

Helping lawyers to mediate in client consultations

An interdisciplinary approach to designing a
short for legal client consultation

Ewelina Gee-Milan and Peter Gee



Outline of the presentation

- Why lawyers need soft skills (in English) to consult with clients
- The Client Consultation Competition
- Frameworks for viewing mediation and legal skills
- The assessment Criteria - an Overview
- Analysis of the criteria
 - From a legal skills perspective
 - From the linguistic perspective
- Next steps
- The wider applications of mediation to ESAP



Why lawyers need soft skills (in English) to consult with clients

- The legal market in Poland is changing
- Why student lawyers need soft skills
- Why meditation is an important soft skill
- Why English?
- Client consultation competition - why we held it



English for Legal Practices

- ELP emerged from ESP - important to analyse texts - genre - (Bhatia, 2002, 2004, 2017)
- ELP mainly focused on writing - now we seem to be seeing a shift to social practices - soft skills



Frameworks for viewing mediation and legal skills

- We have adopted the framework proposed by North and Piccardo (2016),
linguistic,
cultural,
social
pedagogic.
- So far few journal articles have discussed the application of the new CEFR descriptors to legal mediation. Chovancová (2018) seems to be the first author to examine this subject area.



Frameworks for viewing mediation and legal skills

- Linguistic mediation - level of formality/use of specific/ obscure legal language

Challenges

Developing from students to professionals

The need to explain/translate legalese into plain English as learning this language themselves

- Cultural mediation - beyond paraphrasing

Different legal systems - Code and Common Law,

Chovancová, 2018 suggests using learning materials using a Last will and Testament to examine the lexical and cultural differences between US and Czech legal approaches



Frameworks for viewing mediation and legal skills

- Social mediation - everyday pragmatic competences

All the things that enable a successful Chovancová, 2018

- Pedagogic mediation - “above all develop critical thinking.. Facilitating access to knowledge ..scaffolded.. Co-constructing meaning... creating the conditions for the above.. Relational mediation (North and Piccardo, 2016:10)

Chovancová, 2018:58 “Not the job of a lawyer to develop a client’s thinking, but think for him”

- Informed consent - legal knowledge



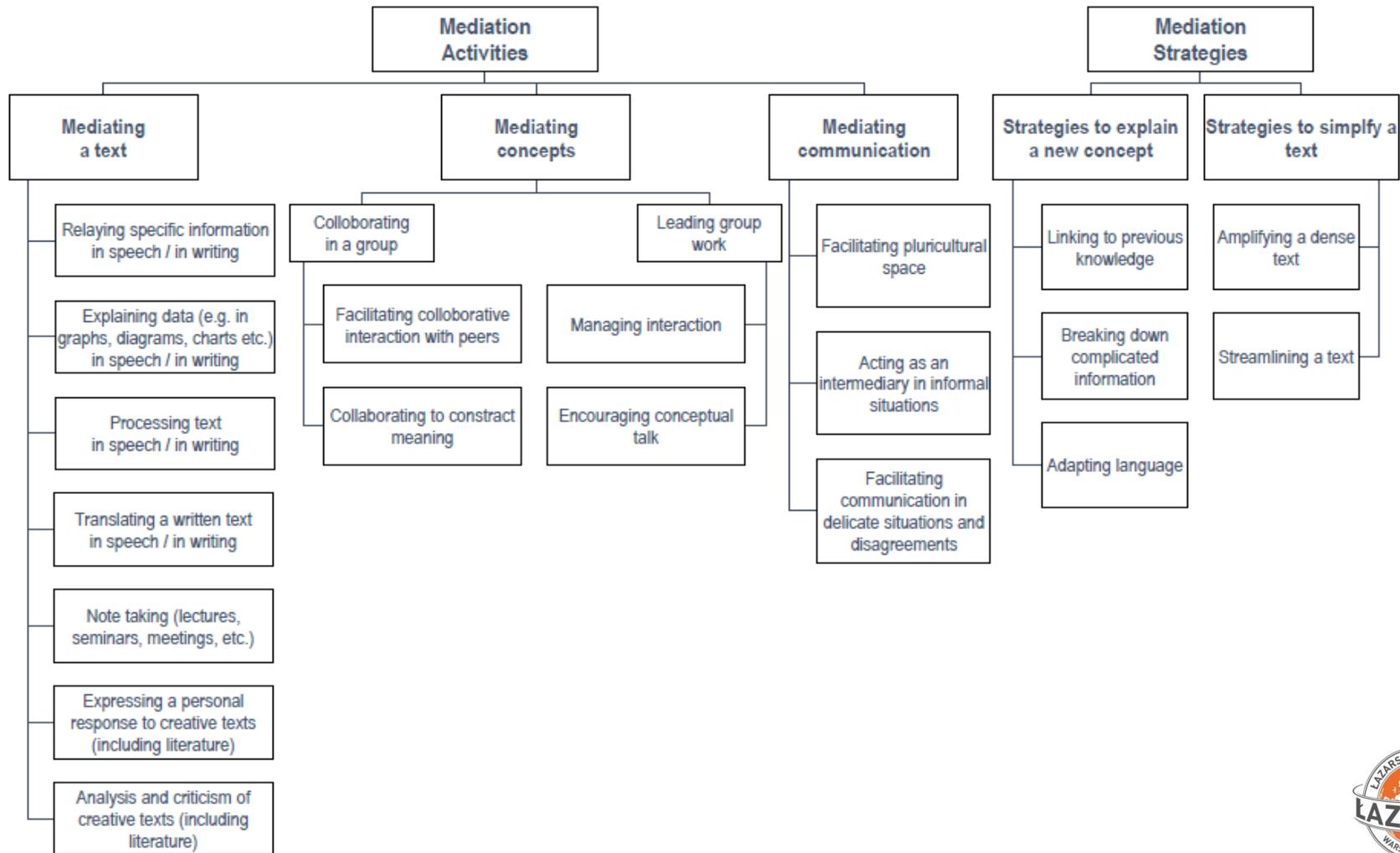
Overview of the Brown-Mosten assessment criteria

The assessment criteria assessment form is organised so that it matches the chronological order of the meeting between the student lawyers and the client.

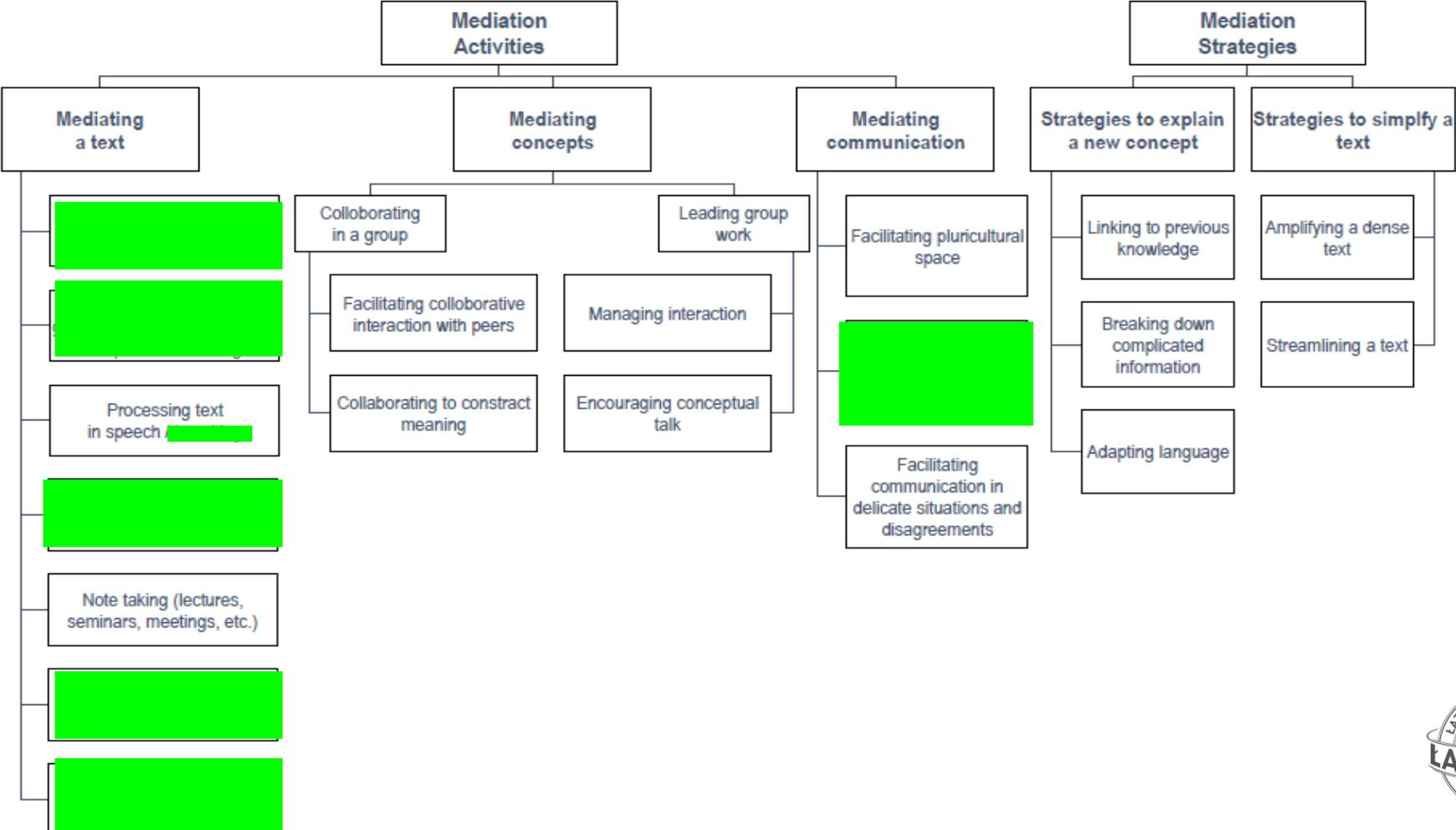
- criteria 1 to criteria 10 chronological follows the stages of the meeting
- criteria 11 is concerned with post meeting reflective discussion between the student lawyers.
- Criterion 10 and 11 focus on wider skills, respectively, teamwork and ethical and moral issues.
- This organisational structure was probably designed to assist the judges of the competition to assess each stage of the interaction between the student lawyers and the clients.

The marking criteria ranges from -2 to +2, with -2 being the lowest mark and +2 being the highest mark.





CEFR mediation descriptors with the descriptors that are applicable to the client mediation competition



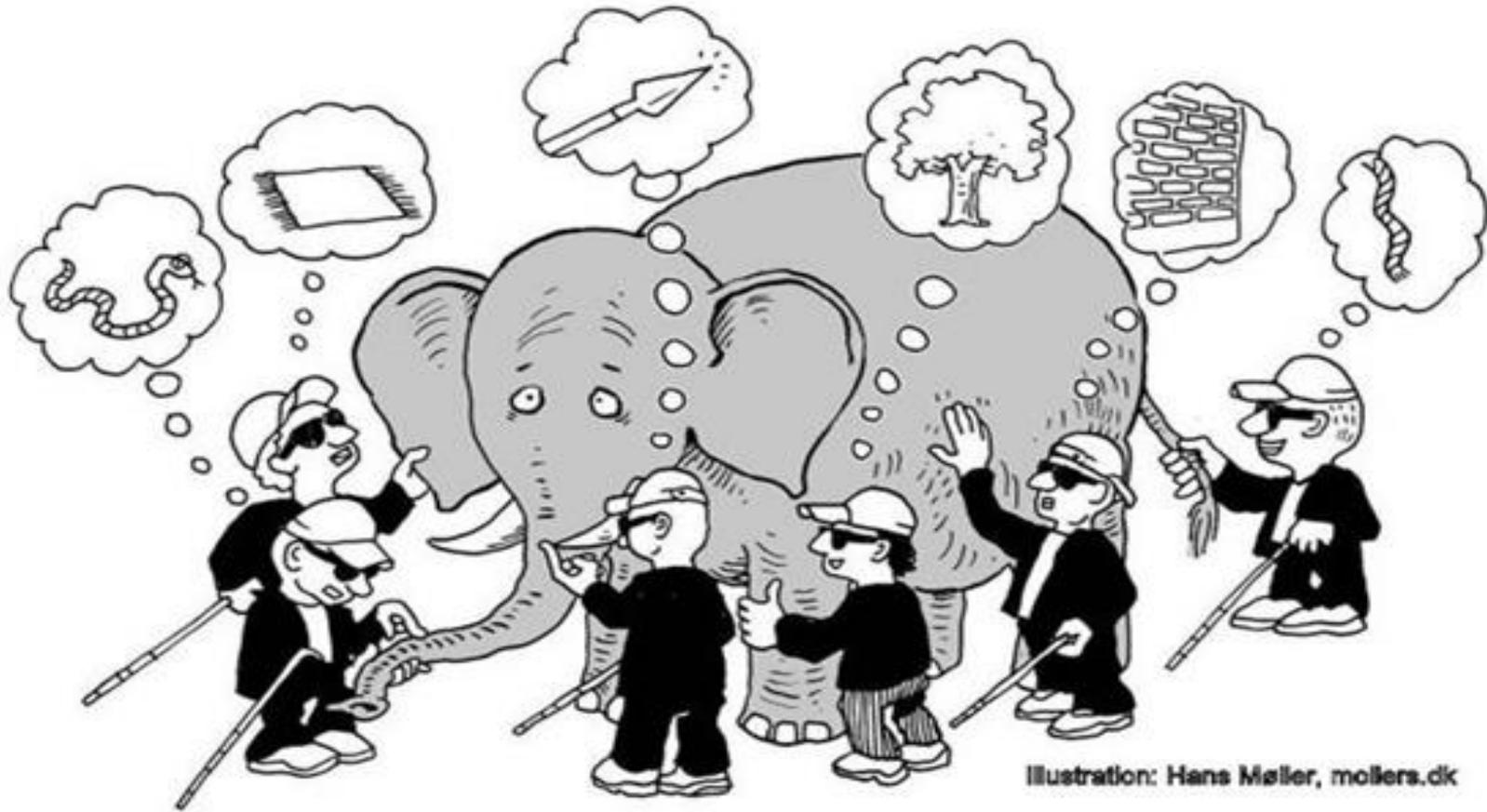


Illustration: Hans Møller, mollers.dk

North and Piccardo (2016:21) strongly emphasise that, “the fact that we bring one aspect into focus in order to describe does not imply that we believe it enjoys a separate existence in an atomistic model.”

Analysis of the criteria from a legal and linguistic perspective

We will now look at the Brown-Mostem assessment criteria from a legal and linguistic perspective.

For each criteria that we have selected there are two slides

- 1) The table shows the criteria, broken down into steps, to which we have added the linguistic and legal skills we believe are required

- 1) How mediation can apply to this criteria and pedagogical suggestions

To try to avoid repetition we have chosen to focus on one aspect of interest per criteria



Criteria 1 - Door to client details and meeting plan.

Stages	Indicative language sub-skills required for interaction between the client and the student lawyers	Content requirement
Establish the beginning of an effective professional relation and working environment	Reply professionally to knock on the door	I explain to my students that it is important that they are nice to the client but also have to remember that they are the hosts of the meeting. For the client, it is often the first meeting with a lawyer, while the lawyers it's just another another client. It is they who pass from a loose conversation to a professional meeting. I teach them phrases that help them to direct the conversation to the purpose of the meeting: for example, we will now move to the first part of the meeting where ... we will present you the meeting plan and proceed to the implementation of 1 point. It also shows them that they must learn to interrupt the customer's responses i.e. "I understand that this is important to you, but let's get back to the main thread".
	Professional salutations	
	Making polite offers	
At an appropriate moment orientate client to special nature of meeting - confidentially - fees - mutual obligations and rights - duration of the meeting - plan for meeting - method of future contact, in a courteous, sensitive and professional manner.	Professional information giving Checking understanding Making suggestions and replying to suggestions Turn taking Writing of telephone number or email address Appropriate register for business meeting	

Criteria 1 - Door to client details and meeting plan

- Linguistic - choice of register - terms being explained - recording of information (note taking)
- Social - managing of interaction - salutations - offering of seat/water - creating the agenda of meeting -
- Cultural - legal -non-legal - explanation

Pedagogical suggestions

- Choices of register - formal/informally speaking
- Charing a meeting/ participating in a meeting
- Note taking - talk and write - not in a lecture now!
- Role play activities



Criteria 3 Learning the client's goals, expectations and needs

Stages	Indicative verbal sub-skills required for interaction between the client and the student lawyers	Content requirement
Learning the client's goals and initial expectations	Eliciting information Note taking	Here, the most important thing is to emphasize to students that this is the moment when they open the door to the actual state of a particular matter. As a lawyer, I have to teach them that at this stage they can not judge anyone or anything, they have to be empathetic: "I feel that you are feeling upset". But above all, they must listen to what they hear and this stage as the law will then be embedded in their story later.. It is also the moment when we learn to paraphrase and encourage the customer to share all the details with us.
Modify or restate goals and initial expectations	?how to modify? Expression of opinions Making polite suggestions Language required for outlining a legal position Restate information spoken by the client Outline a chain chronological events, possibly including information such as, monetary amounts, dates, names etc..	



Criteria 3 Learning the client's goals, expectations and needs

- Facilitating communication - listening - diplomatic - restating

- Pedagogical suggestions

Learning to listen

Leading and open questions



Criteria 4 problem analysis

Stages	Indicative sub-skills required for interaction between the client and the student lawyers	Content requirement
<p>The lawyers analysis the legal and non-legal aspects of the problem with creativity</p>	<p>Outline a chain chronological events, possibly including information such as, monetary amounts, dates, names etc..</p> <p>Expression of opinions Making polite suggestions</p> <p>Language of empathy</p>	<p>analysis the legal and non-legal aspects of the problem</p> <p>creativity - examine problem from different aspects (range)</p> <p>select keywords from evidence presented by the client</p> <p>legal basis for which problems are legal issues and which are non legal issues</p> <p>a clear and useful formulation</p>
<p>Convey of the problem to the client</p>		<p>This is the moment when as a lawyer I teach students how important a thorough understanding of the client's problem for this purpose:</p>



- Mediating concepts - Encouraging conceptual talk -Collaborating to construct meaning

- Pedagogical suggestions

Group discussions - based on gathering information from an informant and making a suggestion - legal/professional criteria

We remember the art of paraphrasing;

We choose informal words for example words that we transfer the ground of law



Criteria 6 Developing reasoned courses of actions (options)

Stage	Indicative sub-skills required for interaction between the client and the student lawyers	Content requirement
<p>The lawyer should develop a range of potentially effective and feasible options - both legal and non-legal - that is consistent with the legal advice that was given</p>	<p>Making polite suggestions - modal verbs for advice</p> <p>Language of analysis and critical thinking</p> <p>Language required for outlining a legal position</p> <p>Language of hypothesis</p> <p>Language related to the consequences of hypothetical actions</p>	<p>The student should understand that one thing can be solved in several ways.</p> <p>The lawyer's duty is to find all possible solutions for a given case</p>



Criteria 6 Developing reasoned courses of actions (options)

- Mediation strategies - restating/adapting language

- Pedagogical suggestions

The sense of this skill is best reflected in the exercise with google maps. Students check that there are different paths to one place. We wonder together what these paths are different. Then we discuss a short factual situation and students in groups develop proposals for solving this problem



Criteria 7 Assisting the client to make an informed choice

Stages	Indicative verbal sub-skills required for interaction between the client and the student lawyers	Content requirement
Develop the appropriate balance between the legal and emotional needs of the client	<p>Asking questions and follow up questions</p> <p>Language of concern and interest</p> <p>Listening for specific details in a verbal text</p> <p>Making polite suggestions - modal verbs for advice</p> <p>Language required for outlining a legal position</p> <p>Language of hypothesis</p>	<p>informed choice</p> <p>In this part, we work on the client not only understanding the indicated solutions (way from google maps) but above all he understood the legal, economic, social and psychological consequences.</p>
Assist the client to understand the problems and solutions to make an informed choice	<p>Language related to the consequences of hypothetical actions</p> <p>Language of empathy</p>	



Facilitating collaboration - questioning

Facilitating in delicate situations

- Pedagogical suggestions

Group discussions about difficult subjects

The best examples to practice these skills are cases from family law, they have a large dose of social and psychological consequences.



Criteria 10 Ethical and moral issues

Stages	Indicative verbal sub-skills required for interaction between the client and the student lawyers	Content requirement
Recognise moral and ethical issues raised during the interview		<p>The student must understand that adherence to ethical principles is his way to success.</p> <p>These rules include information for the client about the principles of hypocrisy but also a conversation about remuneration.</p>
The lawyers should an clarify and ethical raised during the interview		
The lawyers should respond to ethical raised during the interview		



Cultural understanding - what we can agree and not agree to

Strategies to explain a new concept

- Pedagogical suggestions

Small shop 100pln beer - the cost of not asking/setting the price

Stories that teach



Next steps

- Adapt the general mediation descriptors of the CEFR to our legal client consultation training course
- By matching the proficiency scales of the mediation descriptors and the mediation criteria we can have principled guide to minimum levels of Language proficiency
- Our aim is to use these as “can do” statements that provide us and the student clear assessment and grading criteria
- Recruitment of students in the next academic year



The wider applications of mediation to ESAP

- Dialogical relationship with texts - critical thinking (EAP)
- Can describe both academic and professional social practices
- Can do statements - assessment tools - clear and understandable for staff and students
- Co-construction of Knowledge
- Adaptable model for many different contexts



References

Aaron, M.C., 2013. Client Science: Advice for Lawyers on Initial Client Interviews.

Candlin, C.N., Bhatia, V.K. and Jensen, C.H., 2002. Developing legal writing materials for English second language learners: Problems and perspectives. *English for Specific Purposes*, 21(4), pp.299-320.

Brown-Mostem International Client Consultation Competition available at: <https://www.brownmostem.com/materials.html>

Bruce, I., 2011. *Theory and concepts of English for academic purposes*. Palgrave Macmillan.

Council of Europe, 2018. Common European Framework of Reference for Languages: Learning, Teaching, Assessment. Companion Volume with New Descriptors, Strasbourg: Council of Europe, Available at: <https://rm.coe.int/cefr-companion-volume-with-new-descriptors-2018/1680787989>

Chovancová, B., 2018. Practicing the Skill of Mediation in English for Legal Purposes. *Studies in Logic, Grammar and Rhetoric*, 53(1), pp.49-60.

Figueras, N., 2012. The impact of the CEFR. *ELT journal*, 66(4), pp.477-485.

Lotherington, H., 2013. Creating third spaces in the linguistically heterogeneous classroom for the advancement of plurilingualism. *Tesol Quarterly*, 47(3), pp.619-625.

North, B. and Piccardo, E., 2016. Developing illustrative descriptors of aspects of mediation for the Common European Framework of Reference (CEFR): A Council of Europe project. *Language Teaching*, 49(3), pp.455-459.

Weinstein, J., Morton, L., Taras, H. and Reznik, V., 2013. Teaching teamwork to law students. *J. Legal Educ.*, 63, p.36.

