

# LW6135E: MEDIATION PRACTICE

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## Effective Term

Semester B 2024/25

## Part I Course Overview

### Course Title

Mediation Practice

### Subject Code

LW - Law

### Course Number

6135E

### Academic Unit

School of Law (FL)

### College/School

School of Law (FL)

### Course Duration

One Semester

### Credit Units

3

### Level

P5, P6 - Postgraduate Degree

### Medium of Instruction

English

### Medium of Assessment

English

### Prerequisites

Nil

### Precursors

Nil

### Equivalent Courses

Nil

### Exclusive Courses

LW6406

## Part II Course Details

### Abstract

- a. This course aims to provide students with the skills of mediating and the knowledge of the principles and values of mediation.

- b. This course will further develop a student's ability to grasp the fundamental concepts with the ultimate goal of discovering how mediation functions from a practical stand point.

### Course Intended Learning Outcomes (CILOs)

| CILOs |                                                                                                                                                                                                                          | Weighting (if app.) | DEC-A1 | DEC-A2 | DEC-A3 |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------|--------|--------|
| 1     | apply in a real life situation the knowledge of mediation principles, theory and values. Acquire familiarity through discovery/innovation/creativity about the theory of mediation and apply such features into practice |                     | x      |        |        |
| 2     | apply in a real life situation the mediation skills and ethics related to resolving disputes across cultural barriers                                                                                                    |                     | x      | x      | x      |
| 3     | apply working knowledge of several models of mediation                                                                                                                                                                   |                     | x      | x      | x      |
| 4     | appreciate the implications of selected emerging issues in contemporary dispute resolution research and apply relevant practical skills in dispute resolution                                                            |                     | x      | x      | x      |
| 5     | apply the improved mediation skills in the context of complex disputes encountered in realistic situations                                                                                                               |                     | x      | x      | x      |

#### A1: Attitude

Develop an attitude of discovery/innovation/creativity, as demonstrated by students possessing a strong sense of curiosity, asking questions actively, challenging assumptions or engaging in inquiry together with teachers.

#### A2: Ability

Develop the ability/skill needed to discover/innovate/create, as demonstrated by students possessing critical thinking skills to assess ideas, acquiring research skills, synthesizing knowledge across disciplines or applying academic knowledge to real-life problems.

#### A3: Accomplishments

Demonstrate accomplishment of discovery/innovation/creativity through producing /constructing creative works/new artefacts, effective solutions to real-life problems or new processes.

### Learning and Teaching Activities (LTAs)

| LTAs | Brief Description                                                                                                                                                                                                                   | CILO No. | Hours/week (if applicable)                            |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------------------------------------------------|
| 1    | Lectures and Seminars<br>Lecture will be given on theoretical issues; Case studies will be used; Comparison with other legal systems will be made; Students will be engaged in both case analysis and comparative study discussion. | 1, 2, 3  | 3 hours/week or a total of 39 hours of block teaching |

### Assessment Tasks / Activities (ATs)

| ATs |                     | CILO No. | Weighting (%) | Remarks (e.g. Parameter for GenAI use)         |
|-----|---------------------|----------|---------------|------------------------------------------------|
| 1   | Written Assignment  | 1, 2, 3  | 70            | The use of Generative AI tools is not allowed. |
| 2   | Class Participation | 1, 2, 3  | 30            | The use of Generative AI tools is not allowed. |

**Continuous Assessment (%)**

100

**Additional Information for ATs**Applicable to students admitted from Semester A 2022/23 to Summer Term 2024

Students must obtain a minimum mark of 50% in both written assignment and class participation, and an overall mark of 50% in order to pass the course.

Applicable to students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter

Students must obtain a minimum mark of 40% in both written assignment and class participation, and an overall mark of 40% in order to pass the course.

**Assessment Rubrics (AR)****Assessment Task**

Written Assignment (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

**Criterion**

Demonstration of ability to identify issues, current trends and practices.

**Excellent**

(A+, A, A-) Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

**Good**

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

**Fair**

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

**Marginal**

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

**Failure**

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

**Assessment Task**

Class Participation (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

**Criterion**

Demonstration of ability to identify issues, current trends and practices.

**Excellent**

(A+, A, A-) Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

**Good**

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

**Fair**

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

**Marginal**

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

**Failure**

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

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**Assessment Task**

Written Assignment (for students admitted from Semester A 2022/23 to Summer Term 2024)

**Criterion**

Demonstration of ability to identify issues, current trends and practices.

**Excellent**

(A+, A, A-) High

**Good**

(B+, B) Significant

**Marginal**

(B-, C+, C) Moderate

**Failure**

(F) Inadequate

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**Assessment Task**

Class Participation (for students admitted from Semester A 2022/23 to Summer Term 2024)

**Criterion**

Demonstration of ability to identify issues, current trends and practices.

**Excellent**

(A+, A, A-) High

**Good**

(B+, B) Significant

**Marginal**

(B-, C+, C) Moderate

**Failure**

(F) Inadequate

## Part III Other Information

### Keyword Syllabus

Advanced skills. Alternative dispute resolution. Mediation. Accreditation. Principles and values of mediation. Emerging issues. Negotiation. Civil procedure practice of Hong Kong.

### Detailed Syllabus

- a. What is mediation? (textbook definition, Hong Kong definition, Singapore definition, international definition under the Singapore Convention on Mediation)
- b. How mediation is different from negotiation, arbitration and litigation?
- c. What makes mediation popular?
- d. Confidentiality in Mediation (Confidentiality vs Without prejudice, the concept of mediation communication in Hong Kong and Singapore)
- e. Style of mediation (facilitative, evaluative and other styles)
- f. Mediation process (how the court could work with mediators in the court process)
- g. Settlement agreement vs settlement court order
- h. Relationship between court process and mediation (Civil Justice Reform, Practice Directions, court-led mediation)
- i. Mediation Ethics
- j. Role of judges in mediation vis-a-vis mediators
- k. Apology Ordinance (the first piece of apology legislation in Asia)
  1. The United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention on Mediation")
- m. CEPA's Dispute Resolution Mechanism (Close Economic Partnership Arrangement) between Hong Kong and the Mainland
- n. Online mediation

### Reading List

#### Compulsory Readings

| Title |     |
|-------|-----|
| 1     | Nil |

#### Additional Readings

| Title |                                                                                                                                                                                                                                                             |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1     | <a href="https://www.singaporeconvention.org/convention-text.html">https://www.singaporeconvention.org/convention-text.html</a>                                                                                                                             |
| 2     | The Singapore Convention on Mediation - A Commentary by Nadja Alexander & Shouyu Chong (Wolters Kluwer) 2019                                                                                                                                                |
| 3     | <a href="http://mediationblog.kluwerarbitration.com/2018/07/24/singapore-convention-mediation/">http://mediationblog.kluwerarbitration.com/2018/07/24/singapore-convention-mediation/</a>                                                                   |
| 4     | <a href="http://www.hk-lawyer.org/content/new-un-convention-mediation-aka-'singapore-convention'---why-it's-important-hong-kong">http://www.hk-lawyer.org/content/new-un-convention-mediation-aka-'singapore-convention'---why-it's-important-hong-kong</a> |
| 5     | <a href="https://www.chinajusticeobserver.com/a/the-future-of-mediation-in-china-synergy-between-litigation-and-mediation">https://www.chinajusticeobserver.com/a/the-future-of-mediation-in-china-synergy-between-litigation-and-mediation</a>             |
| 6     | <a href="https://www.chinajusticeobserver.com/a/mediation-in-china-past-and-present">https://www.chinajusticeobserver.com/a/mediation-in-china-past-and-present</a>                                                                                         |
| 7     | <a href="https://www.elegislation.gov.hk/hk/cap631">https://www.elegislation.gov.hk/hk/cap631</a>                                                                                                                                                           |
| 8     | <a href="https://www.doj.gov.hk/eng/public/apology.html">https://www.doj.gov.hk/eng/public/apology.html</a>                                                                                                                                                 |
| 9     | <a href="https://hbr.org/2015/09/the-organizational-apology">https://hbr.org/2015/09/the-organizational-apology</a>                                                                                                                                         |
| 10    | <a href="https://hbr.org/2013/03/how-to-give-a-meaningful-apology?referral=03759&amp;cm_vc=rr_item_page.bottom">https://hbr.org/2013/03/how-to-give-a-meaningful-apology?referral=03759&amp;cm_vc=rr_item_page.bottom</a>                                   |
| 11    | <a href="https://hbr.org/2016/11/the-4-types-of-ineffective-apologies">https://hbr.org/2016/11/the-4-types-of-ineffective-apologies</a>                                                                                                                     |

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|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12 | <a href="https://www.elegislation.gov.hk/hk/cap620">https://www.elegislation.gov.hk/hk/cap620</a>                                                                                                                                                                                     |
| 13 | <a href="https://sso.agc.gov.sg/Act/MA2017">https://sso.agc.gov.sg/Act/MA2017</a>                                                                                                                                                                                                     |
| 14 | <a href="https://www.bloomsburyprofessional.com/uk/mediator-skills-and-techniques-triangle-of-influence-9781847661449/">https://www.bloomsburyprofessional.com/uk/mediator-skills-and-techniques-triangle-of-influence-9781847661449/</a>                                             |
| 15 | <a href="http://www.cityu.edu.hk/slw/ADR_Moot/doc/Notes_on_the_Facilitative_Model_of_Mediation.pdf">http://www.cityu.edu.hk/slw/ADR_Moot/doc/Notes_on_the_Facilitative_Model_of_Mediation.pdf</a>                                                                                     |
| 16 | <a href="https://www.civiljustice.hk/eng/home.html">https://www.civiljustice.hk/eng/home.html</a>                                                                                                                                                                                     |
| 17 | <a href="https://mediation.judiciary.hk/en/doc/GeneralGuide_PD31-Eng.pdf">https://mediation.judiciary.hk/en/doc/GeneralGuide_PD31-Eng.pdf</a>                                                                                                                                         |
| 18 | <a href="https://legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PD31.htm&amp;lang=EN">https://legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PD31.htm&amp;lang=EN</a>                                                                                                   |
| 19 | <a href="https://www.doj.gov.hk/eng/public/pdf/2010/med20100208e_annex7.p">https://www.doj.gov.hk/eng/public/pdf/2010/med20100208e_annex7.p</a>                                                                                                                                       |
| 20 | <a href="https://www.tid.gov.hk/sc_chi/cepa/investment/files/HKMediationRule_sc.pdf">https://www.tid.gov.hk/sc_chi/cepa/investment/files/HKMediationRule_sc.pdf</a>                                                                                                                   |
| 21 | <a href="https://www.tid.gov.hk/english/cepa/investment/files/HKMediationRule.pdf">https://www.tid.gov.hk/english/cepa/investment/files/HKMediationRule.pdf</a>                                                                                                                       |
| 22 | <a href="http://mediationblog.kluwerarbitration.com/2019/10/16/is-investor-state-mediation-an-emerging-practice-a-practitioners-perspective/">http://mediationblog.kluwerarbitration.com/2019/10/16/is-investor-state-mediation-an-emerging-practice-a-practitioners-perspective/</a> |
| 23 | Chapter 11, Singapore Mediation Handbook by Nadja Alexander, Joel Lee, Lum Kit-Wye                                                                                                                                                                                                    |