UNSW Course Outline

JURD7478 Mediation in Practice - 2024

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General Course Information

Course Code : JURD7478
Year : 2024
Term : Term 3
Teaching Period : T3A
Is a multi-term course? : No
Faculty : Faculty of Law and Justice
Academic Unit : School of Law, Society and Criminology
Delivery Mode : In Person
Delivery Format : Standard
Delivery Location : Kensington
Campus : Sydney
Study Level : Postgraduate
Units of Credit : 6

<u>Useful Links</u>

<u>Handbook</u> <u>Class Timetable</u>

Course Details & Outcomes

Course Description

Mediation is a widely used method of dispute resolution in contemporary legal practice. This course will introduce you to the mediation process, where a neutral third party assists disputing parties in resolving their issues without relying on a formal determination.

Mediation is applied in diverse areas, including:

- Commercial Enterprises: Commercial disputes, intellectual property.

- Private Law: Industrial, workplace, and family disputes.

- Equity and Diversity: Discrimination, peer review.

- Criminal Justice Systems: Victim/offender dispute resolution programs, restorative justice.

The course covers various models of mediation (facilitative, evaluative, transformative), the role and conduct of the mediator, parties, and legal advocates, the private, court and government infrastructure that supports the mediation process, the statutory regimes that have introduced court-annexed mediation, and the growing body of national and international case law.

Main topics include:

- Examination of different mediation approaches.
- Exploration of outcomes in different mediation models.
- Practical engagement in mediation processes.
- Review of legal and ethical issues in mediation.

This course is ideal for students looking to gain a comprehensive understanding of mediation and its application in various legal contexts.

NOTE: This course is not, of itself, sufficient for accreditation as a mediator.

Course Aims

This course aims to provide you with an understand where mediation fits within the ADR continuum. You will be able to identify various forms of mediation and their key elements, recognise the role of the mediator in different processes, and engage in key elements of the mediation process, including mediator selection and pre- and post-mediation activities. This course aims to provide practical experience in conducting mediation and representing clients, serving as a pathway towards becoming an accredited mediator.

Course Learning Outcomes

Course Learning Outcomes
CLO1 : Examine the process of mediation, common mediation models, and the indicators for or against the use of mediation in particular situations. (PLOs 1, 5)
CLO2 : Critically analysis of the role of legal counsel, clients, and the mediator in the mediation process, and of the standard mediation model for a facilitative mediation. (PLOs 1, 5, 6, 9, 10)
CLO3 : Debate the ethical and legal issues surrounding conduct of, and participation in, the mediation process. (PLOs 1, 5, 6, 12)
CLO4 : Investigate issues, both legal and non-legal, impacting on mediation. (PLOs 5, 6, 9, 10, 12)
CLO5 : Apply appropriate research methodologies when producing written and verbally delivered research. (PLOs 1, 9, 10)

Course Learning Outcomes	Assessment Item
CLO1 : Examine the process of mediation, common mediation models, and the indicators for or against the use of mediation in particular situations. (PLOs 1, 5)	• Mediation Exercise • Research Essay
CLO2 : Critically analysis of the role of legal counsel, clients, and the mediator in the mediation process, and of the standard mediation model for a facilitative mediation. (PLOs 1, 5, 6, 9, 10)	• Mediation Exercise • Research Essay
CLO3 : Debate the ethical and legal issues surrounding conduct of, and participation in, the mediation process. (PLOs 1, 5, 6, 12)	• Class Participation • Mediation Exercise • Research Essay
CLO4 : Investigate issues, both legal and non-legal, impacting on mediation. (PLOs 5, 6, 9, 10, 12)	• Class Participation • Research Essay
CLO5 : Apply appropriate research methodologies when producing written and verbally delivered research. (PLOs 1, 9, 10)	• Class Participation • Research Essay

Learning and Teaching Technologies

Moodle - Learning Management System

Assessments

Assessment Structure

Assessment Item	Weight	Relevant Dates
Mediation Exercise Assessment Format: Group	30%	
Research Essay Assessment Format: Individual	50%	
Class Participation Assessment Format: Individual	20%	

Assessment Details

Mediation Exercise

Assessment Overview

This assessment requires you to participate in a mediation exercise, and complete a written reflection.

Course Learning Outcomes

- CLO1 : Examine the process of mediation, common mediation models, and the indicators for or against the use of mediation in particular situations. (PLOs 1, 5)
- CLO2 : Critically analysis of the role of legal counsel, clients, and the mediator in the mediation process, and of the standard mediation model for a facilitative mediation. (PLOs 1, 5, 6, 9, 10)
- CLO3 : Debate the ethical and legal issues surrounding conduct of, and participation in, the mediation process. (PLOs 1, 5, 6, 12)

Detailed Assessment Description

Please write a roughly 1000 word reflection paper about your mediation simulation. You can use the paper to reflect upon, for example: (a) what you did well as a mediator in the mediation simulation or what you would do differently; (b) how you responded to conflict and challenges in your mediation; (c) your experience of core mediation values in practice (such as neutrality and self-determination). I encourage you to reflect on how the course readings have informed, complicated, contradicted, etc. your experience in the mediation simulation or vice versa.

Assessment Length

1,000 words

Assignment submission Turnitin type

This assignment is submitted through Turnitin and students do not see Turnitin similarity

reports.

<u>Generative AI Permission Level</u>

Simple Editing Assistance

In completing this assessment, you are permitted to use standard editing and referencing functions in the software you use to complete your assessment. These functions are described below. You must not use any functions that generate or paraphrase passages of text or other media, whether based on your own work or not.

If your Convenor has concerns that your submission contains passages of AI-generated text or media, you may be asked to account for your work. If you are unable to satisfactorily demonstrate your understanding of your submission you may be referred to UNSW Conduct & Integrity Office for investigation for academic misconduct and possible penalties.

For more information on Generative AI and permitted use please see here.

Research Essay

<u>Assessment Overview</u>

This assessment requires you to write a research essay.

<u>Course Learning Outcomes</u>

- CLO1 : Examine the process of mediation, common mediation models, and the indicators for or against the use of mediation in particular situations. (PLOs 1, 5)
- CLO2 : Critically analysis of the role of legal counsel, clients, and the mediator in the mediation process, and of the standard mediation model for a facilitative mediation. (PLOs 1, 5, 6, 9, 10)
- CLO3 : Debate the ethical and legal issues surrounding conduct of, and participation in, the mediation process. (PLOs 1, 5, 6, 12)
- CLO4 : Investigate issues, both legal and non-legal, impacting on mediation. (PLOs 5, 6, 9, 10, 12)
- CLO5 : Apply appropriate research methodologies when producing written and verbally delivered research. (PLOs 1, 9, 10)

<u>Detailed Assessment Description</u>

You should write a research paper of 3500 words (+/- 10%) on a topic of your choice. You should draw on course material as well as independent research. Your paper should spell out your topic, saying why it is an important problem in mediation theory/practice, and work out a well-argued critical or reformist perspective that engages with your topic

<u>Assessment Length</u>

3,500 words

This assignment is submitted through Turnitin and students do not see Turnitin similarity reports.

<u>Generative AI Permission Level</u>

Planning/Design Assistance

You are permitted to use generative AI tools, software or services to generate initial ideas, structures, or outlines. However, you must develop or edit those ideas to such a significant extent that what is submitted is your own work, i.e., what is generated by the tool, software or service should not be a part of your final submission. You should keep copies of your iterations to show your Course Authority if there is any uncertainty about the originality of your work.
If your Convenor has concerns that your answer contains passages of AI-generated text or media that have not been sufficiently modified you may be asked to explain your work, but we recognise that you are permitted to use AI generated text and media as a starting point and some traces may remain. If you are unable to satisfactorily demonstrate your understanding of your submission you may be referred to UNSW Conduct & Integrity Office for investigation for academic misconduct and possible penalties.
For more information on Generative AI and permitted use please see here.

ChatGPT and Other AI Software: Planning Assistance

As this assessment task involves some planning or creative processes, you are permitted to use software to generate initial ideas. However, you must develop or edit those ideas to such a significant extent that what is submitted is your own work, i.e. only occasional AI generated words or phrases may form part of your final submission. It is **required** to keep copies of the initial prompts to show your lecturer if there is any uncertainty about the originality of your work.

If the outputs of generative AI such as ChatGPT form a part of your submission, it will be regarded as serious academic misconduct and subject to the standard penalties, which may include 00FL, suspension and exclusion.

Class Participation

<u>Assessment Overview</u>

This assessment requires you to prepare for and actively engage in class-based and online activities.

Course Learning Outcomes

- CLO3 : Debate the ethical and legal issues surrounding conduct of, and participation in, the mediation process. (PLOs 1, 5, 6, 12)
- CLO4 : Investigate issues, both legal and non-legal, impacting on mediation. (PLOs 5, 6, 9, 10, 12)
- CLO5 : Apply appropriate research methodologies when producing written and verbally delivered research. (PLOs 1, 9, 10)

Detailed Assessment Description

This course aims for you to understand mediation from multiple perspectives: the mediator, the analyst, the critic, the regulator, the legal reformer, the client, the client's counsel. To that end, the course includes different styles of learning and classroom instruction. For example, we will devote some class time exclusively to roleplays; other class time, however, will be conducted in a seminar format where issues for debate and discussion will arise from detailed consideration of the readings. Students will be expected to participate actively in all classes.

Assignment submission Turnitin type

Not Applicable

Generative AI Permission Level

No Assistance

This assessment is designed for you to complete without the use of any generative AI. You are not permitted to use any generative AI tools, software or service to search for or generate information or answers.

For more information on Generative AI and permitted use please see here.

General Assessment Information

For further information on generative AI use in the Faculty of Law & Justice, please review the section titled 'Academic Honesty and Plagiarism' under the 'Other Useful Information' tab.

Grading Basis

Standard

Course Schedule

Teaching Week/Module	Activity Type	Content
Week 3 : 23 September - 29 September	Seminar	What is mediation? Investigating the theory Identifying the elements of a mediation Investigating the elements in real life
	Seminar	A day in the life of a mediation Practising the individual elements.
	Seminar	Fishbowl demonstration of the delivery of parties' opening addresses, mediator interaction, questions in clarification, debrief, agenda setting and facilitated discussion of mediation progress following agenda setting
Week 4 : 30 September - 6 October	Seminar	Putting the tools into practice Group work - Mediation role plays
	Seminar	Beyond the Tools Practical applications
	Group Work	Group work - Mediation role plays

Attendance Requirements

Please see information about attendance requirements in **Law & Justice Assessment Procedure and Student Information** located in the Other Useful Information tab in the Academic Information field.

Please be advised there will be no classes on public holidays. If your class falls on a public holiday, alternative arrangements will be made by the course convenor to make up the missed class.

This courseis intensive. 100% attendence required.

Staff Details

Position	Name	Email	Location	Phone	Availability	Equitable Learning Services Contact	Primary Contact
Convenor	William (Joseph) Nicholls					Yes	Yes

Other Useful Information

Academic Information

Upon your enrolment at UNSW, you share responsibility with us for maintaining a safe, harmonious and tolerant University environment.

You are required to:

- Comply with the University's conditions of enrolment.
- Act responsibly, ethically, safely and with integrity.
- Observe standards of equity and respect in dealing with every member of the UNSW community.
- Engage in lawful behaviour.
- Use and care for University resources in a responsible and appropriate manner.
- Maintain the University's reputation and good standing.

For more information, visit the [UNSW Student Code of Conduct Website](#).

UNSW Law & Justice Assessment Policy

It is essential that all students undertaking this course read and abide by the [UNSW Law & Justice Assessment Policy & Student Information](#). This document includes information on Class Attendance, Late Work, Word Limits, Marking, Special Consideration, Workload, and Academic Misconduct & Plagiarism. More information can also be found at [Assessment & Exam Information](#).

Information regarding Course Outlines are subject to change and students are advised to check updates. If there is a discrepancy between the information posted here and the handbook or the UNSW Law & Justice website, please contact [Student Services via The Nucleus Hub](#) for advice. UNSW Law & Justice reserves the right to discontinue or vary such courses or staff allocations at any time. If your course is not here, please visit [Handbook](#) for information.

Academic Honesty and Plagarism

As a student at UNSW you are expected to display [academic integrity](#) in your work and interactions. Where a student breaches the [UNSW Student Code](#) with respect to academic integrity, the University may take disciplinary action under the Student Misconduct Procedure. To assure academic integrity, you may be required to demonstrate reasoning, research and the process of constructing work submitted for assessment.

To assist you in understanding what academic integrity means, and how to ensure that you do comply with the UNSW Student Code, it is strongly recommended that you complete the [Working with Academic Integrity](#) module before submitting your first assessment task. It is a free, online self-paced Moodle module that should take about one hour to complete.

Generative AI

Using generative AI to conduct research or to organise your argument is not prohibited but is not encouraged. We note that the output from generative AI tools is often incorrect and almost always more superficial than is required to achieve a passing grade. Moreover, any substantive errors in the assessment, such as inappropriate references or incorrect statements, will be regarded negatively by the marker, just as they would if not generated by AI. You should limit your use of AI to simple editorial assistance, such as standard editing and referencing functions in word processing software in the creation of your submission. You must not use any functions that generate or paraphrase passages of text, whether based on your own work or not. If your marker or Turnitin identify the wrongful use of generative AI in the text of your assessment submission, including the use of paraphrasing software, your assessment may be referred to the Student Integrity team for investigation. Please go to the link for further information about referencing and acknowledging the use of artificial intelligence tools.

Prohibition on use of translation apps

With limited exceptions for language study, the course of study and assessment in Australian universities must be in English (Higher Education Standard Framework (Threshold Standards) 2021 1.5 6(c)).

In Law & Justice many classes have assessable class participation. This must be in English. **Use of a translation device to assist with contributions to class discussion is not allowed.** Marks for class participation may be reduced where use of translation devices is detected. Similar prohibitions apply to use of any other generative text app that is not specifically permitted by the class teacher. However, use of translation software to assist a student to understand material outside of class, or to assist with preparation for assessment is generally permitted.

Further considerations apply to LLB and JD students. International lawyers who seek to be admitted in NSW must satisfy an English proficiency test. That test is expressed as equivalent to IELTS scores of 7.0 -8.0 across the tests. It is assumed that UNSW graduates are at or above those levels of English proficiency. Use of translation apps can impede the attainment of that level of proficiency. Students should avoid behaviours that put them at risk of breach of legal requirements which can have significant consequences, including potential consequences for your admission as a lawyer.

Submission of Assessment Tasks

Before submitting assessment items all students must read and abide by the UNSW Law &

[Justice Assessment Policy & Student Information](#).

Special consideration

Special consideration is primarily intended to provide you with an extra opportunity to demonstrate the level of performance of which you are capable. To apply, and for further information, see Special Consideration on the UNSW [Current Students](#) page.

Feedback

UNSW Law & Justice appreciates the need for students to have feedback on their progress prior to the last date for withdrawal without failure. All courses will therefore provide feedback to students prior to this date, as well as throughout the course. However, students should note that feedback does not take the form only of formal grades and written comments on written assessments. Rather, formative feedback, which helps students to self-assess, to identify misunderstandings, and to identify areas requiring further work, will occur during class and possibly online. For example, where a teacher asks the class a question, all students should think about how they might answer. Even though not all students will necessarily be able to respond orally, everyone can reflect on their tentative answer in light of the teacher's response and subsequent class discussion. If you are struggling to understand what is being asked in class, or if your tentative answers prove incorrect and subsequent discussion does not clear things up, then you should continue to ask questions (of yourself, your peers or your teacher). Similarly, you can get a sense of your ability in a course through peer feedback during group work, your teacher's responses to your in-class contributions, and your own response to in-class problems and examples (whether or not you are called on to relay your answer to the class) and also your online activities and responses by others to those activities. Students enrolled in this course may check their Moodle course page for details on the specific feedback used in this course.

Faculty-specific Information

Additional support for students

- Student support: https://www.student.unsw.edu.au/support
- Academic Skills and Support: https://student.unsw.edu.au/academic-skills
- Student Wellbeing, Health and Safety: https://student.unsw.edu.au/wellbeing
- Equitable Learning Services: https://student.unsw.edu.au/els
- UNSW IT Service Centre: https://www.myit.unsw.edu.au

Course improvement

Student feedback is very important to continual course improvement. This is demonstrated within the Faculty of Law & Justice by the implementation of the UNSW online student survey myExperience, which allows students to evaluate their learning experiences in an anonymous way. myExperience survey reports are produced from each survey. They are released to staff after all student assessment results are finalised and released to students. Course convenors will use the feedback to make ongoing improvements to the course. Students enrolled in this course may check their Moodle course page for details on the actions taken in response to evaluation feedback in Student Survey.

School Contact Information

Please contact Nucleus Student Hub for all enquiries. The Nucleus acts as a central communications hub for UNSW and will distribute your enquiry to the best person to respond.