

JUST 2013 MEDIATION

Credit Points 10

Legacy Code 200294

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Description This unit will examine the theory and practice of mediation, specifically in the context of the Australian legal system. It builds upon the more general introduction given in the unit Alternative Dispute Resolution (which is a prerequisite for this course). This unit will assume that students have read the textbook for Alternative Dispute Resolution. This unit is experientially based, and students will be expected to participate in discussions, exercises and role-plays. The theory and practice of mediation will be critically considered, as will the social and legal contexts within which mediation is practised. The unit is presented with a multi-disciplinary, analytical and practical approach. Given the very broad range of areas within which mediation can be applied, students will be able to focus on an area or areas of particular personal or professional interest to them (for example, mediation of commercial disputes, mediation under anti-discrimination or family law). This unit is intended to be an introduction to the practice of mediation.

School Law

Student Contribution Band HECS Band 4 10cp

Check your HECS Band contribution amount via the Fees (https://www.westernsydney.edu.au/currentstudents/current_students/fees/) page.

Level Undergraduate Level 2 subject

Pre-requisite(s) LAWS 2001

Learning Outcomes

On successful completion of this subject, students should be able to:

1. Critically evaluate contemporary issues in mediation.
2. Prepare for mediation and document pre-mediation processes.
3. Conduct mediation and evaluate the practical, procedural, ethical and legal issues in the mediation.
4. Reflect on and assess their own capabilities and performance to support their personal and professional development.
5. Write clearly and persuasively, referencing according to the Australian Guide to Legal Citation.

Subject Content

- The concept of mediation.
- The range and diversity of definitions of mediation.
- The mediator: the role of the mediator; different models of the role of the mediator.
- skills and skill development in mediation: The personal and professional qualities and competencies required of A mediator.
- The mediator as A third party facilitator.
- The mediator as neutral: The concepts of neutrality and impartiality in practice.
- The mediation process: approaches to Models of The process.
- aims of mediation: The range of aims which mediation may Seek to achieve.
- risks in mediation: potential dangers and problems in mediation, and appropriate strategies for Addressing them.
- Pre-mediation processes: (1) initial contact with the disputing parties.

- Pre-mediation processes: (2) investigative strategies and the facilitation of information gathering by the parties.
- Pre-mediation processes: (3) interviewing parties prior to mediation.
- Pre-mediation processes: (4) case analysis
- Pre-mediation processes: (5) case evaluation: determining when mediation is appropriate and not appropriate, and what form and style of mediation is appropriate.
- Pre-mediation processes: (6) preparing the parties for mediation.
- agreement to mediate
- Pre-mediation processes: (7) the preparation of preliminary statements of issues and options where appropriate.
- Pre-mediation processes: (8) preparing the mediator for mediation.
- Pre-mediation processes: (9) practical preparations and resources (including the choice of venue, the layout of venue, technical and other resources).
- Pre-mediation processes: (10) planning mediation.
- The mediators relationship with The parties.
- The mediation process: (1) initiating the mediation session: the mediators opening statement and preliminary issues.
- The mediation process: (2) facilitating communication and perception sharing: communication skills and language in mediation.
- The mediation process: (3) opening statements and responses.
- The mediation process: (4) focusing and fractionating.
- The mediation process: (5) identifying areas of agreement and disagreement.
- The mediation process: (6) facilitating issue definition and agenda setting.
- The mediation process: (7) facilitating option generation.
- The mediation process: (8) facilitating option evaluation.
- The mediation process: (9) facilitating costing of options and alternatives.
- The mediation process: (10) caucusing, breaks and adjournments.
- The mediation process: (11) returning from separation.
- The mediation process: (12) facilitating negotiation.
- The mediation process: (13) types and forms of agreement.
- The mediation process: (14) facilitating agreement in principle.
- The mediation process: (15) facilitating agreement in detail.
- The mediation process: (16) reality testing.
- The mediation process: (17) agreement writing.
- The mediation process: (18) termination.
- Post-mediation processes: (1) de-briefing of the parties.
- Post-mediation processes: (2) de-briefing of the mediator.
- Post-mediation processes: (3) evaluation and assessment.
- Post-mediation processes: (4) agreement monitoring, review and revision.
- intervention in The mediation process: when, why and how should The mediator intervene?
- control in mediation: Issues relating to control, power and intervention.
- emotions in mediation
- Variant forms of mediation: (1) Co-mediation: the use of two mediators.
- Variant forms of mediation: (2) Team mediation: the use of more than two mediators.
- Variant forms of mediation: (3) Shuttle mediation: mediation without bringing the parties together.
- Variant forms of mediation: (4) Med-Arb.
- Variant forms of mediation: (5) Facilitated Negotiation.
- Variant forms of mediation: (6) Other variant forms of mediation: conciliation, specialist mediation, therapeutic mediation, mediation through advocates and representatives, telephone and video-conferencing mediation, fast-track mediation, crisis media
- Additional parties in mediation: advocates, representatives and supporters.
- mediation in multi-party disputes.
- mediation in family and relationship disputes

- Factors which may influence The mediation process.
- legal Issues in mediation.
- Ethical issues in mediation: ethical principles for mediation; ethical dilemmas and their resolution; codes of ethics and standards of professional practice.
- evaluation of mediators and mediation.
- Issues and Controversies in mediation

Assessment

The following table summarises the standard assessment tasks for this subject. Please note this is a guide only. Assessment tasks are regularly updated, where there is a difference your Learning Guide takes precedence.

Item	Length	Percent	Threshold	Individual/ Group Task
Essay	1 x 2,000 words	30	N	Individual
Documentation of Pre-Mediation Process	1 x 1,500 words	20	N	Individual
Conduct and Evaluate a Mediation	45 minutes plus 1,000 word reflection	50	N	Individual

Teaching Periods