

NEGOTIATION AND MEDIATION COURSE OUTLINE: 2011

1 INTRODUCTION

Overview

Negotiation and Mediation consists of a theoretical and a practical component. It is a skills-orientated course, designed not only to expose students to the practical skills required during negotiations and mediations, but also to provide a theoretical context for such skills and the analytical skills to adapt to various circumstances. Particular emphasis is placed on developing group, inter-personal and problem-solving skills.

Students will also be able to develop a range of broader, transferable life skills for dealing with issues of professional and personal life, including: basic negotiation and mediation skills; a methodical approach to problem solving; confidence in oral communication; working effectively in teams; and the importance of responding with integrity and moral courage in professional contexts.

Some of the learning principles upon which this course is based are:

- Skills are best learnt by working things out for oneself.
- It is assumed that students will bring some prior knowledge, experience, attitudes and skills into the course.
- To develop skills, students need to have the opportunity of practising them and obtaining feedback.

Credit value

10 Credits

Assumptions of Prior Learning

An ability to communicate coherently in English, preferably both orally and in writing.
A basic ability to function as an autonomous learner.
Ability to organise and manage their own studies
Some communication skills

2 OUTCOMES

2.1 Critical Outcomes

- Identify and solve problems
- Work in a team
- Organise and manage themselves
- Collect, analyse and evaluate information
- Communicate effectively
- Recognise problem solving contexts
- Participate as a responsible citizen
- Be culturally and aesthetically sensitive

2.2 Specific Outcomes

At the end of the course, students will have the ability to conduct negotiations and simple mediations, and should have developed effective techniques for autonomous learning and problem-solving, which can be applied in both their professional and personal lives.

The course is designed to achieve the following specific outcomes:

- The ability to analyse a conflict situation and to select the appropriate dispute resolution strategy.
- An ability to negotiate effectively.
- An ability to conduct or participate appropriately in a mediation process.
- An ability to participate effectively in meetings, in a range of roles.
- An ability to work effectively as a member of a team, and recognition of the value and constraints of team work.
- The ability to separate process of decision-making from the object of the process and the final product that results from the process.
- The ability to apply problem-solving techniques, including: identification of core issues from a set of facts; thinking laterally and innovatively in order to find effective solutions to those issues.
- An ability to situate dispute resolution processes in their wider social, political and theoretical contexts.
- An ability to respond ethically, and to operate with integrity – in professional and other contexts.

3 TEACHING AND LEARNING METHODS

Students will be expected to assume responsibility for their own learning, and the extent of their knowledge at the end of the course will depend on the effort they put into the course.

In this course a distinction is drawn between theory and concepts – that need to be understood – and physical skills – that need to be experienced by doing. Students will be provided with a course outline and a list of readings for each seminar session. They are expected to do the preparatory reading in advance to familiarise themselves with the theory and concepts. Each person has his or her own way of assimilating knowledge. Students are not restricted to the material provided in the outline. Should they prefer to use other materials, they are free to do so. *Students are also not obliged to refer to all the reading material*, although it would be advantageous. In many instances the materials are merely different ways of saying the same thing. Students might find one author's exposition easier to understand than another's, and are free to select the readings that are appropriate to their learning needs.

The readings will be referred to briefly during seminars to highlight certain issues and to clarify where necessary. The purpose of the seminars is merely to help students to improve their understanding of the theory. Lectures will be semi-Socratic and class participation is emphasised. The purpose of the practical class exercises is to make learning overt and to develop the practical application of the theoretical concepts. Provision is made for individual differences in application and learning. The learning environment will hopefully be safe and encouraging. Students should constantly question, request feedback and reflect. Making mistakes is part of the learning process and in this course mistakes can assist one to understand issues or to develop skills.

Class exercises provide students with the opportunity to practise their negotiation and mediation skills. At the end of each exercise students will assess their own performances and that of their partners and thereafter they will present feedback to the person with whom they interacted. The lecturer will then also provide feedback, by commenting on specific issues that arose, or by analysing and discussing DVD recordings of certain exercises or of experts demonstrating certain skills.

Students should also not feel constrained to follow the views that the lecturer expresses in seminars. If they feel someone else has a better approach, they should accept that approach. It is important that they are comfortable with the theory that they intend applying. If they are not comfortable, the application thereof will be artificial and insincere. So students are free to experiment and the course provides them with the space to do so.

4 RESOURCES

(# = books on short loan)

- # *Anstey Managing change, negotiating conflict (3rd ed)*
Anstey Negotiating Conflict
Asherman Negotiation Sourcebook (2nd ed)
Bevan Alternative Dispute Resolution (2nd ed)
Brand et al Labour Dispute Resolution (2nd ed)
Brown and Marriott ADR Principles and Practice
Craver Effective legal negotiation and settlement (5th ed)
- # *Fisher and Ury Getting to Yes*
Halpern Negotiating Skills
Inns of Court School of Law Negotiation 1999/2000
Kovach Mediation: principles and practice (3rd ed)
Lewicki et al Essentials of Negotiation
Lewicki et al Negotiation (5th ed)
Lewicki et al Negotiation: readings, exercises and cases (5th ed)
Moore The Mediation Process (3rd ed)
Stone Representing Clients in Mediation
The Mediator Handbook
Ury Getting Past No
- # *Weeks The Eight Essential Steps to Conflict Resolution*

5 STUDENT ASSESSMENT

Informal assessment will occur throughout the course. Self-assessment, peer assessment and lecturer feedback will take place from time to time after exercises, and at the end of each session students will be given an opportunity to reflect on what they have learnt during the course of that session.

Formal assessment will take three forms:

- Student journal (30% of overall result): Students must compile a journal in which their learning during the course is recorded. Students should choose examples of their work that match the objectives and outcomes of the course, or that best illustrate the quality of their learning. The journal should contain, amongst others, an analysis of the readings and their relevance to the course; an evaluation of the practical class exercises; reflection on one's skills development during the course; and comment upon broader

issues, outside the course, which now appear more relevant or understandable. The journal will be assessed for the quality and depth of the analysis, evaluation, reflection and comment. Journals must be handed in by the end of swot week.

Examples of journals are available for scrutiny. A mark sheet setting out the assessment criteria for the journal is attached.

- Practical examination (30% of overall result): At the end of the course, students will participate in a negotiation exercise during which the internal and external examiners will assess their negotiation and communication skills. *The material for the practical negotiation examination will be similar to that used in the class exercises. A mark sheet setting out the assessment criteria for the practical examination is attached.*
- Theoretical examination (40% of overall result): A two hour written examination at the end of the course (in June) will assess students' understanding of the readings and the theoretical concepts.

6 EVALUATION

Students are required to complete evaluation questionnaires according to the Law Faculty's evaluation cycle.

An external examiner assesses the quality of the examination paper and the student answers. The external examiner must complete a report on the course as per Law Faculty and University policy.

Specific Outcomes	Assessment Criteria	Assessment Tasks
1. The ability to analyse a conflict situation and to select the appropriate dispute resolution strategy.	Students must demonstrate that, if given a set of facts in a conflict situation, they can identify the nature of a dispute and the path that the conflict has followed and then select an appropriate strategy for resolving that dispute.	1. Class discussions in which students are asked to identify issues from factual scenarios given to them. (Formative) 2. Learning journals in which students must analyse and reflect upon at least one real-life situation, apply conflict resolution theory to that situation and suggest suitable resolution strategies. (Formative and Summative) 3. A 20-minute practical examination in which students must demonstrate that they have analysed a set of facts and selected an appropriate negotiation strategy. (Summative) 4. A two-hour examination containing some questions that deal with conflict analysis issues. (Summative)

<p>2. An ability to negotiate effectively.</p>	<p>Students must demonstrate that they can:</p> <ul style="list-style-type: none"> (a) plan and prepare for a specific negotiation. (b) select appropriate opening statements and create a positive negotiating atmosphere; (c) identify core issues from a given set of facts; (d) be flexible and adjust their bargaining positions if necessary, according to new information presented to them during negotiations. (e) communicate effectively, present their arguments confidently and listen empathically; (f) probe and clarify issues; (g) generate options; and (h) fashion a workable agreement. 	<ul style="list-style-type: none"> 1. Class practical exercises in which students have to conduct negotiations and after which students are required to provide feedback on their own and other students' performances. (Formative) 2. Learning journals in which students must analyse and reflect upon their progress in attaining proper negotiation techniques and communication skills and ways in which these could be improved. (Formative and Summative) 3. A 20-minute practical examination in which students must demonstrate proper communication and negotiation techniques based on the dispute scenario presented to them, including: <ul style="list-style-type: none"> (a) select appropriate opening statements and create a positive negotiating atmosphere; (b) present their points of view confidently and coherently; (c) practise sound empathic listening skills; (d) be sensitive to the other party's point of view; (e) show that they can adapt to new information. (Summative)
<p>3. An ability to conduct or participate appropriately in a mediation process.</p>	<p>1. Students must demonstrate that they can:</p> <ul style="list-style-type: none"> (a) select appropriate opening statements and create a positive negotiating atmosphere; (b) provide evidence that they know the facts of the exercise and have grasped the core issues; (c) present their arguments confidently; (d) probe and clarify issues; (e) generate options; and (f) fashion a workable 	<ul style="list-style-type: none"> 1. Class practical exercises in which students have to participate in mediations, either as mediators or as negotiators and after which students are required to provide feedback on their own and other students' performances. (Formative) 2. Learning journals in which students must analyse and reflect upon their progress in attaining proper mediation techniques. (Formative and Summative)

	<p>agreement.</p> <p>2. Students must demonstrate that they can conduct basic mediations.</p>	<p>3. A 20-minute practical examination in which students must demonstrate proper communication, negotiation techniques based on the dispute scenario presented to them. (Summative)</p>
<p>4. An ability to participate effectively in meetings, in a range of roles.</p>	<p>Students must provide evidence that: they</p> <ol style="list-style-type: none"> 1. can participate in meetings. 2. understand and can apply meeting rules of order 3. understand and apply the basic principles of group dynamics. 	<ol style="list-style-type: none"> 1. Class practical exercises in which students have to conduct group negotiations and mediations in an orderly fashion and after which students are required to provide feedback on their own and other students' performances. (Formative) 2. Learning journals in which students must analyse and reflect upon their involvement in meetings and how their acquired knowledge has been put into use. (Formative and Summative) 3. A two-hour examination in which students could be required to provide evidence that they can participate in meetings and apply meeting rules of order and/or principles of group dynamics. (Summative)
<p>5. An ability to work effectively as a member of a team and recognition of the value and constraints of team work.</p>	<ol style="list-style-type: none"> 1. Students must demonstrate that they can work in groups. 2. Students must demonstrate and appreciate the advantages and disadvantages of working in teams. 	<ol style="list-style-type: none"> 1. Class practical exercises in which students have to prepare for negotiations and mediations in groups. (Formative) 2. Learning journals in which students must analyse and reflect upon their involvement in meetings. (Formative and Summative) 3. A two-hour examination in which students could be required to provide evidence that they can participate in meetings and apply meeting rules of order and/or principles of group dynamics and leadership. (Summative)

<p>6. The ability to separate process of decision-making from the object of the process and the final product that results from the process.</p>	<p>Students must provide evidence that they are able to</p> <ul style="list-style-type: none"> (a) separate the people from the problem; (b) separate the problem from the process; (c) select and apply independent criteria against which issues can be tested. 	<ul style="list-style-type: none"> 1. Class practical exercises in which students have to distinguish between content and process issues. (Formative) 2. Learning journals in which students must analyse and reflect upon their negotiation skills. (Formative and Summative) 3. A practical examination in which students must: <ul style="list-style-type: none"> (a) separate the people from the problem; (b) separate the problem from the process; (c) select and apply independent criteria against which issues can be tested. (Summative) 4. A two-hour examination in which students could be required to provide evidence that they understand the essentials of negotiation theory. (Summative)
<p>7. The ability to apply problem-solving techniques, including identification of core issues from a set of facts and thinking laterally and innovatively in order to find effective solutions to those issues.</p>	<p>Students must provide evidence that they can:</p> <ul style="list-style-type: none"> (a) apply appropriate problem-solving techniques; (b) identify and isolate core issues; (c) think creatively, generate options; and (d) select solutions which are appropriate and implementable. 	<ul style="list-style-type: none"> 1. Class practical exercises in which students have to apply problem-solving techniques. (Formative) 2. Learning journals in which students must analyse and reflect upon their problem-solving skills. (Formative and Summative) 3. A practical examination during which students apply appropriate problem-solving techniques, identify and isolate core issues, generate options and select appropriate solutions. (Summative) 4. A two-hour examination in which students could be required to provide evidence that they understand the theory of problem solving. (Summative).

<p>8. An ability to situate dispute resolution processes in their wider social, political and theoretical contexts.</p>	<p>Students must analyse at least one real-life situation and apply conflict resolution theory to that situation in order to suggest suitable resolution strategies.</p>	<p>1. Class practical exercises drawn from various contexts – commercial, environmental, family and community. (Formative) 2. Learning journals in which students must analyse at least one real-life situation and apply conflict resolution theory to that situation, in order to suggest suitable resolution strategies. (Formative and summative).</p>
<p>9. An ability to respond ethically, and to operate with integrity – in professional and other contexts.</p>	<p>Students must demonstrate that they can negotiate ethically and also respond appropriately to unethical behaviour, should that occur.</p>	<p>1. Class discussions in which students are asked to negotiate ethically and afterwards to give and receive feedback on their behaviour. (Formative) 2. Learning journals in which students must analyse and reflect upon their negotiation ethics, as well as the ethics of negotiations in real-life situations that they have encountered. (Formative and Summative) 3. A 20 minute practical examination during which students must demonstrate that they can negotiate ethically and also respond appropriately to unethical behaviour, should that occur. (Summative) 4. A two-hour examination containing some questions that deal with ethical issues. (Summative)</p>

CRITERIA FOR ASSESSING THE JOURNAL

Task: Students must compile a journal in which their learning during the course is recorded. They should choose examples of their work that match the objectives and outcomes of the course, or that best illustrate the quality of their learning. The journal should contain, amongst others, an analysis of the readings and their relevance to the course; an evaluation of the practical class exercises; reflection on one's skills development during the course; and comment upon broader issues, outside the course, which now appear more relevant or understandable. The journal will be assessed for the quality and depth of the analysis, evaluation, reflection and comment.

Category	Descriptive Statement	Mark
Brilliant	All the criteria mentioned in the "excellent" category are met, and the overall quality of the contents and the presentation is creative and exceptional. For example, presentation is polished and imaginative; the information is comprehensive, and clearly and logically organised and synthesised. The material demonstrates integration and innovation in the selection and handling of theory. Contexts and boundaries are explored, tested, illustrated and critically reviewed. Reflective practice is of exceptional standard, including analysis of strengths and weaknesses in light of theory and class exercises, and taking action according to own developed criteria.	85% <
Excellent	The journal contains evidence: (a) That the student has understood the purpose of the course, demonstrating that the student has achieved the majority of the outcomes of the course; (b) Indicating that the student understands the theories encountered during the course; (c) That the student can apply theory to practical situations, and evaluate theory in the light of class discussions and everyday encounters; (d) Indicating the extent of the student's professional and personal development – the extent to which the student's knowledge and skills have progressed since the beginning of the course measured against the course outcomes; (e) That the student has a clear understanding of his or her "negmed" strengths and weaknesses and knows what he or she can and cannot do; (f) Of a high level of critical analysis and evaluation – of the reading material, the classroom interaction and of events outside the formal learning environment – and an ability make linkages and to see the broader picture; (g) Rendering a coherent picture of the student as a reflective learner; and (h) Of a high degree of clarity of thought – ideas communicated clearly and succinctly, in a structured and polished fashion.	78%
Very good	All the criteria mentioned in the "excellent" category are met, but the level of critical analysis and evaluation could have been more rigorous.	73%

Good	<p>All the criteria mentioned in the “excellent” category are met. Aspects of the journal have merit, matching the levels required for placement in a higher category, but either one or both of the following aspects are present:</p> <p>(a) While the student has indicated a fair understanding the interaction of theory and practice, as well as of his or her growth and development, the analysis and evaluation lack depth; and</p> <p>(b) The organisation and presentation of the journal, while sound, could have been developed further.</p>	68% or 62%
Competent	<p>The majority, and even all, of the criteria mentioned in the “excellent” category are met, some even at levels sufficient to be considered for placement in a higher category, but some or all of the following aspects are present:</p> <p>(a) The analysis and evaluation, while coherent, is weak;</p> <p>(b) There is an inability or reluctance to confront the materials critically and reflectively;</p> <p>(c) The journal gives a superficial account of the student’s growth and development; and</p> <p>(d) The organisation and presentation of the journal is weak.</p>	58 or 52%
Not competent	<p>While the majority, or even all, of the criteria mentioned in the “excellent” category have been addressed, some or all of the following aspects are present:</p> <p>(a) The student has provided insufficient evidence to indicate that he or she is a reflective learner;</p> <p>(b) The analysis and evaluation is either patchy or poor;</p> <p>(c) The journal gives a superficial and/or incoherent account of the student’s growth and development; and</p> <p>(d) The organisation and presentation of the journal is weak.</p>	47%
Bad	<p>While the majority, or even all, of the criteria mentioned in the “excellent” category have been addressed, there is a clear lack of effort to confront the learning objectives of the course. The student is unable to learn reflectively and the material gives the impression that the student is disinterested in the course. Some or all of the following aspects are present:</p> <p>(a) The student has provided little or no evidence to indicate that he or she is a reflective learner;</p> <p>(b) The analysis and evaluation is either non-existent or extremely poor;</p> <p>(c) The journal gives an incoherent account of the student’s growth and development; and</p> <p>(d) The organisation and presentation of the journal is weak.</p>	40% >

CRITERIA FOR ASSESSING THE PRACTICAL EXAMINATION

Task: At the end of the course, in June, students will participate in a negotiation exercise during which the internal and external examiners will assess their negotiation and communication skills. Students will negotiate in pairs, and each pair will be given a different set of facts. The detail will be similar to that found in class exercises, but the topics and the issues will not necessarily be the same. Participants will be given 30 minutes to prepare, after which they will negotiate for approximately 15 minutes. *It is not necessary to reach an agreement in the time allocated, but negotiators should try to do so and should not take too long over one particular issue.* At the end of the exercise participants will be given an opportunity to comment upon their performance, and to point out factors which they think the examiners should consider in their assessment.

Category	Descriptive Statement	Mark
Brilliant	All the criteria mentioned in the “excellent” category are met, but the student demonstrates exceptional ability – in particular, but not limited to, the following: the student is confident and in control of the process, negotiates in a manner suited to the factual situation, consistently displays exceptional communication skills, explores perspectives and responds creatively and imaginatively, and obtains a result that optimises the positions of both parties.	85% <
Excellent	<p>Students must demonstrate that they are highly skilful in most of the following areas:</p> <p>(a) Preparation: That they understood the facts of the exercise, analysed the conflict, identified the core issues, considered a BATNA, and selected an appropriate negotiation strategy.</p> <p>(b) Introduction: That they introduced themselves appropriately, selected appropriate opening statements and created a positive negotiating atmosphere.</p> <p>(c) Story-telling: That they have communicated their views rationally and coherently, ascertained the views of the other party (where necessary probing and clarifying), that they discerned the interests of both parties, grasped the core issues and identified the boundaries of the dispute.</p> <p>(d) Communication skills: That they can communicate confidently and assertively, using verbal and non-verbal means, and that they can listen empathically.</p> <p>(e) Negotiation skills: That they control their own destiny and can select appropriate tactics, and adapt or modify their strategies and tactics if required to do so. In particular, that they can separate the people from the problem, and the decision-making process from the subject-matter of the negotiation.</p> <p>(f) Values: That they can negotiate ethically and with appropriate sensitivity towards the other party’s needs and interests, but not at the expense of their own; and, if applicable, that they can respond ethically to unethical behaviour.</p> <p>(g) Problem-solving skills: That they apply appropriate problem-solving processes and techniques – isolate the problem, identify possible causes, think innovatively, and generate and select implementable options using appropriate objective criteria.</p> <p>(h) Consensus-building: That they can fashion a realistic and workable agreement and record it in an appropriate way.</p>	78%

Very Good	All the criteria mentioned in the “excellent” category are met, but either not consistently throughout the exercise, or, alternatively, some of the criteria details are not met. Small mistakes are made in some of the areas, but the flaws are not of major importance and do not materially effect the outcome of the exercise. The negotiator nonetheless performs with a high level of skill.	73%
Good	All the criteria mentioned in the “excellent” category are met. Aspects of the student’s performance have merit, matching the levels required for placement in a higher category, but other aspects were not performed satisfactorily. For example, the negotiator might not have analysed the conflict properly and as a result adopted an incorrect strategy, might not have clarified issues sufficiently, might have proceeded too quickly to the next negotiation stage or might not have been fully in control at some stage in the negotiation. Nonetheless the outcome is a satisfactory one. The negotiator performs competently in some areas and skillfully in others.	68% or 62%
Competent	The majority of the criteria mentioned in the “excellent” category are met, some even at levels sufficient to be considered for placement in any of the higher categories. The negotiator performs competently, but there are flaws which, although not disastrous, could be material to the outcome of the negotiation. For example, the negotiator might have made an error in analysing the conflict and as a result adopted an incorrect strategy, might not have clarified a vital issue sufficiently, or failed to ascertain an important need or interest, did not stick to the mandate, might have made an incorrect offer, might have proceeded too quickly to the next negotiation stage or might not have been fully in control of the exercise, allowing the other party to dominate the process. Although there is evidence of a lack of confidence and/or of poor communication skills, and the negotiator has not optimised his or her position, the result is still acceptable.	58% or 52%
Not competent	The majority of the criteria mentioned in the “excellent” category are met, but there are flaws which are material to the outcome of the negotiation. For example, the negotiator might have made a serious error in analysing the conflict properly and as a result adopted an inappropriate strategy, might not have clarified a vital issue sufficiently, or failed to ascertain an important need or interest, or might have proceeded too quickly to the next stage in the process. The negotiator has poor communication skills, lacks confidence, was definitely not in control of the situation and allowed the other party to dominate the process. The negotiator achieved an unfavourable result.	47%
Bad	The criteria mentioned in the “not competent” category are present but, in addition, the student succumbed to the pressure of the situation, all but abandoned his or her case, and achieved a result that is unacceptable on the facts.	40% >