

**UNIVERSITY OF FLORIDA FREDRIC G. LEVIN**  
**COLLEGE OF LAW**

**COLLABORATIVE LAW SYLLABUS**

**FALL 2022**

**ADJUNCT PROFESSOR ROBERT J. MERLIN**

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## **COURSE DESCRIPTION**

Collaborative Law focuses on helping clients (individuals or entities) identify their interests in a legal dispute and to facilitate settlement negotiations through which the client resolves the disputes based upon mutual self-determination rather than through litigation. This skills course is designed both to familiarize students with the history and theory of the Collaborative Process and to train them in the practical application of Collaborative Practice principles.

The course will introduce students to the concept and practice of Collaborative Law, a non-adversarial means of resolving disputes, most often used in the family law context. Collaborative Practice is often a multi-disciplinary process which seeks to help parties settle family legal matters in a dignified, private and creative manner, with respect for all of the participants, using constructive communication methods and the active participation of the parties to the dispute and the Collaborative professionals. Because family law is the area in which most Collaborative lawyering has occurred, this course will focus on the Collaborative divorce, touching briefly on the other legal contexts in which Collaborative Practice may be useful. Students are expected to attend class, to read the assigned materials in advance of each class, to complete assignments in a timely manner and to participate in class activities and discussions.

**Class Number:** 6314

**Section:** 28210

**Credit Hours:** 2

**Class Times:** Thursdays 10:00 am – 12:00 pm

**Class Dates:** Thursday, August 25, 2022 – Thursday, November 17, 2022

**Office Hours:** Please call my office, 305-448-1555, to schedule an appointment or text or call my cell 305-322-5138 to speak with me. I will make myself available for office hours every Friday from 9:00 am until 11:00 am, except for September 30<sup>th</sup>, October 28<sup>th</sup> and November 11<sup>th</sup> when I will be conducting Collaborative Process trainings for professionals. Feel free to e-mail, call or text me at any time. I will respond to you as quickly as possible if I am not available when you contact me. I would also like to schedule one or two times to personally meet at the law school with students who would be interested in having an informal and voluntary discussion on any topic related to the Collaborative Process.

**Format:** Online

**Canvas:** Please make sure you can access the Canvas site for this course, where I will post the class materials and announcements.

**Attendance:** Class attendance is mandatory. If you miss more than three classes for any reason, you may be rendered ineligible to receive credit for the course. You are expected to arrive on time for each class. If you arrive late, it is your responsibility to communicate with me after class to make sure I have marked you as being late rather than absent. I do not distinguish between excused and unexcused absences, but simply allow you three absences for whatever reason, with the following exceptions: (a) According to UF policy, “students, upon prior notification to their instructors, shall be excused from class to observe a religious holy day of their faith.” (b) “Absences from class for court-imposed legal obligations (e.g., jury duty or subpoena) must be excused.” Such excused absences for a religious holy day or a court-imposed legal obligation shall not count toward the three permitted absences. If you miss a class, you will be expected to have been prepared for the class, to have completed assignments due for that class and to know what happened during the missed class.

### **Required Readings:**

Collaborative Law, Third Edition, Pauline H. Tesler, Esquire, published by the American Bar Association Section of Family Law ISBN 978-1-63425-470-0

Uniform Collaborative Law Rules and Uniform Collaborative Law Act:

<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=515a6ede-25c2-1ab5-740e-0a8f0dfd3b18&forceDialog=0>

Florida Statutes Sections 61.55-61.58:

[http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0000-0099/0061/0061PartIIIContentsIndex.html&StatuteYear=2020&Title=%2D%3E2020%2D%3EChapter%2061%2D%3EPart%20III](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0061/0061PartIIIContentsIndex.html&StatuteYear=2020&Title=%2D%3E2020%2D%3EChapter%2061%2D%3EPart%20III)

Florida Family Law Rule of Procedure 12.745:

<https://www-media.floridabar.org/uploads/2019/08/Family-Law-Rules-of-Procedure-08-2019.pdf>

Florida Bar Rule of Professional Conduct 4-1.19:

[https://www-media.floridabar.org/uploads/2020/09/Ch-4-2021\\_03-SEP-RRTFB-9-3-2020.pdf](https://www-media.floridabar.org/uploads/2020/09/Ch-4-2021_03-SEP-RRTFB-9-3-2020.pdf)

International Academy of Collaborative Professionals Standards and Ethics:

<https://www.collaborativepractice.com/sites/default/files/IACP%20Standards%20and%20Ethics%202018.pdf>

### **Recommended Readings:**

“Getting to Yes,” Roger Fisher and William Ury, ISBN 978-0-14-311875-6

“The Collaborative Law Process Act: The Future is Now,” Robert J. Merlin, Esquire, The Florida Bar Journal, April 2017, <https://www.floridabar.org/the-florida-bar-journal/the-collaborative-law-process-act-the-future-is-now>

“The Collaborative Law Process Rules: This is How We Do It,” Robert J. Merlin, Esquire, The Florida Bar Journal, April 2018, <https://www.floridabar.org/the-florida-bar-journal/the-collaborative-law-process-rules-this-is-how-we-do-it>

“Collaborative Law Movement Is Gaining In Popularity,” The Florida Bar News, December 23, 2020, <https://www.floridabar.org/the-florida-bar-news/collaborative-law-movement-is-gaining-in-popularity>

“Collaborative Law Handbook,” Forrest S. Mosten

**Class Participation:** You are encouraged to prepare for each of our classes, including the first class. You will benefit from your preparation for the classes and your participation in our classroom discussions. You are encouraged to ask questions and to make relevant comments. My philosophy is that if you have a question, there is a reasonable chance that someone else in the class will have the same question, so please ask the question. I do not mind being respectfully interrupted with a question. If I do not think it is an appropriate time to answer the question, I will let you know. Please remind me either before the end of the class or after the class if I did not answer your question. You should expect to be randomly called upon to answer my questions or to participate in a discussion. I encourage you to think about what you have read to prepare for a class. Questioning how and why something is done will enable you to better understand the Collaborative Process. I do not expect you to answer all of my questions correctly, but I expect you to ask well thought-out questions and to actively participate in our discussions. Each student will play a role in a Collaborative team as part of your experiential learning. As such, you will play the role of an attorney, financial professional, facilitator, child specialist or party, so be prepared to embrace your role. There should be opportunities for all students to play multiple roles during our semester. Given that this will be a virtual class, it is easy to be distracted during the class. Not paying attention to what is being discussed during our classes will negatively affect your grade. While it may go without saying, you must use your video camera at all times during our classes, unless you let me know that you have an emergency. Your grade may be lowered if you do not have your camera on during a class. Please do not leave the class for any reason without communicating with me first. You should not leave the class except in extenuating circumstances. We will have a ten (10) minute break between the first and second hours of each class.

**Final Exam:** There will be a limited flexible final exam in this class, which will be administered between December 5 and 9, 2022. The format of the exam will be a combination of essay, multiple choice and fill in the blank. The law school policy on exam delays and accommodations can be found at [Exam Delays & Accommodations - Levin College of Law Levin College of Law \(ufl.edu\)](#).

**Grading Policy:**

Your grade will be based upon your participation in the classroom, your class assignments and your final exam grade, with 30% of your grade being based upon your class participation, 40% based upon your final exam grade and 30% based upon your class assignments. Per law school policy, this class will be graded on a curve. UF recognizes the following grades, in accordance

with the grading policy available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>

| <u>Grade</u>  | <u>Points</u> |                  |      |
|---------------|---------------|------------------|------|
| A (excellent) | 4.0           | C (Satisfactory) | 2.0  |
| A-            | 3.67          | C-               | 1.67 |
| B+            | 3.33          | D+               | 1.33 |
| B             | 3.00          | D                | 1.0  |
| B-            | 2.67          | D-               | 0.67 |
| C+            | 2.33          | E (failure)      | 0.00 |

**American Bar Association Out-of-Class Hours Requirement:** ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. This Collaborative Law class will be two (2) hours in the classroom each week, so you should expect to spend at least four (4) hours of preparation work each week outside of the classroom.

**Civil Discourse and Inclusive Excellence in the Classroom:** As a law student and future lawyer, it is important that you are able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may trigger strong emotions. As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world, the law school classroom, and develop our unique personal and professional identities, I encourage each of us to:

- commit to self-examination of our values and assumptions
- speak honestly, thoughtfully and respectfully
- listen carefully and respectfully
- reserve the right to change your mind and allow for others to do the same
- allow ourselves to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers.

**Accommodations for Students with Disabilities:** Students requesting accommodation should register with the UF Disability Resource Center (352-392-8565, <https://disability.ufl.edu>) and provide appropriate required documentation. Once registered, students will receive an accommodation letter, which should be presented to the UF Law Office of Student Affairs when requesting accommodation. This procedure should be followed as early as possible in the semester. Law students with disabilities can also contact the Levin College of Law Office of Student Affairs for assistance on these matters in 164 Holland Hall, 273-0620, [www.law.ufl.edu/students/](http://www.law.ufl.edu/students/).

**Basic Needs Assistance:** Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. If you are comfortable doing so, you may also contact me so I can direct you to additional resources.

**UF Law Honor Code:** Students are bound by the UF Law Honor Code, which can be found at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

**University Policy on Academic Misconduct:** UF students are bound by The Honor Pledge, which states: “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: “On my honor, I have neither given nor received unauthorized aid in doing this assignment.” The Honor Code (<https://sccr.dso.ufl.edu/students/student-conduct-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor.

**Recording of Class Discussions:** Class Recording Policy: The Office of Student Affairs will continue to record all classes via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time and it is the student’s responsibility to contact the Office of Student Affairs as soon as possible after an absence.

**Online Course Evaluation:** Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete the evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://gatorevals.aa.ufl.edu/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

**Class Schedule and Topics:**

While the topics to be covered in the classes are subject to change and additional materials can be introduced during a class, this is what you can expect to be discussed during each class. I will try to leave time for questions and answers at the end of each class:

August 25, 2022

- Discussion of dispute resolution processes
- Introduction to Family Law
- Introduction to dispute resolution methods available in Family Law matters
- Discussion of problems with existing Family Law system
- David Hoffman, Esquire - TED Talk on Peacemaking
- Discussion of concept of being a peacemaker
- Introduction to Collaborative Process

**Class assignment: Prepare a summary of your experience in divorces. The experience can be the result of your, a close relative's or a friend's marriage being dissolved.**

September 1, 2022

- Discussion of topics covered in prior class and homework
- Introduction to Collaborative Process (continued)
- History of Collaborative Process
- Different models of Collaborative Process
- Benefits of Collaborative Process
- Objections to Collaborative Process
- Discussion of Interest Based Negotiation

September 8, 2022

- Discussion of topics covered in prior class and homework
- Organization of Collaborative world
- Discussion of Prefatory Notes to the Uniform Collaborative Law Rules and Act
- Uniform Collaborative Law Rules and Act
- Florida Collaborative Process Act
- Florida Collaborative Rule of Procedure
- Florida Collaborative Rule of Professional Conduct
- ABA Model Rules of Professional Conduct
- International Academy of Collaborative Professionals Standards and Ethics
- Brian Galbraith, LL.M. – President-Elect of the International Academy of Collaborative Professionals

September 15, 2022

- Discussion of topics covered in prior class and homework
- Organization of a Collaborative matter
- Roles of Collaborative Team members
- Collaborative professional team building
- Pre-brief and debrief meetings

September 22, 2022

- Discussion of topics covered in prior class and homework
- Collaborative Participation Agreement
- Introducing Collaborative Process to clients
- Conducting initial consultation with client
- Retainer Agreement – limited scope representation
- Kevin Scudder, Esquire – perspective on role of Collaborative attorney

September 29, 2022

- Discussion of topics covered in prior class and homework
- Lana M. Stern, PhD – role of the Mental Health Professional/Facilitator/Coach

Intimate Partner Violence and Collaborative Process  
Role play with Facilitator

October 6, 2022

Discussion of topics covered in prior class and homework  
Marta Alfonso, Esquire, CPA - role of the Financial Professional  
Role play with Financial Professional

October 13, 2022

Discussion of topics covered in prior class and homework  
Introduction of fact pattern  
Preparing a client for first Collaborative meeting

October 20, 2022

Discussion of topics covered in prior class and homework  
Planning first joint meeting  
Role play initial joint meeting  
Preparation of minutes of joint meeting  
Communications between joint meetings

October 27, 2022

Discussion of topics covered in prior class and homework  
Discussion of issues anticipated for second joint meeting  
Role play second joint meeting  
Debriefs of joint meeting with client and Team members

November 3, 2022

Discussion of topics covered in prior class and homework  
Exercise on Interest Based Negotiations

November 10, 2022

Discussion of topics covered in prior class and homework  
Preparation of Collaborative Marital Settlement Agreement  
Preparation of Petition for Dissolution of Marriage  
Preparation of Final Judgment of Dissolution of Marriage

November 17, 2022

Discussion of topics covered in prior class and homework  
Debrief of Collaborative Process and classes



**Course Learning Objectives:**

At the end of this course, students should be able to:

1. Explain the dispute resolution options available in family law matters, including the benefits and drawbacks of each option;
2. Explain the Collaborative Process, including:
  - a. The participants and the role of each, including the parties and the required and potential professionals;
  - b. The structure of how the Collaborative Process works;
  - c. The documents required to be used and other documents typically used in the Collaborative Process;
  - d. The organization of meetings and communications in the Collaborative Process;
  - e. How the Collaborative Process concludes or is terminated and the consequences of each; and
  - f. The rules applicable to the Collaborative Process.
3. Conduct an initial interview with a potential client, including explaining the process choices for handling a family law matter;
4. Begin the Collaborative Process, including creating the Collaborative team, preparing relevant documents, preparing the client for the first joint meeting and conducting the first joint meeting;
5. Explain the various steps in the Collaborative Process between the first joint meeting and the signing of a settlement agreement;
6. Facilitate and participate in multiple joint Collaborative meetings, including understanding and playing the different roles in such meetings;
7. Recognize and de-escalate potential conflicts during the Collaborative Process;
8. Prepare documents relevant to the Collaborative Process, including minutes of meetings, partial agreements and a final settlement agreement;
9. Prepare the documents needed to obtain court approval of a Collaborative Settlement Agreement;
10. Understand the ethics rules that apply to the Collaborative Process.

**Disclaimer:** This syllabus represents my current plans and objectives for this Collaborative Law class. As we go through the semester, those plans may change depending on a variety of circumstances. The goal will be for such changes to enhance the student's learning experience. Such changes, which will be clearly communicated to the class, are not unusual and should be expected.