapt to the Circumstances of Each Case?, 11 Appalachian J. L. 185 (2012).

Ch. Newmark, Modifying the Mediation Model, Fordham Lecture April 2012 (available on Weblearn).


Lecture 8: Roles and (legal) rules in mediation


Blake, Susan / Browne, Julie / Sime, Stuart, *The Jackson ADR Handbook* (OUP, 2nd ed. 2016), Chapter 4:

- Section A “Overview” (4.01)
- Section B “Duties under the Civil Procedure Rules” (4.02)
- Section C “The Role of a Lawyer in Advising on ADR” (4.03 – 4.06)
- Section D “Authority to Settle” (4.07 – 4.08)
- Section E “The Role of a Lawyer in Advising on Terms of Settlement” (4.09)
- Section F “The Role and Responsibilities of a Client in Relation to ADR” (4.10 – 4.11)
- Section I “Potential Liability of a Lawyer in Relation to ADR” (4.10 – 4.11)

and Chapter 15, Section L “Mediation Advocacy” (15.48 – 15.52).


Civil Procedure Rules (CPR) 78.23 through 78.28, https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part78#IDAIH1HC.


*Farm Assist Limited (in liquidation) v The Secretary of State for the Environment, Food and Rural Affairs* (No. 2) [2009] EWHC 1102 (TCC) (“Farm Assist 2”).

*Brown v Rice* [2007] EWHC 625 (Ch).


Dundas, Hew, When does "confidential" mean confidential? An important development in the law of mediation and the without prejudice rule, 73(3) *The International Journal of Arbitration, Mediation and Dispute Management* 335-341 (2007).


*PGF II SA v OMFS Co 1 Ltd* [2014] 1 W.L.R. 1386.


- Chapter 18 “Recording Settlement – Private Agreement” (18.01 – 18.22) and
- Chapter 20 “Enforcement of Settlements” (20.01 – 20.09).
Lecture 9: Mediation process and mediators' techniques


- Section A "When does the Mediation Start?" (15.01 – 15.03)
- Section B "The Stages in Mediation" (15.04 – 15.07)
- Section C "The Opening Stage" (15.08 – 15.14)
- Section D "The Exploration/Information Stage" (15.15 – 15.18)
- Section E "The Negotiating/Bargaining Stage" (15.19 – 15.24)
- Section F "The Settlement/Closing Stage" (15.25 – 15.29).

Mackie, Karl / Miles, David / Marsh, William / Allen, Tony, The ADR Practice Guide: Commercial Dispute Resolution (Tottel, 3rd ed. 2007), 247-270 ("What happens at a typical mediation").


Dunham, K. Practical Considerations in Mediation Training: Should Mediators Be Trained to Adapt to the Circumstances of Each Case?, 1 Appalachian L. J. 185 (2011-2012).

Wissler, R., To Evaluate or Facilitate? Parties' Perception of Mediation Affected by Mediator Style, Dispute Resolution Magazine (Winter 2001).

Lecture 10: Consumer dispute resolution and algorithmic dispute resolution


Algorithmic Anxiety: let’s stop fighting the last war and focus on the future (3 March 2017), https://lawyerwatch.wordpress.com/2017/03/03/algorithmic-anxiety-lets-stop-fighting-the-last-war-and-focus-on-the-future/.