UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Civil and Commercial Mediation

1920-4-A5810121

Learning objectives

The course provides students with the general rules governing every negotiation (as well as mediation) in civil and commercial cases, with special reference to the s.c. duty to explore (which belongs both to the mediator and the parties), and to the different means of reaching an agreement on the basis of the informations previously gathered.

Contents

Aim of the course is to investigate both the mediation's general principles and proceedings and the new "assisted negotiation" procedure. In particular, with regard to the first, the course will take into account the main aspects (as well as the related problems) of the new mediation proceeding as provided by D.Lgs. n. 28/2010, an act that has firstly set the mediation as a general A.D.R. means within the Italian legal system. A special attention will be devoted to the mediator's role and tasks, to the characters and requirements of both public and private mediation chambers, to the mediation procedure and its connections with a judicial proceeding. On this last purpose, an extensive part of the lessons will consider the so called "mandatory mediation" – i.e. cases where a preliminary mediation is required in order to access civil justice – with a deep analysis of its preconditions and effects. With regard to the second, a special attention will be devoted to the main aspects of the new collaborative procedure provided by d.l. n. 132/2014, with a special attention to the cases of "mandatory negotiation". Moreover, during the course students will always be involved in practical exercises so as to learn how to manage the most common negotiation techniques (s.c. "negotiation workshop"). On this regard, for students who are deeply focused on the matter, seminar activities will be provided (up to 2 additional cfu), where they will be able to practice their skills in sumulated mediation cases. Last but not least, students who regularly attend the course will be preferred in appointing the University team who will take part to the National mediation competition, hosted by the University of Milan and the Milan Arbitration Chamber, as well as to the International mediation competition, hosted by the I.C.C. of Paris.

Detailed program

Mediation: from rights to interests;

Types of mediation;

Mediator: requirements and duties;

Mediation chambers;

Proceedings; The mediation agreement;

The mediator’s proposal and its effects;

Connections with judicial proceedings;

Comparative perspectives;

"Collaborative law" procedure;

Negotiation workshop.

Prerequisites

Students need to know the general principles of the italian civil law and procedure.

Teaching methods

Lessons; negotiation practice; moot mediations.

Assessment methods

Oral exam.

Textbooks and Reading Materials

Danovi F., Ferraris F., La cultura della mediazione e la mediazione come cultura, Milano 2013;

Danovi F., Ferraris F., La “nuova” mediazione civile e commerciale: le modifiche al d.lgs. 4 marzo 2010, n. 28 operate dal d.l. 21 giugno 2013, n. 69 (c.d. “Decreto del fare”) conv. con l. 9 agosto 2013, n. 98, Milano 2014 (disponibile su questa piattaforma).