



NEW JUSTICE PROGRAM

UNIVERSITY OF SOUTH
CAROLINA

YAROSLAV MUDRYI
NATIONAL LAW UNIVERSITY

RULE OF LAW CERTIFICATE PROGRAM SYLLABUS

Day 1: Modern Approaches to the Rule of Law

Overview

Rule of law is a widely embraced concept. Yet, it resists easy definition and it can be difficult to fully understand how political systems, states, economics, and societies interact. In addition, for many countries, including Ukraine, rule of law is high on the national agenda. Development agencies, international financial institutions, and a seemingly ever-growing network of nongovernmental actors watch for it, try to measure it, and seek to promote it. This day will tackle some key foundational questions about the rule of law, including possible origins, definitions, key outcomes, and risks related to its absence.

Modules for the day

Session 1 (90 min) – The Rule of Law: Origins, Evolution, and Difficulties in Understanding

- ❖ *Professor:* Justice Serhiy Holovaty
- ❖ *Topics:* Antique origins of the rule of law, The rule of law development in the Middle Ages, New Concepts as prerequisites of the rule of law doctrine shaping. British doctrine of the Rule of Law. Professor Dicey's efforts to deconstruct and define the rule of law. German doctrine of "Rechtsstaat": "Rechtsstaat" vs. "Polizeisstaat". Other doctrines from continental Europe linked to the rule of law. The rule of law principle in the acts of international organizations.
- ❖ *Delivery Method:* Lecture

Session 2 (90 min) – Defining the Rule of Law

- ❖ *Professor:* Joel Samuels
- ❖ *Topics:* Why is rule of law difficult to define? What definitions exist (e.g, instrumentalist versus functionalist)? How is rule of law realized?

- ❖ *Delivery Method:* Lecture

Session 3 (90 min) – Why the Rule of Law Matters (and where it doesn't exist) in Ukraine

- ❖ *Professors:* Joel Samuels and Olena Uvarova
- ❖ *Topics:* Why the rule of law is important to a State; who benefits from it and how? How have courts and other institutions handled these issues? How does the rule of law matter in Ukraine? And where is it absent or in need of greater support?
- ❖ *Delivery Method:* Lecture, case analysis, facilitated interactive dialogue

Session 4 (90 min) – The Rule of Law and Power (The State and Other Non-State Actors – MNCs, donors)

- ❖ *Professors:* Joel Samuels and Olena Uvarova
- ❖ *Topics:* What is the relationship between the rule of law and power? Who are the key actors beyond the state in ensuring the maintenance of the rule of law? Is the law fundamentally constrain or authorize the exercise of power?
- ❖ *Delivery Method:* Lecture, facilitated interactive dialogue, and in-class exercise

End of Day: Wrap up, de-brief, discuss homework, Q&A

Learning Outcomes

At the conclusion of today's discussions and presentations, participants will be able to:

- Summarize and place in context the historical development of the concept of rule of law
- Understand what social phenomena lead to the idea that everyone is bound by the law
- Identify stages of the rule of law evolution from a doctrine to a principle
- Identify and discuss the various means of defining rule of law and why an accepted definition is elusive
- Understand different approaches to identifying the elements of the rule of law
- Interpret the rule of law principle and apply it in their daily work
- Understand the consequences of the absence of the rule of law
- Recognize key political, governmental, and societal benefits of ROL
- Summarize the history of efforts to improve rule of law, notably in Ukraine
- Consider the concept of non-state legal regulation, which is always seen in the context of such concepts as self-regulation, legal pluralism and globalization

- Understand the role of the non-state actors (multi-national corporations, political parties, religious organizations, ethnic communities, online communities etc.) for human rights and rule of law
- Illustrate the role of the rule of law for the law regulation at the level of the non-state actors

Day 2: Core Rule of Law Principles and Pillars in Comparative Perspective

Overview

How do we move from theory into practice? At the international level, several institutions hold forth standards for, and condition membership on, the existence of the rule of law. How should nations seeking to “improve” their rule of law practices do so? How are international rule of law principles implemented at the national level? Through this lens, this day’s sessions will consider these issues and discuss comparative approaches to key rule of law benchmarks, including separation of powers and proportionality.

Modules for the day

Session 1 (90 min) – Incorporating International Rule of Law Principles into National Law

- ❖ *Professors:* Joel Samuels and Yuri Barabash
- ❖ *Topics:* How do other states “build” the rule of law? What role do international standards play in national law? What mechanisms are used to incorporate these principles? What lessons can be learned from these approaches? What spaces exist in Ukraine to adopt some of these approaches and in what areas has this already been accomplished?
- ❖ *Delivery Method:* Lecture and facilitated interactive dialogue

Session 2 (90 min) – Comparative Approaches to Proportionality

- ❖ *Professors:* Joel Samuels and Yuri Barabash
- ❖ *Topics:* Proportionality is a core concept of the rule of law. How have different courts addressed proportionality? What challenges do the approaches of these courts present? How are these questions addressed, and are these approaches consistent with best practices to establish the rule of law?
- ❖ *Delivery Method:* Lecture, case study, and facilitated interactive dialogue

Session 3 (90 min) – The Role of Professional Institutions in Establishing and Maintaining the Rule of Law

- ❖ *Professors:* Steven Austermiller and Joel Samuels
- ❖ *Topics:* What are the major institutions that serve as the pillars of the rule of law? How do they support rule of law objectives? This session will consider the unique place, tensions, and obligations of key institutions in establishing and maintaining the rule of law.
- ❖ *Materials:* Short lecture; small group exercise, PowerPoint slides.
- ❖ *Delivery Method:* Facilitated discussion, anecdotes, and experiential discussion

Session 4 (90 min) – Separation of Powers and Its Challenges in Practice

- ❖ *Professors:* Joel Samuels and Yuri Barabash
- ❖ *Topics:* How do other countries balance the relationship between the executive branch and the judicial branch? What is the nature of the interactions between the executive and judicial branches in Ukraine? What challenges are presented by these interactions? How do other nations grapple with these challenges and how is the rule of law affected?
- ❖ *Delivery Method:* Lecture, facilitated interactive dialogue, and in-class exercise

End of Day: Wrap up, de-brief, discuss homework, Q&A

Learning Outcomes

At the conclusion of today's discussions and presentations, participants will be able to:

- Consider how rule of law principles have been incorporated into national law in Ukraine and where there is an opportunity for further efforts at incorporation
- Understand how rule of law principles have been incorporated into national law in select other countries
- Understand the importance of proportionality and why it matters
- Apply the proportionality test in their daily work based on international standards
- Discuss the major professional institutions considered pillars of the rule of law
- Consider how they operate in other settings and in Ukraine
- Identify how professional institutions contribute to strengthening the rule of law
- Understand the implications of the separation of powers in Ukraine and what that means for rule of law in the country
- Understand the role of each branch in strengthening the rule of law, and know how to use checks and balances to avoid the improper influence on other branches

Day 3: Human Rights and Their Protections (Part 1)

Overview

“Human rights” are legal guarantees deemed to have a universal nature; they protect individuals and groups against actions that interfere with or limit certain fundamental freedoms and basic human dignity. Most human rights “originate” in the United Nations’ Universal Declaration of Human Rights and the treaties elaborating and developing its provisions. In addition, regional bodies, such as the Council of Europe, African Union, and Organization of American States, have adopted regional conventions mirroring and developing the rights in United Nations’ instruments. Taken together, these treaties, along with a number of declarations, and other non-treaty instruments, comprise what is broadly referred to as ‘human rights’ law, addressing many aspects of human life and interaction.

Rule of law encompasses directly providing basic protections for individuals. This session will explore human rights protections mandated by international law. What are the basic source of international law that protect human rights? What are those rights and how do multilateral treaties protect them? How do global human rights instruments, such as the European Convention on Human Rights, operate in national law?

Modules for the day

Session 1 (90 min) – Overview and Application of Human Standards in Practice, Part I

- ❖ *Professors:* Joel Samuels and Olena Uvarova
- ❖ *Topics:* What are international human rights and how are they enforced? How do international obligations apply in Ukrainian courts? What are the challenges of implementation and effectiveness?
- ❖ *Delivery Method:* Lecture and facilitated interactive dialogue

Session 2 (90 min) – Overview and Application of Human Standards in Practice, Part II

- ❖ *Professors:* Joel Samuels and Olena Kharytonova
- ❖ *Topics:* Using a case study involving life imprisonment, explore how international human rights standards provide guideposts for the development of national law.
- ❖ *Delivery Method:* Lecture, participant group activity, and facilitated interactive dialogue

Session 3 (90 min) – European Approach to Access to Justice

- ❖ *Professor:* Joel Samuels and Tatiana Tsuvina

❖ *Topics:* What does access to justice mean in theory and in practice? How do international human rights standards affect access to justice?

❖ *Delivery Method:* Lecture, case study, and facilitated interactive dialogue

Session 4 (90 min) – The European Convention on Human Rights and the Right to a Fair Trial

❖ *Professor:* Steven Austermiller and Tatiana Tsuvina

❖ *Topics:* How does ECHR Article 6 protect the right to a fair trial? What constraints does it place on state actors? What changes need to be made to ensure the right to a fair trial?

❖ *Delivery Method:* Facilitated interactive dialogue, and in-class exercise.

End of Day: Wrap up, de-brief, discuss homework, Q&A

Learning Outcomes

At the conclusion of today's discussions and presentations, participants will be able to:

- Identify the major sources of international human rights norms
- Describe key protections provided through those sources
- Understand how international human rights standards affect national practice
- Identify how human rights standards affect the rule of law
- Describe how human rights instruments are given effect in national courts
- Discuss how to apply international human rights standards in domestic legal institutions
- Understand European approaches to access to justice
- Apply the proportionality test in cases where the right to a fair trial is violated
- Understand how the international right to fair trial applies in the Ukrainian legal system
- Identify the circumstances when formalism is in tension with access to justice

Day 4: Human Rights and Their Protections (Part 2)

Overview

Today, participants will continue to delve into how international principles are incorporated into Ukrainian national law. Do international human rights protections only apply in criminal matters? If not, what other areas of law and human activity are affected and how? This day will tackle how international human rights issues affect commercial matters. Participants will also discuss how international standards apply in cases of civil unrest or conflict.

Modules for the day

Session 1 (90 min) – Human Rights and Business

- ❖ *Professors:* Steven Austermiller and Olena Uvarova
- ❖ *Topics:* Business responsibility with respect to human rights standards in various contexts.
- ❖ *Delivery Method:* Lecture, case study, and facilitated interactive dialogue

Session 2 (90 min) – Anti-Discrimination Standards, Part 1

- ❖ *Professors:* Steven Austermiller, Olena Uvarova, and Olena Kharytonova
- ❖ *Topics:* Human rights, commercial matters and discrimination.
- ❖ *Delivery Method:* Lecture, small group exercises, and facilitated interactive dialogue

Session 3 (90 min) – Anti-Discrimination Standards, Part 2

- ❖ *Professors:* Steven Austermiller, Olena Uvarova, and Olena Kharytonova
- ❖ *Topics:* Anti-discrimination standards, social consensus, and criminal law
- ❖ *Delivery Method:* Lecture, small group exercise, and facilitated interactive dialogue

Session 4 (90 min) – Justice and Rule of Law in Times of Conflict

- ❖ *Professors:* Joel Samuels and Olena Kharytonova
- ❖ *Topics:* How does the rule of law withstand emergency situations? What protections must be in place to ensure that the rule of law survives in times of conflict? How can the state be held accountable when the rule of law breaks down in times of conflict?
- ❖ *Delivery Method:* Lecture, facilitated interactive dialogue.

End of Day: Wrap up, de-brief, discuss homework, Q&A

Learning Outcomes

At the conclusion of today's discussions and presentations, participants will be able to:

- Describe how international human rights law applies to private business activities
- Understand the relationship between human rights protections and business activities and effective legal remedies
- Understand the role of the state, civil society and the legal community in promoting the implementation of human rights obligations by businesses
- Identify how businesses may violate human rights and understand corporate practices of risk assessment related to human rights
- Identify key issues in Ukrainian application of international anti-discrimination norms
- Describe the basic rules of Ukrainian anti-discrimination law
- Identify and discuss rule of law in times of conflict
- Understand basics of a state's positive obligations, responsibilities in uncontrolled territories, and the concept of "effective control"

Day 5: Rule of Law in Practice: Professionalism and Ethical Obligations

Overview

According to the United Nations, professional training for lawyers, judges, prosecutors, and law enforcement officials should promote a culture of service and ethics in part to serve the rule of law. Only when legal rules are predictably and professionally enforced can justice be effectively administered. But, justice institutions are operated by individuals: lawyers, prosecutors, judges, and police. To have the rule of law a society requires more than just laws and institutions. The institutions must be deemed by society as legitimate and worthy of compliance. At its core the rule of law is about the relationship between the government and society.

It is in the public interest that legal, judicial, and correctional institutions are legitimate. How are these institutions' professionals held accountable? Today's session will address how these obligations that are crucial for the rule of law are realized by self-regulation or some form of state oversight. How do concepts such as professionalism, independence, ethics, and continuing education contribute to the integrity and legitimacy of judicial institutions?

Modules for the day

Session 1 (90 min) – The Legal Profession, Independence, and Legitimacy

- ❖ *Professors:* Steven Austermiller and Joel Samuels
- ❖ *Topics:* Lawyers are considered essential to a democracy, in part owing to the role of the courts in constraining executive power. How does this profession deal with obligations related to the protection and maintenance of a democratic order?
- ❖ *Delivery Method:* Presentation, small group exercise, and facilitated interactive dialogue.

Session 2 (90 min) – Professional Self-Regulation Challenges and Opportunities

- ❖ *Professors:* Steven Austermiller and Joel Samuels
- ❖ *Topics:* What is a self-regulating profession? How do they define the public interest and place it above personal matters?
- ❖ *Delivery Method:* Presentation and facilitated interactive dialogue

Session 3 (90 min) – Independence, Impartiality, and Integrity of Justice Sector Actors

- ❖ *Professors:* Joel Samuels and Tatiana Tsuvina
- ❖ *Topics:* How do we distinguish among the inter-related concepts of independence, impartiality, and integrity? What does it mean for courts or professions to be independent or to have integrity? Why do these concepts matter to the rule of law?

- ❖ *Delivery Method:* Presentations, case study, and facilitated interactive dialogue

Session 4 (90 min) – Comparative Professional and Ethical Obligations Facing Legal Professionals

- ❖ *Professors:* Steven Austermiller and Ashot Aghaian
- ❖ *Topics:* Codes of conduct of professional organizations prohibit conflicts of interest and impose constraints on the exercise of delegated authority and public trust. Self-regulating professions argue that such conflicts are, in general, best evaluated by similarly trained individuals who can evaluate the quality of work done and ensure that high-quality service has been provided above concerns over financial gain. How effective are such systems?
- ❖ *Delivery Method:* Presentation, small group exercise, and facilitated interactive dialogue

End of Day: Wrap up, de-brief, discuss homework, Q&A

Learning Outcomes

After today's discussions and presentations, participants will be able to:

- Understand the meaning of legitimacy
- Understand how legitimacy applies to the legal profession in Ukraine
- Describe the basics of how self-regulating professions should work, may or may not operate in practice
- Identify key issues relating to self-regulating professions, such as identifying the public interest, avoiding conflicts of interest, and how professional standards interact with other public-sector accountability rules
- Understand the concepts of independence, impartiality, and integrity including not only the meaning of each concept, but also how these concepts relate to one another and to the rule of law
- Consider the independence, impartiality, and integrity of justice sector actors in practice including not only the meaning of each concept, but also how these concepts relate to one another and to the rule of law
- Identify violation of these norms
- Recognize the importance of professional ethics for strengthening the rule of law.
- Understand the ethical values and obligations that all legal professionals have in common
- Learn the sources of ethical rules for legal professionals
- Learn how to apply the ethics and conflict of interest rules in daily life

Day 6: Legal Reasoning: Exploring New Developments and New Challenges

Overview

Legal reasoning is at the core of all legal and judicial theory and practice. It is the logical process by which legal and judicial professionals bring the law as written into the practical world of everyday life. Consistency in the form and substance of legal reasoning is important to improving the logic and argumentation necessary to apply the law to real life situations. The law – both written and as interpreted by judges, governments, and lawyers – builds upon itself; prior decisions, interpretations, and legislation are used consistently as context and lens to grapple with current legal matters. Understanding the use of precedence and case law is a part of every professional’s practice. This day will introduce a common methodology of legal analysis and reasoning and apply it in various fields of law.

Modules for the day

Session 1 (90 min) – IRAC (Issue, Rule, Analysis, Conclusion)

- ❖ *Professors:* Steven Austermiller and Tatiana Tsvina
- ❖ *Topics:* The basic tenets of legal reasoning; the IRAC method
- ❖ *Delivery Method:* Lecture, facilitated interactive dialogue, and case-based exercises

Session 2 (90 min) – Precedence

- ❖ *Professors:* Steven Austermiller and Tatiana Tsvina
- ❖ *Topics:* Historical and theoretical underpinnings of precedence; usage of precedence in civil law systems; usage of precedence in ECHR and Ukraine
- ❖ *Delivery Method:* Lecture, facilitated interactive dialogue, and group debate using hypothetical cases

Session 3 (90 min) – Constitutional Law

- ❖ *Professors:* Greg Gisvold and Yuri Barabash
- ❖ *Topics:* Constitutional construction and statutory interpretation, US and Ukrainian perspectives as examples of evolving jurisprudence. Protecting individual rights in a constitutional framework. Legal formalism (principle of legality) versus realism (or “purposivism”) and textualism. Roles of privileges and immunities and appropriate limits.
- ❖ *Delivery Method:* Introductory lecture (Barabash); summary presentation (Gisvold); Case discussion (Barabash); discussion.

Session 4 (90 min) – Procedural Law

- ❖ *Professors:* Greg Gisvold and Tatiana Tsuvina
- ❖ *Topics:* Explore procedural law problems in the context of human rights protections and utilizing IRAC methods. The cases will contain a sub-textual link to questions of Access to Justice.
- ❖ *Delivery Method:* Short introductory lecture and presentation of cases; small group work; modified Socratic method to ask questions and seek responses.

End of Day: Wrap up, de-brief, discuss homework, Q&A

Learning Outcomes

At the conclusion of today's discussions and presentations, participants will be able to:

- Understand the IRAC method of deconstructing legal decisions or arguments
- Develop facility using the IRAC method of legal reasoning
- Identify and correctly state the actual legal issue, as well as other key parts of legal reasoning
- Understand the basic premise and origins of precedence
- Use analogies and distinctions between different cases
- Use precedence in arguing or deciding a case
- Understand the importance of interpretation in making arguments based on precedent or text (Constitution or Statute)
- Understand and explain the difficulty of using “black and white” or majoritarian rules to decide cases in a constitutional rights context
- Gain a comparative understanding of various methods of interpretation used in common law legal systems
- Use precedent (Ukrainian, ECtHR, or other jurisdictions cases) to argue key procedural issues
- Use IRAC methods to analyze legal formalism (purist) decision making in the context of a real case
- Gain an understanding of the tension between legal authority and legal certainty and discuss benefits and drawbacks of procedural constraints on state power

Day 7: Applying Legal Reasoning Skills in New Settings

Overview

One of the core functions of law is to help keep social order. In a democratic society, citizens have an important need to know which behaviors are allowed and which prohibited or circumscribed. However, the state cannot conceive of every situation and create a rule ahead of time. In one sense, the “rule of law” describes the tension between the state’s goal of keeping order and citizen’s rights. The publication of laws, transparency of adjudication processes, and accountability of legal and judicial professionals all help provide certainty and consistency to the process of applying general rules to specific situations. Such adjudication of rules to real life circumstances is aided by logic, reasoning, interpretation of statute and prior court decisions, supported by vigorous argument by lawyers. This day will consider this challenge in several areas of law.

Modules for the day

Session 1 (90 min) – Criminal Law, part 1

- ❖ *Professors:* Greg Gisvold and Olena Kharytonova
- ❖ *Topics:* Identify and discuss the obligations of the state to directly protect its citizens individually (such as protecting rights, including the right to life) and to protect its citizens collectively (such as by protecting “social goods” and allowing disruptive speech). Understanding the benefits and limits of criminal law in a democracy.
- ❖ *Delivery Method:* Introductory lecture; small groups to review cases and make for/against arguments; modified Socratic method question and answer.

Session 2 (90 min) – Criminal Law, part 2

- ❖ *Professors:* Greg Gisvold and Olena Kharytonova
- ❖ *Topics:* Continue discussion and examination of criminal law in a democracy. Address the issues underpinning the importance of the criminal law being affirmatively predictable (e.g., can’t be punished for an act not prohibited; “nulla poena sine lege”) and proactive (e.g., prohibition on ex post facto punishment).
- ❖ *Delivery Method:* Introductory summary remarks and presentation of new cases; small group work; modified Socratic method to draw out key issues.

Session 3 (90 min) – Rule of Law in Private Law (business, contracts)

- ❖ *Professors:* Olena Uvarova and Greg Gisvold
- ❖ *Topics:* Understanding the role of courts and legal principles in private legal matters (contracts, real estate, etc) using IRAC analysis and small group work.

- ❖ *Delivery Method:* Introductory presentation; small group work; modified Socratic method discussion to draw out key issues.

Session 4 (90 min) – Rule of Law in Private Law (family, labor)

- ❖ *Professors:* Olena Uvarova and Greg Gisvold
- ❖ *Topics:* Continue discussion of private and business law matters in the context of rule of law and human rights.
- ❖ *Delivery Method:* Introductory presentation; presentation of cases; small group work; modified Socratic method discussion to draw out key issues.

End of Day: Wrap up, de-brief, discuss homework, Q&A

Learning Outcomes

At the conclusion of today's discussions and presentations, participants will be able to:

- Employ IRAC legal reasoning method to analyze criminal cases
- Gain improved understanding and facility in harmonizing cases from different jurisdictions (ECtHR and Ukraine)
- Discuss the impact of majoritarian sentiment on judicial decision-making and legal protections
- Readily use IRAC method of legal reasoning to analyze criminal cases
- Gain improved understanding and facility in harmonizing competing goals of criminal law (certainty, predictability, and social control)
- Discuss the role of an independent judiciary in this process
- Using precedent (Ukrainian, ECtHR, or other cases) to argue business and contracts cases
- Gain a basic understanding of the how human rights laws may apply to genuinely commercial matters
- Discuss when “private” matters become “public” (i.e., legal) matters and the role of the public interest in commercial disputes
- Using precedent (Ukrainian, ECtHR, or other cases) to argue family law and labor law cases
- Gain a basic understanding of the how human rights laws may apply to genuinely commercial matters
- Discuss when “private” matters become “public” (i.e., legal) matters and the role of the public interest in commercial disputes

Day 8: Legal Counseling and Interviewing

Overview

Almost all legal professionals have clients. The client may be an individual, an organization, or even the state itself. Nonetheless, legal professionals must serve those clients. Effective client counseling is an integral part of legal practice. These modules focus on the initial aspects of client representation—learning the client’s problem, legally analyzing that problem and developing proposed solutions to the problem. Studies show that important non-legal skills, such as listening, empathy, communication, problem solving and creativity are as important as the “legal” skills of issue spotting and legal analysis. The final module addresses the skill of witness interviewing—that is, gaining the most important information from a witness that is not your client and possibly even hostile. These modules address crucial core skills, using that latest studies in communications and placing them in the contemporary Ukrainian context.

Modules for the day

Session 1 (90 min) – Interviewing and Listening Skills

- ❖ *Professors:* Steven Austermiller and Tatiana Tsuvina
- ❖ *Topics:* Client-centered approaches, interviewing, and listening
- ❖ *Delivery Method:* Presentation; small group work; role play

Session 2 (90 min) – Questioning, Counseling, and Organizing Skills

- ❖ *Professors:* Steven Austermiller and Tatiana Tsuvina
- ❖ *Topics:* Questioning, counseling, and organizing skills
- ❖ *Delivery Method:* Presentation; small group work; role play; demonstration

Session 3 (90 min) – From Theory to Practice: Counseling Session

- ❖ *Professors:* Steven Austermiller and Tatiana Tsuvina
- ❖ *Topics:* Practicing and experiencing client interviews
- ❖ *Delivery Method:* Demonstration client interview; practice interviews; discussion

Session 4 (90 min) – Witness Interviewing

- ❖ *Professors:* Steven Austermiller and Tatiana Tsuvina
- ❖ *Topics:* Witness interview principles; hostile witnesses; gaining information

❖ *Delivery Method:* Case study; practice witness interview; discussion

End of Day: Wrap up, de-brief, discuss homework, Q&A

Learning Outcomes

At the conclusion of today's discussions and presentations, participants will be able to:

- Understand the basic principles of client-centered counseling
- Deploy empathy, active listening and other problem-solving techniques
- Conduct a basic initial client interview
- Use different kinds of questions at the correct time during a client interview
- Think creatively and address ways to help a client solve his/her problem
- Understand the basic principles of witness interviewing
- Conduct a simple witness interview even if the witness is hostile

Thursday, Day 9: Dispute Resolution as an Element of Rule of Law

Overview

Court litigation is expensive, and the results are uncertain. Accordingly, most legal disputes are resolved outside of the courts, often through negotiation. Yet, few practitioners receive any training on this dispute resolution method. Successful legal and judicial professionals often say that their negotiation skills were among the most important factors that led to their success. In fact, negotiation skills are important in all aspects of life, beyond the formal legal world.

The past half century has witnessed a large improvement in the understanding of the science of negotiation. These modules will expose students to some of the key principles that have been learned. This includes theoretical and practical foundations of interest-based negotiation. It also includes the latest in communications and game theory. For these foundations to be understood, students will experience different challenging exercises and engage in discussions that develop a greater understanding of these principles. They will enable students to practice more effective interest-based negotiation and find solutions outside of the traditional position-based bargaining paradigm.

Modules for the day

Session 1 (90 min) – Approaches to Negotiation

- ❖ *Professors:* Steven Austermiller and Tatiana Tsuvina
- ❖ *Topics:* Negotiation theories—distributive vs. integrative negotiation; how to prepare for a negotiation; BATNA (Best Alternative To a Negotiated Agreement); game theory
- ❖ *Delivery Method:* Lecture; facilitated interactive dialogue; and in-class exercise

Session 2 (90 min) – Integrative or Interest-based Negotiation

- ❖ *Professors:* Steven Austermiller and Tatiana Tsuvina
- ❖ *Topics:* Principles of integrative / interest-based negotiation (Separate the people from the problem; Focus on interests, not positions; Invent options for mutual gain; Insist on using objective criteria); applying the principles; exploring the role of cooperation, reputation, and punishment in negotiation; game theory
- ❖ *Delivery Method:* Lecture, facilitated interactive dialogue, four-person negotiation exercise about water consumption, and de-brief discussion about results of exercise

Session 3 (90 min) – Negotiation Exercise

- ❖ *Professors:* Steven Austermiller and Tatiana Tsuvina

❖ *Topics:* Using integrative negotiation principles in practice; analyzing interests; developing options; exploring objective standards; and negotiation strategies

❖ *Delivery Method:* Short lecture, followed by Q&A; negotiation exercise

Session 4 (90 min) – Peaceful Settlement and Mediation

❖ Professors: David Vaughn and Tatiana Tsvina

❖ *Topics:* Client/Agency issues, negotiation strategy; negotiation style; advanced communication

❖ *Delivery Method:* Settlement conference and mediation demonstrations; discuss differences

End of Day: Wrap up, de-brief, discuss homework, Q&A

Learning Outcomes

At the conclusion of today's discussions and presentations, participants will be able to:

- Identify the key differences between the two competing theories of negotiation
- Prepare for a negotiation using the “BATNA” technique
- Identify and understand the principles of interest-based negotiation
- Identify options and develop objective standards when searching for agreement
- Understand key communication and perception principles at work in negotiation
- Engage in a difficult negotiation and successfully represent your client
- Differentiate between the various types of alternative dispute resolution (ADR) mechanisms, including mediation, and how ADR relates to the rule of law
- Define mediation and understand the mediation process
- Describe the benefits of mediation and enforcement of mediation agreements
- Recognize the role of judges, prosecutors and lawyers in the mediation process

Day 10: Adversarial Elements of the Rule of Law in Ukraine and Discussion of Capstone Projects

Overview

Recent changes to Ukraine's Criminal Procedure Code allow for more adversarial proceedings at trial. Prosecutors and defense attorneys are now explicitly authorized to take control of the prosecution and defense cases, including presenting and examining witnesses and delivering a closing argument (CPC Arts. 7, 22, 23, 42 and others). However, most students and professionals have not received a great deal of training on how this system is to work in practice. The first two modules will present participants with theoretical and practical aspects of the changed roles in the Ukrainian courtroom including the ethical obligations of court process participants. The final two modules will discuss the Capstone project.

Modules for the day

Session 1 (90 min) – Adversarial Proceedings as Guarantee of the Rule of Law. Roles and Perspectives of Various Court Process Participants

- ❖ *Professors:* Justice Debra Stephens, Washington State Supreme Court
- ❖ *Topics:* Adversarial and inquisitorial systems; direct and cross examination; changing roles for each judicial actor
- ❖ *Delivery Method:* Presentation of the framework for adversarial roles via Skype; facilitated discussion

Session 2 (90 min) – Role of Key Actors in the Courtroom and Their Ethical Obligations

- ❖ *Professors:* Greg Gisvold, Steven Austermler, Victor Smorodynskyi, Ashot Aghaian
- ❖ *Topics:* Adversarial and inquisitorial systems; direct and cross examination; changing roles for each judicial actor
- ❖ *Delivery Method:* Small group exercise, facilitated interactive discussion

Session 3 (90 min) – Explanation and Discussion of Capstone Exercise

- ❖ *Professors:* David Vaughn, Greg Gisvold, and Steven Austermler
- ❖ *Topics:* Capstone projects
- ❖ *Delivery Method:* Small groups; Q&A; presentation

Session 4 (90 min) – Selection of Topics

- ❖ *Professors:* David Vaughn and Selected Faculty from Kharkiv and the University of South Carolina
- ❖ *Topics:* Capstone projects
- ❖ *Delivery Method:* Small group meetings for approval by YTW and NJ/USC rep

End of Day: Wrap up, de-brief, discuss homework, Q&A

Learning Outcomes

At the conclusion of today's discussions and presentations, participants will be able to:

- Identify the key differences between the adversarial and inquisitorial systems
- Better understand ethical obligations facing legal professionals as a guarantee of the rule of law
- Understand the ways in which the Ukrainian CPC allows for adversarial proceedings
- Describe the roles of the various actors in the courtroom under the current Ukrainian CPC
- Understand the Capstone exercise project
- Develop an approved Capstone topic for later submission