

METHODOLOGICAL GUIDELINE

for University Lecturers Teaching Mediation

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INTRODUCTION AND AIM OF THE METHODOLOGY

1.1. Introduction

The present document serves as a practical guideline (methodology) for teachers and trainers in the area of mediation. Apart from general recommendations on mediation curricula (course) content and organization, a special focus is being placed on organizing mock mediation sessions (including the online ones) – as these are very important parts of the overall mediation training process and, according to our experience, various mediation lecturers and trainers often lack relevant support materials and knowledge in organizing those. Therefore, this methodology shall be helpful for any teacher or trainer as a support tool for proper preparation, guiding, evaluating and receiving feedback within their professional mediation workshops and seminars.

Taking into account the fact that different universities provide mediation studies of different length of hours and even semesters, this methodology is prepared for 24 hours long mediation course. If the user of this methodological material works with mediation classes of shorter or longer hours, the advices shall be accordingly adjusted.



This methodology can be used by universities, as well as other educational institutions or NGOs, which present mediation classes for students and other participants of the course in mediation.

1.2. Aims and outlines of the present methodology

This methodology material is prepared with a primary aim to help mediation teachers with a practical and useful tool whilst working with students on a daily basis. The current methodology may be especially helpful for teachers who start teaching mediation to their students. For teachers with longer mediation-teaching experience, this methodology material can be useful as a basic checklist to establish whether all possible aspects of mediation are covered. Equally, the methodology material can be very helpful for students and/or even mediation practitioners who are getting prepared for examination in mediation or for examination to reach status of certified (accredited) mediator. It is easy and convenient to go through the methodology material and ascertain the level of knowledge and fields to be improved in mediation skills.

Users of this methodology material are encouraged to refer also to other printed and electronic resources (see, for instance, the online book 'Mediation to Foster European Wide Settlement of Disputes' available here <https://mediation.turiba.lv/>), in which theoretical description of mediation is readily available.

In order to render teaching of mediation as interactive as possible, various model mediation settings and student activities are proposed to practice mediation with students in a number of areas. Also, teachers may show short videos displaying mock mediation cases in different contexts, such as neighbourhood mediation, commercial mediation and family mediation. To watch these videos please consult <https://mediation.turiba.lv/>

1.3. General recommendations

1.3.1. Balance between theory and practice

The teacher shall keep a good balance between theory and practice in his/her mediation classes. Both of those are equally important to become a mediator. Especially in large groups of students there is a risk that the teacher concentrates only on theory and neglects practice. Such a situation is understandable, because it is more complicated in large groups of students to organize practical activities and these tasks

are often given as home assignments for students. Whereas, in smaller classes it is easier to combine theory with practice. However, even for larger groups of students the teacher shall find a way how to encourage students to engage in mock-mediation process as well as to follow the progress of students in mock-mediations. Knowing that a skilful mediator has good knowledge of both – theoretical and practical aspects of mediation – also the teacher shall present to the students classes with the same balance.

1.3.2. Watching a video about mediation process to raise interest

Taking into account the fact that at times students get deeper interest into mediation after they hear about practical cases and success stories of mediation, or watch mock mediation process, it is advisable to present a video of the overall mediation process at the beginning of the mediation studies. The teacher can watch one or more videos together with students in the class, or assign watching videos individually.

If the video is watched together with the students in the class, it is possible for the teacher to stop the video any time and to comment on significant aspects of the mediation process, for instance, about the mediator's skills, forms of questions, quality of active listening *etc.*

If the students watch the video individually, it is advisable for the teacher to prepare in advance and distribute to the students evaluation forms of the video or question sheets about the video, encouraging the students to find answers about the video, on the questions such as:

- A) What open questions did the mediator ask?
- B) What closed questions did the mediator ask?
- C) How did the mediator show active listening skills?
- D) How did the mediator react to sarcastic comments made by the parties?
- E) Was the introductory speech of the mediator clear enough and acceptable for the parties?
- F) How was the mediation room arranged?
- G) What supplementary tools did the mediator use and what was placed on mediator's table?
- H) Did the mediator reflect emotions of the parties and how?
- I) What mistakes did the mediator make and how would you behave in the role of the mediator?

After the video is watched the teacher can organize a discussion in the class about the video and its contents.

If the students have filled in the evaluation forms about the video or answered question sheets about the video, the teacher can comment on answers and explain the correct options. In case the students are not given any tasks before watching mediation videos, there is a risk that they will not have enough motivation to follow all the details of the video, and will leave without having paid attention to valuable information and examples included in the video. Therefore, an assignment is helpful for structure, details, development and discipline of the students.



Supplementary to the above and to engage students even more, it is advisable to assign them with the task of finding online extracts from movies or famous shows depicting mediation or negotiations processes. The latter would further increase active participation and trigger even higher interest towards the mediation course.

Alternatively, it may be helpful to show several famous examples from movies as a part of the teaching process and as a way further interaction with the audience.

To demonstrate what mediation is about and how it looks like at the beginning of your mediation training/curricula/course, we recommend to pick up a very simple case with two participants, one mediator and no lawyers – *i.e.* a very easy and simplified case from across any legal area to start with. A selection of such videos is available on the Online Mediation Platform at <https://mediation.turiba.lv/>

1.3.3. Data protection requirements if filming is used during mediation classes

If mock mediation process or any other process where students participate is filmed and recorded during classes (for teaching purposes to reach audience outside the class), the national provisions related to implementation of the General Data Protection Regulation (GDPR) No. 2016/679 should always be observed and complied with, and explicit consent of participating students shall be obtained before such videos are shared publicly to reach a wider public.



Therefore, before any filming starts, the teacher shall receive explicit written permissions from all students that they are aware of the filming, that they agree with the filming, they are informed about the purpose of filming, they know about the time frame how long the recorded video will be stored, who is responsible for data processing and where the particular persons may ask to delete or amend the collected data. The teacher shall get a written permission and make sure that this permission is stored at the University for later possible evidence about this fact.

1.3.4. Working style of the mediation teacher and cooperation with other academics and practitioners

Teachers have academic freedom to choose their working style with students. This can equally be a lecture, seminar, discussion, group work, home assignment *etc.*

The teacher can combine various models of teaching, for instance, having a series of monologue lectures after which a seminar with discussions follow. The choice of working style depends on the size of the group of students, preferences of the teacher, the amount of information to be given during the classes, availability of reading materials *etc.*

At the same time, the teachers are encouraged to assess the effectiveness of each working style. For instance, research proves that the least effective tools are classical monologue lectures, where an average person in audience loses concentration abilities after only 15 minutes of class. And the most effective learning style is an interactive presentation of the lecturer to the others. Therefore, mediation teachers are invited to use a broader spectrum of working styles.



Teachers are equally encouraged to elaborate and keep their own individual and unique teaching style of mediation, thus enriching academic diversity among universities. Even knowing other wonderful teaching styles applied by other teachers, such pattern should not be copied automatically. Instead, the individuality of the teacher is equally valuable and therefore it could be enriched by other examples, but not excluded from the options of teaching styles.

Teachers are invited to establish contacts with other mediation teachers and practitioners thus learning from each other, attending classes, presentations and seminars of colleague teachers and raising professional competences as a teacher. Cooperation with mediation organizations can help the teacher to gather new mediation cases, samples of good practice, success and failure stories to be discussed with students *etc.*

New and creative tools in mediation shall be offered by teachers, however, novelty is not a primary goal. If the mediation teacher has established that previous methods of mediation teaching work well and students are growing in their competences, then such methods shall be kept as effective.

There are no standard models in mediation studies. Each mediation teacher has an academic freedom to use those methods which are effective and acceptable for students and teachers.

Teachers are invited to motivate students in mediation, by presenting positive success stories of cases resolved by methods of mediation. At the same time, teachers shall keep a realistic approach and also disclose difficult moments in mediation, thus preparing students for responsible and diligent work of a mediator.



CONTENT OF A MEDIATION COURSE/CURRICULA

2.1. The aim of a mediation course

The aim of teaching students in mediation is to prepare them as future mediators at such a level they are able to pass an exam of certified (accredited) mediator. In the beginning of the mediation study process, it is advisable to distribute to the students a list of professional competences which they should have as the future mediators. Such “information about the end in the beginning” will be very helpful for students to prepare better for the final test and for becoming practicing mediators. Equally such a list of professional competences motivates students to learn and acquire as much information as possible to be able to display those competences.

2.2. Professional competences of a mediator

A number of mediation organizations of national and international level have elaborated so called lists and descriptions of professional competences of the mediator. This methodology for neutrality reasons does not advertise or criticise any of such professional competences samples. Each of them is slightly differently organized and all of them contain a valuable list of competences the mediator shall possess. An average sample list of professional competences is attached to this methodology material in the Attachment 1, and the teacher is also free to use any other acceptable lists of professional competences of mediator, for instance, those available at: <http://adric.ca/wpcontent/uploads/2015/11/COMPETENCIESGUIDELINES.pdf>

Therefore, in the beginning of the mediation study process, the teacher can distribute to students a list of professional competences and inform them that in order to become a qualified mediator, they need to display the particular qualities. Also, during the study process, the teacher can return to the list of professional competences and examine them in further detail. The qualification and role of mediators have been discussed by Dana Rone in Chapter 15 of the e-book available at <https://mediation.turiba.lv/>

2.3. Possible topics of a mediation course

A teacher is free to prepare the contents of the mediation course/curricula according to the standards of particular country and university. However, it is advisable to include the following topics in the mediation course/curricula:

1. Types of settlement of disputes
2. The main methods of alternative dispute resolution („ADR“)
3. Basic principles of mediation
4. Skills and competences of a mediator
5. Co-mediation
6. Phases of mediation
7. Verbal and non-verbal communication
8. Role of culture in mediation
9. Mediation history
10. Legal regulation of mediation
11. Mediation specifics in family cases
12. Psychological aspects of mediation
13. Creative mediation tools
14. Restorative justice and mediation in criminal cases. Conferencing in criminal cases
15. Specifics of mediation in commercial cases
16. Mediation in public international law cases
17. Mediation in cross-border family and child abduction cases
18. Mediation clause and mediation agreement
19. BATNA (Best Alternative to a Negotiated Agreement) and WATNA (Worst Alternative to a Negotiated Agreement) as tools in mediation
20. Certification and attestation of mediators
Continuing professional development
21. Mediation ethics
22. Supervisions and self-evaluation need in mediation
23. Role of lawyers in mediation. Choosing a mediator
24. Referral to mediation by courts, lawyers, institutions and other entities
25. Online mediation

2.4. Evaluation of a mediator – reverse learning about mediation skills

One of the methods to train students in mediation is to analyse the mediation process from the perspective of mediation clients. This method can be equally used at any stage of mediation studies. By giving students a chance to look at the mediation process

with the eyes of the mediation client, the students see the qualities and failures of a mediator as a professional in dispute resolution much better.

It is advisable to discuss with the students possible assessment of the mediation, judging performance from the point of view of the client – a party in the case. A discussion about the quality of the mediator can help the students to understand what it makes to be a good mediator. Discussion can be integrated in a lecture on topic, for instance, 'Role of lawyer in mediation. Choosing a Mediator'. The categories below are properly discussed:

1. Personal assessment, *i.e.* initial assessment of the mediator (relationship building, trust, ability to listen, *etc.*);
2. Subject matter expertise, *i.e.* industry or technical expertise in the subject matter of the dispute;
3. Quality assurance, *i.e.* appropriate training, accreditation, *etc.*

Regarding “Personal assessment” the following questions can be analysed:

1. Does the mediator establish rapport quickly?
2. Does the mediator listen carefully to what the parties are saying?
3. Does the mediator decline the work if he/she is not properly trained?
4. Does the mediator decline the work if he/she does not feel capable of undertaking it?
5. Does the mediator check for any conflicts of interest?
6. Does the mediator explain the process of mediation clearly?
7. Does the mediator discuss the pros and cons of mediation with you (the client)?
8. Does the mediator demonstrate that he/she knows how to arrange the logistics?
9. Does the mediator offer to have an informal chat about the process with you (the client)?
10. Does the mediator offer to send you further information?
11. Does the mediator provide you with a clear pricing structure?

Regarding “Quality assurance” the following questions can be analysed:

1. How many hours of initial training did the mediator undertake?
2. After passing the training, how much time did he/she spent co-mediating with someone more experienced?
3. How much time does he/she spend each year on continuing professional development (CPD)?
4. Which code of conduct does he/she operate under?
5. What complaints procedure does he/she have in place?
6. What level of professional indemnity insurance does he/she have?

ORGANIZATION OF PRACTICAL ACTIVITIES AND MOCK MEDIATION SESSIONS

3.1. Group size

The size of the group influences the type of activities during mediation studies. In case there are up to 20 – 30 students in the class, it is easy to organize interactive exercises and role plays during classes. However, if there are more than 30 students in the class, interactivity and role plays are more difficult and such assignments shall be given for students to be done independently after classes. Students shall actively practice different mediation skills, such as rephrasing, reframing, and mirroring, and this can be done only when there is appropriate environment and not too many other persons practicing alongside.

To watch videos, there is no need to split the class into smaller groups. However, before watching videos it is advisable to give to the students some assignment, for instance, finding particular techniques used during the video, observance of emotions showed by the parties, vocabulary used by the mediator *etc.*

Also, while practicing mock mediation, the students who are not actively participating as parties to the disputes or mediators may act as observers of mediators or as observers of mediation process in totality, simulating a mediation examination. They may be invited to provide feedback on performance of the mediators in the mock exercise.

3.2. Gradual development of difficulty

Practical activities shall be organized on a step by step basis, gradually increasing skills of the students in active listening, rephrasing, summarizing, leading the mediation process, *etc.*

Students can work in pairs and/or in larger groups. It is advisable to start with activities in pairs and afterwards gradually turn to activities in larger groups.

Practical activities can be organized in pairs/groups which are directly present, as well as to use the online mediation platform, thus, practicing the online model of mediation. Initially, the online model of mediation can be practiced among students of the same university, and for more experienced students the online mediation platform can be used for activities and mock mediation sessions among several universities – to learn how to work in a multicultural environment.

When organizing a mediation class, the teachers should aim at creating an environment which is as similar to a real setting of mediation as much as possible. For instance, the mediator should not sit in a superior position with respect to the parties of mock mediation. It is recommended to have a round table rather than a rectangular one, so that none of the participants in mediation has to sit in a 'front' position with respect to the others. Having a flipchart or a white board in the class would be very helpful as visual imagination may work better with some mediation participants than verbal perception does. At the beginning of the class, the teachers may wish to introduce the student with the different phases of mediation. For a more detailed account of the mediation phases please refer to Chapter 13 of the online book available here: <https://mediation.turiba.lv/>

3.3. Mock mediations

Before the organization of the first mock mediation process, a general theoretical lecture on mediation should have already been delivered – so that the students have at least a brief theoretical understanding which is then being further developed. In this first mock mediation process it is advisable that the teacher observes, assesses and comments on the progress of the students. If possible, each group of students should have their own observer; *i.e.* several teachers shall be present.

First of all, an introductory part of mediation shall be tried. The students may use supplementary materials and texts in front of them to feel more confident during the introductory part, to memorize the sequence and the essential parts of the introduction.

It is possible to organize mock mediation sessions according to different models, which are as follows:

1st model:

3 students in the group. 1 student is a mediator and 2 other students are parties in the case. The student – mediators – plays, for instance, an introductory part of the

mediation. After 20 minutes the next student in the same group plays the role of the mediator in the introductory part of the mediation from the beginning. After next 20 minutes, the third student plays the role of the mediator in the introductory part of the mediation from the beginning.

2nd model:

3 students in the group. 1 student is a mediator and 2 other students are parties in the case. The student – mediator – plays, for instance, an introductory part of the mediation. After 20 minutes the next student in the same group plays the role of the mediator, continuing the process from the moment where the previous student left. And after next 20 minutes the third student plays the role of the mediator from the moment where the previous student left.

3rd model:

6 students in the group, following the 1st of the 2nd model of sequence. The only difference is that instead of 1 student in the role of the mediator or parties, there are 2 students, playing the same figure, like co-mediators or like a party and its lawyer or supporter. This model allows to involve more students in mediation activities.

4th model:

More than 3 students in the group. Those who do not have a separate role are considered as observers, who later would give comments on the performance of the mediator or answer specific questions prepared by the teacher about the performance of the mediator.

3.4. Online mediation sessions

To use the web platform elaborated by this project, the teacher can organize mock mediation sessions for students of two or more universities. A web platform <https://mediation.turiba.lv/> provides a step-by-step instruction for teachers who start using this platform. A teacher finds a partner university teacher, agrees on the time frame for mock mediation sessions, chooses an exercise or mock mediation role play and registers the students for the mock mediation process.

According to technical possibilities of this web platform, the teacher can record mediation processes and later comment to students on the quality of the performance of the mediators.

Online mediation sessions train students to work in a multicultural environment and understand specific features in working in an online world. Equally, online mediation raises awareness of the students on the possibilities of an online mediation tool and on the settlement of disputes where parties are apart.

In practice, teachers who do not practice mediation themselves, may find it difficult to find suitable scenarios for practicing mediation in class. Therefore, Attachment 2 provides a number of situations which may serve as a background for practicing mediation by students.

3.5. Discussions after a mock mediation session and feedback

It is advisable to organize a short discussion among the students and the teacher after each mock mediation session. During this activity the following issues can be discussed:

1. A teacher shares his/her observations about the mediators and their performance
2. Students can ask questions about the mediation process and its elements
3. The students playing roles of the parties can share their feelings and observations about the mediation process and the performance of the mediator
4. The student playing the role of the mediator can share his/her feelings about his/her performance, difficult and successful moments in mediation

To gather relevant feedback, the teacher can create a specific self-evaluation form and distribute it among the students. Such a form can include a dedicated reflection page – e.g. What did you learn in this session? How did you feel in various roles? What are the key takeaways? The teacher shall, of course, go through these self-reflections afterwards and evaluate them appropriately. Such an exercise is seen as an excellent feedback for both parties.



EXAMINATION

It is advisable for mediation teachers to inform students about the form of the final examination in the beginning of mediation studies. In this way students are informed about the rules and also the form of the exam, and can effectively and timely prepare for the exam. The aim of the final exam is to ascertain that students have acquired complete and broad theoretical and practical knowledge in mediation, and are capable to lead mediation sessions independently. Students shall be capable to apply theoretical knowledge in practice and shall be able to analyse the performance of mediation led by other mediators in detail.

4.1. Examination options

There are many options for organizing a mid-term or a final exam on a mediation course, such as:

- an essay
- oral exam
- multiple choice questions
- open questions
- a mock mediation

It is advisable to use a combination of a theoretical and practical exam, thus dividing the exam in two or more parts. Students are not allowed to use any supplementary materials while taking the written and the oral part of the exam, nor are they allowed to communicate unless they are participating in a mock mediation session. This is a purely individual work.

Attachment 3 provides some model theoretical questions which can be used for the written part of the final exam.

4.2. Evaluation of a mediation exam

4.2.1. Evaluation of written and oral exams

The teacher must set a minimum score for the exam which is considered a pass mark. For instance, if the maximum score is 10 points, the teacher can set that an

exam is considered to be passed if the student has gained at least 7 points. The amount of points to obtain a pass mark depends on the university, its standards and other parameters of the institution where the exam is organized. In case a combined exam is organized (for instance, a written test and a mock-mediation session) the teacher may also provide that only students who have successfully passed the first part of the exam may be admitted to the second part of exam.

4.2.2. Evaluation of a mock mediation exam

In a mock mediation exam, students may be assessed based on the following or another freely created evaluation grid, which may be adjusted to the needs of the course participants. The teacher is free to add more criteria to be evaluated in the exam. It is advisable to inform students before the mock mediation exam about the contents of the evaluation grid, to make the rules of the exam transparent and also to allow the students to prepare for the exam in a timely manner.

The following table contains a proposal for an evaluation grid of mediator's communication skills

Competency	Maximum number of points*
A smooth and informative introduction. Establishing contact with the parties	
Showing empathy	
Active listening (rephrasing, paraphrasing, mirroring, appreciating, summarizing the progress etc.)	
Making questions	
Using the flipchart, other supplementary tools and creative tools and techniques	
Observance of mediation principles (neutrality, impartiality, confidentiality, self-determination of the parties)	
Coping with difficult moments in mediation	
Noticing and searching for common interests	
Motivation of the parties	
Balanced use of common and separate sessions	

REFERENCES TO FURTHER READING MATERIALS

The teacher shall encourage students to read additional materials about mediation. Many reading materials are available at the online platform: <https://mediation.turiba.lv/>

To learn from success and failure stories of practicing mediators, the teacher can refer students to the material called „Best Practices Manual“ available at: <https://mediation.turiba.lv/>

CONCLUSION AND ACKNOWLEDGEMENT

Mediation as an out-of-court dispute settlement mechanism has not fully reached its potential yet. We believe that the present methodological guidelines will encourage teachers across the European Union to promote the use of mediation for the settlement of all kinds of disputes. This methodology was tested during an intensive international summer school on mediation and negotiating techniques held in July 2018 in Riga, Latvia, and adapted accordingly based on the feedback received from the participants.

The teaching of mediation and of the negotiation techniques employed during mediation will strengthen students' soft skills, which are often neglected in school curricula, both at secondary school and at University levels. Teaching mediation in an interactive way will inspire students to move away from merely memorizing data. Students will be actively involved in practicing their soft skills, which will not become outdated when they use them once they have completed their studies.

The authors of the methodological guidelines would like to thank for the support received under the Erasmus+ Programme of the European Union and believe that the funds have been used efficiently to disseminate both, the principles and the practice of mediation.

ATTACHMENT 1

A list of advisable professional skills and competences of a mediator

A mediator shall have the following types of professional skills:

- A) Administrative skills
- B) Procedural skills
- C) Relationship skills
- D) Facilitation skills

Having acquired all the above mentioned skills a professional mediator has these abilities:

1. Ability to contact and welcome the parties
2. Ability to build trust of the parties
3. Ability to organize properly the mediation depending on the requirements of the mediation service providers
4. Ability to make the first contacts with the parties
5. Ability to prepare the documents that are necessary for the mediation depending on the national legislation
6. Ability to motivate and consult the parties before the mediation agreement
7. Ability to analyse if the conflict is suitable for mediation (pre-evaluation process)
8. Ability to mind the logistics for mediation
9. Ability to make a good introductory talk in the beginning of mediation
10. Ability to observe the timing
11. Ability to structure the process and to choose the most suitable form/styles/ setting of the process

12. Knowledge of the phases of mediation and the differences among them
13. Ability to make a proper opening of mediation including an explanation of mediation principles and rules, the role of the mediator, parties and process
14. Ability to build trust and to create an environment
15. Ability to set the tone and to create an emotional tone and atmosphere conducive to cooperation
16. Demonstration of essential effective communication skills:
 - 16.1. Active listening
 - 16.2. Summarizing
 - 16.3. Paraphrasing
 - 16.4. Reframing
 - 16.5. Reflecting back emotion
 - 16.6. Negotiation skills
17. Ability to use appropriate questions to uncover potential needs and interests of the parties (e.g. probing questions, open ended questions)
18. Ability to manage the parties and their own emotions
19. Ability to separate people from the problem
20. Ability to explore and distinguish positions/ interests/ needs
21. Ability to search for an integrative potential
22. Ability to involve all the participants into the process
23. Ability to narrow the differences
24. Ability to make a reality test and pay attention to detail
25. Ability to explore alternatives and options
26. Ability to encourage mutual recognition and understanding between the parties
27. Ability to encourage parties to generate options and solutions (brainstorming; mind – mapping)
28. Ability to organize common and separate sessions with parties, and recognize moments when each is required
29. Ability to prepare a legally acceptable settlement agreement
30. Ability to close the proceeding
31. Ability to make post-evaluation and follow up with the parties
32. Ability to perform professional self-evaluation to be able to improve skills



ATTACHMENT 2

Model scenarios for holding mock mediation sessions

Case 1 – Racial discrimination

You will mediate a case involving racial discrimination. The offending party (Mr. B) is willing to pay some money to get this issue resolved and to avoid going to the court. An initial separate meeting with the offended party (Mr. A) shows that their idea of compensation is about 1 million EUR. This is, however, a compensation much higher than the idea of Mr. B. A law court would not award damages amounting to such a high sum of money either.

One student shall play the role of Mr. B, another student the role of Mr. A and a third student the role of a mediator. How would you proceed in mediating the case?

Note: This case was inspired by Frank, H. Conflict Resolution and Mediation in the Real World, lulu.com, 2003. ISBN 9780974424804.

Case 2 – Employment case

Mary has a health issue (Carpal tunnel) which slows down her performance at work. She is afraid to disclose this information to her boss (Tom) because she does not wish to lose her job. She is not sure if her boss would keep her at work due to her health issue. Tom suggests to initiate a mediation about keeping Mary at work or making her redundant. In principle, he would be happy to keep her if he can be assured that the health issue would not further decrease Mary's performance at work.

One student shall play the role of Mary, another student the role of Tom and a third student the role of the mediator. How would you proceed in mediating the case?

Case 3 – A construction dispute

Mr. and Mrs. Czech contracted a construction company to have their house build in an area with a high level of underground water. To prevent their house from becoming humid, the contract provided for a special insulation layer to be incorporated into the basement of their house. While inspecting the construction works, Mr. and Mrs. Czech found out that the construction company forgot to incorporate the special insulation layer.

After this unpleasant discovery, they asked the company to remedy the situation. The construction company denied to do that and suggested to incorporate a special insulation layer into the vertical walls of the house, which corresponded to a novel technology, with which the consulted expert may not have been familiar yet. Mr. and Mrs. Czech consulted this option with experts who strongly discouraged them from accepting this solution and encouraged them to terminate the construction contract in case the construction company failed to insulate the basement of the house.

Since neither of the parties wanted to go to the court, they readily agreed to mediate the situation. The construction contract allows parties to terminate it in case of a serious breach thereof. The construction company believes that its breach of the contract was by no means serious, and wants Mr. and Mrs. Czech to compensate the costs of the construction material used as well as the costs of the work force.



One student shall play the role of Mr. or Mrs. Czech, another student the role of the manager of the construction company and a third student the role of the mediator. How would you proceed in mediating the case?

Model solution: The mediator suggested appointing an independent expert in insulation technologies to have an expert report evaluated. The construction company agreed to cover the costs of the expert report. Both parties agreed to abide by the conclusions of the expert report. If the report finds that the insulation layer consisting of the new technology is equivalent to the one planned for the basement of the house, the construction may proceed without insulating the basement. If, on the other hand, the report finds that the new insulation technology is not equivalent to the one planned for the basement, the construction company will redo the basement and incorporate the insulation layer planned in the original construction contract.

Case 4 – A neighbourhood dispute

The neighbourhood dispute arose between the owner of a recreational house and an adjoining hotel. The hotel placed its grilling facilities very close to the fence of the recreation house. Subsequently, the house owner started to complain about recurrent noise and smelly gasses coming from the grilling facilities. The recreation house owner, Mr. Holiday sued the hotel before a law court asking for an injunction that would disable the hotel from carrying out any activities next to his fence. At this stage, Mr. Holiday agreed with the judge's suggestion to handle the dispute by means of mediation. The hotel agreed as well.

One of the students can play the role of Mr. Holiday, another one the role of the hotel manager and a third one can practice the role of the mediator. How would the mediator proceed to settle this case?

Model solution: Mr. Holiday accepted the original location of the grilling facility, however, the hotel undertook to create a sound-proof barrier and to plant 5 taller cedar trees. Also, the hotel undertook to raise the height of the chimney. Finally, the hotel agreed to place its security cameras in such a way as to keep an eye on the recreational house of Mr. Holiday as well, for a symbolic monthly payment.

ATTACHMENT 3

A list of model theoretical questions to test students' knowledge of the mediation process

- Why would parties choose mediation rather than a judicial resolution of their dispute?
- What are the key principles of mediation?
- What does it take to be a mediator?
- Are there any situations where mediation is not appropriate?
- Is mediation governed by EU legislation or by the legislation of the individual EU Member States?
- Can mediators provide legal advice to the parties?
- Is the final agreement resulting from mediation enforceable in case it has not been complied with on a voluntary basis?
- What is the difference between facilitative and evaluative mediation?
- Explain the meaning of BATNA and WATNA
- Are mediators bound by ethical codes?
- If parties choose mediation as a method for dispute resolution, however, no agreement has been worked out, will they still be able to take their dispute to court?

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