

MAY THERE BE PEACE

**An Introductory Course in Mediation and Conflict Resolution
in Thirteen Lessons**

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Introduction

Often when the combatants are ranged face to face, and swords are drawn and spears are bristling, these men [the Druids] come between the armies and stay the battle, just as wild beasts are sometimes held spellbound. Thus even among the most savage barbarians anger yields to wisdom, and Mars is shamed before the Muses.

Diodorus Siculus

Peacemaking is a traditional endeavor of Druids. We know that historically that they were often exempted from military service and mediated between warring tribes. As modern Bards, Ovates and Druids, we can carry on this legacy today. One form of peacemaking is mediation, a form of negotiation.

But just what is negotiation? According to the Merriam-Webster's Dictionary, 'negotiate' means 'to confer with another so as to arrive at the settlement of some matter.' And Mediation is simply an extension of the negotiation process, whereby a neutral third-party (such as the Druid) intervenes in a dispute to negotiate a mutually beneficial settlement of the parties' differences. Consequently, mediation is a very powerful form of conflict resolution, a primary goal of the modern Druid.

This course introduces the art of mediation, one of the forms of conflict resolution. If you would like to send in your assignments for assessment, or would like to discuss the subject of mediation, I will be happy to respond. When emailing, please mention whether you are a member of OBOD. My email: Bbronsonbr@aol.com

Assignment

Find a journal to record your thoughts and notes on this course. Then ask yourself: did you ever witness a conflict? Do you remember what the dispute was over? How did it make you feel? Thinking about it now, is there anything you could have done to try and resolve the conflict?



Lesson 1 - What is Conflict?

Conflict is all around us. It is not something we can wish away. It happens. It may develop around something as trivial as where to go for dinner or something critical as who is entitled to a particular piece of land.

We all have experienced conflict. Sometimes we handle it well and we go on with our regular routine. Other times we handle it badly and we are angry for days. The results of a properly handled conflict are so much more satisfying, one would wonder why we ever settle for less. Mediation is one way we can handle conflict in a satisfying way.

Sometimes conflict is good, sometimes it is bad. Normally, we attempt to resolve differences on a friendly basis. But if this does not work we may become frustrated and angry. We might place blame and make threats. Such tactics do not usually result in a good outcome. When you threaten someone, they usually respond with a counter-attack. And that escalates the situation.

Ignoring conflict does not make it go away. It will linger and begin to express itself through stress, loss of productivity and outbreaks of less significant conflict. For this reason, it is best to attempt to resolve differences rather than try to ignore them.

Mediation is one mechanism for resolving conflicts. Once we have identified a problem that is keeping needs from being satisfied, we can then work to create solutions that serve everyone's interests. And such is the aim and goal of mediation. When differences are aired, it allows people to connect on a deeper level. Coming to a mutual solution creates better understanding, unity and trust among participants.



Understanding this we can say that:

1. Conflict is normal.
2. Conflict is unavoidable.
3. Conflict is necessary.
4. Conflict can either build or destroy relationships.

Conflict functions as:

1. A signal indicating that we need to create or modify rules, norms and laws.
2. A means to tell us how important relationships are.
3. A means to create alliances.
4. A means to enhance group cohesion through issue and belief clarification.

Assignment

In your journal, give your thoughts and ideas related to the subject matter raised in this lesson.

What are some conflicts that you have been embroiled with over the years? How did you handle them? Were you satisfied with the results?



Lesson 2 -The History of Mediation

Sometimes mediation is called ‘dispute resolution’. In the United States, mediation is sometimes offered as an alternative to the conventional legal system, which is the formal path to Justice. In the United States, most disputes are resolved through the court system which borrows heavily upon the common law of our English ancestors.

There are many criticisms of the traditional legal system. One criticism is that it costs too much. Another is that it is not accessible to all. Moreover, even for those individuals who can afford a lawyer, a lawsuit often leaves them feeling dissatisfied due to the attendant stress involved in litigating a case.

Mediation offers an alternative to the traditional justice system, but it is not of recent origin. In ancient China, mediation was often the first choice for dealing with conflicts and was heavily influenced by Confucian philosophy, which taught that moral persuasion was superior to government coercion. Moreover, the adversarial processes was viewed as a disruption to the maintenance of peace, a central tenet of Confucian ideology.

Today in China, mediation is carried out on a vast scale. Significant value is attributed to voluntary self-determination, a hallmark of mediation practice.

In Japan, mediation of conflicts by the head of each village is a system which pre-dates the modern era. Mediation is so ingrained in Japan that there are very few lawyers involved in actual disputes.

Mediation first arrived in the United States through Chinese immigrants in the 1800's and the modern era of conflict resolution began some fifty years later with the advent of



arbitration. Beginning in the 1960's, the United States experienced a burgeoning of interest in alternative forms of conflict resolution. In California, there has been a pronounced increase in alternative forms of conflict resolution like mediation over the past 20 years due to the flowering of mediation and arbitration practices.

Today, mediation is quickly becoming a mainstream form of conflict resolution.

Assignment

Please post in your journal your thoughts on this lesson, focusing on your own conceptions of the legal system and alternative dispute resolution. For instance, when did you first hear of mediation? Where did you think its origins lay? Also, have you ever known anyone involved in a lawsuit? What was their feelings regarding that situation? Were they satisfied? Were they frustrated? What about mediation?



Lesson 3 - Be Positive in Your Negotiations

There are moments when you are trying to do something and it isn't working out. And sometimes we tell ourselves things like, 'I'll never get this right,' or 'this is a waste of time.'

Such self-talk is negative self-talk. Negative self-talk can often be a barrier to accomplishing a task.

These principles also apply to mediation. Remember, in a mediation, you will be dealing with people who are in a conflict, oftentimes an intractable conflict. That is why they have sought out a mediator, to help them resolve their differences.

Thus, you are likely to encounter people engaging in negative self-talk. Many times participants of a mediation will feel that talking about their conflict is a waste of time. Often, through negative self-talk, they have convinced themselves ahead of time that the mediation will end in failure.

This conviction in the minds of one or both parties often becomes the first challenge you must face. In mediation it is crucial to have a positive attitude. If the participants sense that you have succumbed to their negative self-talk or perhaps your own, the mediation will not go well. Participants will be uncooperative and likely go through the motions to end the mediation as quickly as possible.

But if you have a positive attitude, much of their negative self-talk will dissolve away. For this reason, begin each mediation with the attitude that the conflict can be resolved, and tell the participants that you believe that. It can also be helpful to tell them at various times during the negotiations that you are confident that case will be resolved, and that you feel good about all the progress being made.



Also, keep in mind that a positive attitude can also stem from your belief in the process. For me, as a professional mediator, my cases do not always settle on the day of the mediation session. However, 99% of the cases that come before me settle before going to court. And I always know that I have had a positive impact on that result.

In other words, the matter does not have to be completely resolved in one session for progress to have been made. The fact that you got the parties to agree to a date, time and place is often a great achievement in itself.

Assignment

For this lesson I would like you to think of times in your life when you did not believe you could accomplish a goal. What was the goal? Did you tell yourself beforehand that you could not accomplish it? Sometimes, such feelings are self-fulfilling. How did it feel not to be able to finish the task? Then think of times when you had a positive attitude about finishing a task. Did that attitude help you achieve your goals?



Lesson 4 - Empathy, Understanding and Listening Skills

When people come to you to help them resolve a conflict, the first thing that must be done is to get a better understanding of the conflict and the people involved.

To get a better understanding of people and their conflict, one can employ empathy. Empathy is about creating an emotional connection to other people. The Merriam-Webster Dictionary defines empathy as ‘the experiencing as one's own of the feelings of another.’ A great way to go about experiencing empathy is to try and put yourself in the shoes of another. Think: ‘how would I feel if I was this person in this situation?’ The more you try this exercise, the more you will be able to experience the feelings of another as your own. And if you can feel how another is feeling, you can have a much greater understanding of that person and the conflict that they find themselves embroiled in.

Empathy can also help a mediator remain neutral and objective. By putting yourself in the shoes of each participant you are not factoring your own feelings in, and you can have a more global appreciation of the conflict.

Moreover, if you can get the parties in a conflict to empathize with each other, you will find it easier to discuss the issues in the conflict. Furthermore, the parties, after feeling – or at least exploring - the other side's position, may be more willing to resolve the conflict. That is the hallmark of understanding which empathy conveys.

Another way to be empathetic is to employ listening skills. To understand and empathize with the parties in a conflict, you must hear them out. If you listen, rather than speak, they will tell you how they feel about the conflict. And that makes it much easier for you to understand and empathize.



Being an active listener requires that you commit your total presence to the speaker and you must have the ability to be objective in situations that are often clouded with emotion. The listener should listen very carefully to the speaker's feelings to allow them to release their frustrations and understand that they are safe and can trust you to listen to what is being said.

Another thing that good listening skills will accomplish for you is to make the parties feel like they have been heard. Sometimes, all that a party may be looking for in a conflict is for someone to hear their story.

Furthermore, once you have heard a person's story, you can sympathize with the individual. Some of the stories I have heard in my mediations are heartbreaking. I always try to let injured participants know that I am sorry they were hurt. And in some situations, expressing these feelings can help to bring about the resolution of a conflict.

As a Bard, Ovate or Druid, it is our place to care about the hardships of other people. In this way we can serve them better.

Assignment

For this exercise, try to talk to three people you know about particular difficulties, challenges or conflicts they face. Your job will be to simply listen to what they have to say about their own problems without you trying to offer any advice. Just focus entirely on hearing them without any judgement, or desire to interrupt, or to solve their problems for them. This is an exercise in 'deep listening'. If it feels right, after the exercise, ask the participants how they felt when they talked to you.



Lesson 5 - Remaining Neutral

Everyone has a filter that they use in their communications. Such filters decide for us whether something is favorable or unfavorable, and are created when we are very young.

However, these filters may become a problem in a mediation. The most important aspect of a mediator's role is to remain neutral and objective. Such neutrality can be hard to maintain if one's filter is rendering judgments about the participants and their conflict. It is not a mediator's job to judge the parties or their conflict. Such things are better left to judges and juries. A mediator's job is to bring resolution to the parties' conflict. Oftentimes, the parties will have vastly different views of the circumstances.

For this reason it is wise to let go of your mind's propensity to judge during a mediation session. Likewise with your feelings, which may urge you to take sides on the basis of what you have learnt about the dispute. But keep those feelings and judgments in abeyance.

Another thing that you might encounter in your negotiations is a party that may try to antagonize you. Again, your mental and emotional 'filters' will influence you into judgment and even reaction. It is important not to be antagonized by a participant. Remember, they are involved in a conflict. They may or may not see you as a person who is trying to help them. But try not to judge the individual as malevolent. This may be hard to do, but to remain neutral it is important not to take one side over the other.

Remaining neutral and detached can also be difficult when one party attempts to enlist your aid to gain a better negotiating position with the other side. But a mediator is not involved in the conflict, and should resist any attempt or urge to take one side over another. That is why it is important not to make judgments about what is right or wrong or good or bad. If you have



decided that one party is right and the other is wrong, you may be tempted to advocate for that side. That is not the role of the mediator. Remember: stay neutral, stay objective.

Assignment

For this assignment find a conflict with two or more sides. Maybe you can watch a show on TV with a judge who decides a case, like *Judge Judy*. If you cannot find a show, you might try a law library with books filled with cases. Watch a show or read a case, and practice staying neutral and objective. No matter what evidence is presented, try to see all sides of the conflict. Report three such cases in your journal, presenting each side of the case.



Lesson 6 - The Power of Words

In any negotiation, words are the only real tools you have at your disposal. Their power plays a crucial part in any mediation.

Words have the power to heal and the power to injure. And for this reason we must be certain that the words we use convey our thoughts as clearly and as unambiguously as possible.

Remember, in a mediation, the mediator is in charge. He or she directs the flow of communication and gives structure to the negotiations. Thus, the words you use to do so are critical.

The following is a list of phrases you might choose to use in your negotiations, drawn from Pearl M. Georgen's manual, *Professional Mediator's Course . . . For Those Who Choose to be Peacemakers*.

1. **'Please correct me if I'm wrong.'** This helps you remain open to persuasion by objective facts and principles. This also helps to defuse confrontation.
2. **'We appreciate what you've done for us.'** Giving personal support to the 'other' is crucial to separating the people from the problem.
3. **'Our concern is fairness.'** Showing continued concern for fairness helps you demonstrate objective criteria for resolving problems.
4. **'We would like to settle this on the basis of principle, not selfish interest.'** Separating the people from the problem and focusing on interests and objective criteria come into play with this statement. A 'selfish interest' can be interpreted to mean a hard line 'position' which ultimately is based upon a hidden agenda or a number of behind-the-scenes interests.



5. **‘Could I ask a few questions to see if my facts are right?’** Clarification of the facts will facilitate communication and keep misunderstanding at a minimum. Also, when you test your facts, the other has the opportunity to listen and respond, which keeps communication open.
6. **‘Let me see if I understand what you are saying.’** Showing concern for the other and appreciation for wanting to be understood, helps reduce misunderstanding and communication breakdowns. It also shows that you care about what the other is saying.
7. **‘Let me get back to you.’** Sometimes, you will not know an answer to a question a party has or you might need to confirm something with the other side. This phrase is good to employ in that situation.
8. **‘Let me show you where I have trouble following some of your reasoning.’** Sometimes it is important to point out a weakness in a party's argument or reasoning. This phrase is good to employ if that situation arises.
9. **‘One fair solution might be . . .’** No commitment to the solution has to be agreed upon, therefore, people will listen with open minds and ears. Also, being able to express a ‘might be’ solution will help generate dialogue and other options and criteria.

Assignment

This week take five words that you choose and give their dictionary definitions. Then explain why the words you chose are important. Then show how they can be used during a negotiation.



Lesson 7 - Confidentiality

Confidentiality is another important aspect of the mediation process. On this subject, Christopher W. Moore, in his book [*The Mediation Process*](#), writes:

‘Confidentiality, though often considered to be both an important aspect and indeed a functional necessity of mediation, is not universally guaranteed or necessary. Some states in the United States make legal guarantees of confidentiality between disputants and mediator. Other states do not provide for confidentiality and on occasion may request data or subpoena mediators to testify in postmediation court proceedings if the parties have failed to reach an agreement.’

For me, I keep my mediations confidential, as is required by local laws in my state. And I feel that confidentiality is essential to my negotiations. It makes parties feel more at ease to discuss matters that they normally would not relate. Because they know that the statements made in mediation will not be used anywhere else, particularly a court case, they feel freer to relate facts and tell the truth.

Moreover, keeping negotiations confidential also builds a sense of trust between the mediator and the participants. In a mediation, often one party will feel more comfortable revealing a fact to a mediator, if that party knows that the fact will not be revealed to the other side.

This aspect of mediation is important because essentially a mediation is a communication process. To keep the flow of communication going is crucial. Otherwise nothing will be said and an impasse could be reached. It is important to keep the flow of communication of essential



facts going so that there is a subject to be discussed. If not, you might spend your time talking off-topic or in evasive small talk, which will not be helpful.

The following is an example of what you might say to participants regarding confidentiality at the beginning of your mediation:

‘These sessions will be considered by me to be confidential in that I will not discuss them publicly with any person not involved in this dispute. I will attempt to maintain this confidentiality to the best of my ability. I may want to discuss this problem confidentially with a colleague so that I may gain greater insight into the conflict. I request that you grant me this privilege as it will enable me to better assist you in reaching an agreement. If I do so, I will not use either of your names in describing the situation.’ (Christopher W. Moore, [*The Mediation Process*](#).)

Assignment

Have you ever told a secret to someone? Most people have at some time. Was that secret revealed to other people? How did you feel about that? Has anyone ever revealed a secret to you which you later related to another person? How did the person who told you the secret originally feel about the revelation of their secret? Confidentiality is essentially the same thing as keeping a secret. What the participants say to you is a secret. If you reveal such a secret, especially one that has legal consequences, how successful do you think your negotiations will be?



Lesson 8 - Have a Plan for Your Negotiations

In your negotiations, the parties will be looking to you as the mediator to give structure to the mediation. Thus, it is good to organize a mediation plan beforehand. On this subject, Christopher W. Moore says the following in his book [*The Mediation Process*](#):

‘Once a mediator has collected and analyzed information and gained a commitment from the parties to mediate, the task that remains before any direct intervention to conduct problem solving is to design a mediation plan. A *mediation plan* is a projected sequence of procedural steps initiated by the intervener that will assist negotiators in exploring and reaching an agreement. The plan's detail depends on the type and complexity of the conflict, the extent of the mediator's knowledge of the dispute, available planning time, and the amount of control over the negotiation process the disputants have delegated to the intervener.’

It is a good idea to begin a mediation with a joint session. A joint session is a session when all the relevant parties are present. This presents a good time to introduce yourself and give the parties a chance to present their cases. Then you want to discuss the issues of the case.

In any conflict, there are relevant issues to the problem. Here is where you want to focus your planning. Prior to the mediation, you might want to think about the facts of the dispute and outline what the issues are. For example, in an auto accident case, one of the major issues is going to be what caused the accident. Each side may have their own version. Thus, this topic is an issue to be discussed since knowing which party is liable will determine which party owes money to the other. And in many auto-accidents, that is all the parties are concerned with; who owes whom and how much. Thus, we want to place in our outline ‘liability’ as a major issue and schedule a time in our mediation for that issue to be discussed.



At some point, you might want to schedule a caucus. A caucus is when the mediator meets with one party alone and keeps confidential all communications that are revealed by that party in the caucus. It is a good idea to have a caucus to explore one of the relevant issues in the case.

For example, one party has admitted they owe the other side money, but they don't feel comfortable revealing what is the most they want to pay. You might choose to caucus with that party to explore that amount in more depth as it can assist you in reaching a final agreement to the amount to be paid.

If you reach an agreement on all the substantive issues in the case (in the example above, the parties will agree how much the defendant will pay the plaintiff for damages), you will then want to draft an agreement. This part of the process I will discuss at length later on.

Once you have an agreement or the parties have reached an impasse, you then conclude the mediation. A good way to do this is to bring everyone together in a joint session and officially close the mediation. If you have been successful, this part of the mediation will be lighthearted and jovial. If not, some participants may not want to speak to the other participants and simply leave.

Assignment

Take a case that you know about and draft an outline for a mediation. Give an introduction, which might include some basic information about you, your credentials and your conflict resolution philosophy. Present the different parties and their cases. Then outline the substantive issues and schedule joint sessions and caucuses where you think they would be strategic. Report your mediation plan in your journal.



Lesson 9 - 'Getting to Yes'

The actual discussion of major issues in your negotiations can be difficult. In their award-winning book [*Getting to Yes*](#), Roger Fisher and William Ury relate several negotiation principles that can aid you in your mediation. They suggest that any agreement can be fairly judged by three criteria:

- 1. It should be a wise agreement if agreement is possible.**
- 2. It should be efficient.**
- 3. It should improve, or at least not damage, the relationship between the parties.**

Additionally, they present four basic points on principled negotiation. These are:

- 1. Separate the people from the problem.** Always ask yourself, 'Am I paying enough attention to the people who are facing the problem?' The parties are people first; their emotions, values, and beliefs come into play constantly throughout the negotiation.
- 2. Focus on interests not positions.** For a wise solution or agreement, reconcile interests rather than positions. The positions taken are motivated by underlying interests. Interests motivate people to take positions, and it is your responsibility to look beyond positions to ascertain the interests.
- 3. Generate a variety of possibilities before deciding what to do.** Invent options that offer mutual gain for the parties. The following is a list of things that inhibit an abundance of options: a) Premature judgment, b) searching for a single answer, c) assumption of a fixed pie, and d) thinking that solving the problem is their problem.



4. Insist that the result be based on some objective standard. Do not try to decide on the basis of will, this only leads to win/lose outcomes. Prepare in advance and develop some standards beforehand and think through all possibilities.

When dealing with problems in your mediation work, try considering these four points outlined by Fisher and Ury.

Probably the most famous negotiation tactic presented in [*Getting to Yes*](#), is the suggestion that you should work out your best alternative to a negotiated agreement ('BATNA.'). The reason you negotiate is to produce something better than the results you can obtain without negotiating. When you have decided what your BATNA is, you can compare it to the proposed agreement. Using objective criteria, a choice can be made as to which option will be in your best interest. So instead of having a bottom line, compare a proposal with your BATNA to see if it meets your interests. The better your BATNA, the greater your power in a negotiation.

I highly recommend that you read [*Getting to Yes*](#). It is considered one of the most influential books on negotiation and very helpful to becoming an effective mediator.

Assignment

Take one of the cases you have been working on and develop a proposal of an agreement or solution that you think is wise and efficient. Then draft a BATNA that is related to your agreement or solution. Post these in your journal.



Lesson 10 - Strategies for Dealing with Conflict

In your negotiations you will also encounter different strategies that are commonly used for dealing with conflict. These strategies are explored in the [*Thomas-Killman Conflict Mode Instrument*](#), which is a tool developed to measure an individual's response to conflict situations.

Below is a summary of these differing strategies:

- **Accommodating Teddy Bear** - This cuddly strategy is all about giving in to the other party, allowing their interests to be met while yours are not. This strategy is employed when : (1) We have a low concern for our own interests but a high concern for the interests of the other party, (2) We are in the early stages of a relationship where trust hasn't been established and so the relationship is unstable, (3) Want to be liked and (4) We are accommodating because we feel threatened.

- **Avoiding Turtle** - This is a non-coping strategy. We just choose not to deal with the issue and either withdraw from the conflict or avoid it altogether. In withdrawing from the conflict we either physically walk away or mentally walk away by ignoring what the other party is saying. In avoiding there is complete inaction. The goal is to procrastinate or completely deny that a conflict exists.

- **Contending/Forceful Shark** - This is a confrontational strategy and is bilateral because there must be cooperation in order to carry on. It takes two people to contend with one another. Also known as a win-lose strategy. This strategy is most often employed when (1) There is a high concern for our own interests and low concern for the interests of the other party, (2) There is a fear of losing, (3) We are in a rigid position, (4) We have entered into a conflict having decided



upon our own position and there are no alternatives but to get what we want, (5) We have the ability to compete and control and (6) We hold the belief that the other party will yield.

- **Compromising Fox** -This strategy is a process whereby both parties give up something that they want in order to get something else that they want more. Compromises are often win-lose or lose-lose situation, used when there are limited resources to be divided up, and whatever side gets, the other side loses. In a compromise, neither side gets everything that they really want, but each make concessions in order to reach an agreement that is acceptable to both.

- **Collaboration Process** - The collaboration strategy provides the best chance for a mutually satisfactory response. By demonstrating that you are committed to trying to solve the conflict in a way that works for both parties, there is a greater potential for you to influence the other party to trust you. However, if you just seem to be only interested in your own interests then it is likely that the other side will compete. Collaboration is the search for cooperation.

Assignment

Which strategy above is your preferred strategy in negotiations? Why? Have you found it to be an effective strategy? Think of a conflict you have been involved in, or that is familiar to you, and think through how it can be approached with each of these strategies.



Lesson 11 - Drafting an Agreement

The point of a mediation is to arrive at a solution or agreement regarding all the relevant issues of the dispute. Once you have reached this point, it is important to reduce the agreement or solution to a written agreement. Written agreements spell out the decisions, intentions and future behavior of the disputants. The psychological effect of a written agreement is one of the main reasons why mediation works. The agreement details what the disputants are bound to do in the future.

The following is a list of guidelines to drafting an agreement adapted from [*Mediate, Don't Litigate*](#) by Peter Lovenheim.

1. Use plain language in drafting your agreement.
 2. Use neutral language, omitting any mention of blame or fault.
 3. Identify the people involved by their full names.
 4. Give specific dates when certain events are to occur.
 5. If the agreement involves the payment of a certain sum, specify the method by which the payment will be made.
 6. Establish Who? What? Where? When? and How? in clear plain language with sufficient detail to carry out the promises and terms of the parties' agreement.
 7. Address all of the issues discussed during the mediation and limit your discussion to only those issues discussed.
 8. Reflect the parties' mutual concerns/interests by the use of parallel or joint provisions.
- This usage will guarantee that each/ party is treated equally.



The following is an example of a format you can choose to use in drafting your agreement.

1. Introduction - Who are the parties involved in the dispute?
2. Relationship of the parties - What are the relationships that the parties have to each other?
3. Issues which brought the parties to mediation - What caused the dispute?
4. Agreements - What did the parties eventually agree upon in discussing the relevant issues of the dispute?
5. Enforceability clause - (This will be discussed in the next lesson in greater detail.)
6. Execution - Include at the end of the document a date, the parties' signatures, and the mediator's signature.

Assignment

Take one of the cases you have been working with during this course, or an example from your experience, and draft a written agreement. Post this agreement in your journal.



Lesson 12 - The enforcement of an Agreement

Agreements in mediation are not in and of themselves enforceable. For this reason, in drafting an agreement, the mediator must address the issue of enforceability. Regarding the subject of enforceability, Christopher W. Moore in [*The Mediation Process: Practical Strategies for Resolving Conflict*](#) says the following:

‘*Legal contracts* are the most common way of ensuring commitment to an agreement between two or more parties that is judicially enforceable. Contracts are characterized by an exchange of consideration, a promise, or an act that one party agrees to perform in return for promises or acts from another.’

In forming a contract, you must comply with the laws regarding contracts in your locality. A judicially enforceable contract allows the parties to have some recourse if one or more of the parties to the agreement fail to perform as determined by the terms of the agreement.

If you do not choose to create a contract, you might have a nice agreement that no one adheres to after the mediation.

The following is an enforceability clause from a generic ‘Stipulation re Settlement’ used by the Los Angeles Superior Courts:

‘The parties agree that they have reached a full and final settlement of all claims arising from the events described in the complaint. *This agreement is binding* and it contains the material terms of the agreement between the parties . . . The Court is requested to retain jurisdiction and this settlement may be *enforced* pursuant to California Code of Civil Procedure section 664.6.’



For the Agreement to be enforceable as a contract, it must comply with the local laws of your municipality, state or country, and to ensure you have the correct enforceability clause when drafting your Agreement, you should consult with an attorney/lawyer.

Assignment

Consult your local rules relating to the enforcement of contracts to see what they specifically require, and then take one of the cases you have been working with, or an example from your experience, and draft an enforceability clause that adheres to the local laws of your city, state or country.



Lesson 13 - Being a Mediator in the Real World

Deep within the still centre of my being

May I find peace.

Silently within the quiet of the Grove

May I share peace.

Powerfully within the greater circle of humankind

May I radiate peace.

The Druid's Peace Prayer

We live in a world full of conflict. As members or friends of the Order of Bards Ovates & Druids we are attempting to emulate the Druids of the past to help bring peace to the world.

And mediation is just one way you can go about this task. It requires no magic tricks. All you need is your words.

Here is a shortlist of the types of disputes that can be successfully handled through mediation:

1. Family issues such as divorce or child custody. Or other domestic issues such as abuse or disputes between a parent and a child.
2. Business issues such as employer/employee contracts and partnerships, and workplace disputes.
3. Issues that arise at school like bullying.
4. Neighborhood disputes over issues such as noise pollution.
5. Issues that arise between landlords and their tenants.



6. Disputes that occur between consumers and merchants.
7. Conflicts which arise in your local community.
8. Misdemeanors such as sexual harassment.
9. Political disputes between differing legal parties.
10. International disputes arising between hostile nations.

Use your imagination!

Further exploration of mediation and negotiation is recommended. Fortunately today there are many classes that you can take – look on the internet for classes in your area.

This course is based in part on my own experience and on the work of the authors cited.

For further reading I recommend the books cited in the lessons, especially [*Getting to Yes*](#) by Fisher and Ury. See also:

[*The Making of a Mediator*](#) by Michael D. Lang and Allison Taylor

[*The Skilled Facilitator*](#) by Roger M. Schwarz

[*Getting Together*](#) by Roger Fisher and Scott Brown

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