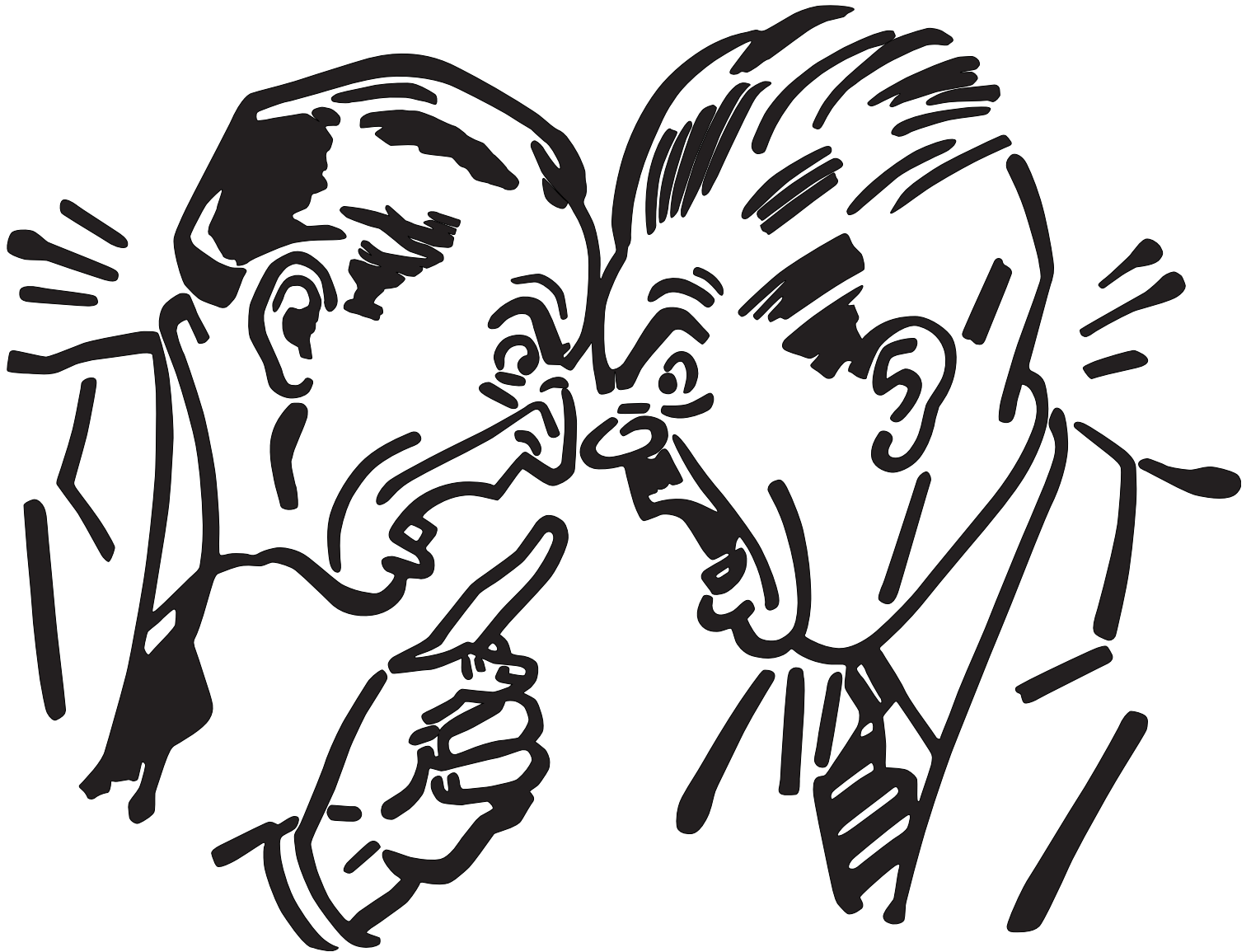


Dr Grant and his Underpants

A model mediation



Victoria**Law**
Foundation

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Victoria Law Foundation supports better justice through research, education and grants. We are a not-for-profit organisation funded by the Legal Services Board Public Purpose Fund. Our education programs work with the general community and students. We connect people with the foundations of our justice system and institutions through events such as Law Week and Law Talks for VCE students. Wherever possible, publications are made available at no cost to schools and community organisations.

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This model mediation was written by David Thomson in consultation with Margaret Lothian, former Principal Mediator at VCAT. It is based on the case of *Grant v Australian Knitting Mills and Another* [1935] HCA 66; (1935). The introduction and exercises were prepared by David Thomson.

Disclaimer

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About these materials

The resource is intended for VCE students. It may also be suitable for use at other year levels, with relevant tasks adapted to suit students' abilities.

Dr Grant and his Underpants is a scripted model mediation for classroom use. The scenario is based on the South Australian case *Grant v Australian Knitting Mills Limited and Another [1935] HCA 66; (1935) 54 CLR 49*. Details of the original case are set out in the section entitled 'The real case and its outcome' following the mediation scenario. The scenario is also accompanied by explanatory notes, suggested student activities and a list of useful websites.

This resource is designed to show students, in a practical and entertaining way, the procedure for the mediation of a dispute. It also demonstrates the effectiveness of mediation as a method of dispute resolution.

Curriculum links

Dr Grant and his Underpants and accompanying notes, references and tasks will assist students to:

- demonstrate knowledge of mediation as an alternative method of dispute resolution;
- evaluate the strengths and weaknesses of mediation;
- identify the relationship between mediation and other dispute resolution procedures; and
- evaluate the contribution of mediation to the effectiveness of the legal system.

Area	Outcomes	Key skills
Unit 1 Area of Study 3: Civil Liability	• Explain the purposes and key concepts of civil law • Apply legal reasoning to argue the liability of a party in civil law based on actual and/or hypothetical scenarios	• Synthesize and apply legal information to actual and/or hypothetical scenarios in relation to an area of civil law • Apply legal reasoning and principles to identify and argue the elements, possible defenses and civil liability in relation to a hypothetical scenario
Unit 2 Area of Study 2: Remedies	• Explain key concepts in the resolution of a civil dispute • Discuss the principles of justice in relation to the resolution of civil disputes and remedies	• Discuss the principles of justice in relation to the resolution of civil disputes and remedies • Discuss the ability of remedies to achieve their purposes

Area	Outcomes	Key skills
Unit 3 Area of Study 2: Victorian Civil Justice System	- The methods used to resolve civil disputes, including mediation, conciliation and arbitration, and their appropriateness - The purposes of remedies	- Define and use legal terminology - Discuss, interpret and analyse legal principles and information - Discuss the responsibilities of key personnel in mediation - Discussion of remedies to achieve their purposes - Recent reforms and recommended reforms to the civil justice system

Using the materials

The model mediation

The mediation script can be used to introduce students to the process of mediation as an effective means of dispute resolution. This mediation is intended to be largely self-guided by the students, however there are prompts in the scenario to guide them.

Before using the scenario in class

- Students will need to understand the differences between 'negotiation', 'mediation', 'facilitation', 'conciliation', 'arbitration' and 'adjudication'. Students will also need to understand the difference between civil dispute resolution by courts and resolution by alternative processes
- You may wish to familiarise students with the law of manufacturers' liability and negligence as it was developing in the 1930s
- You may wish to access the numerous resources relating to mediation in the Teacher Resources section of the Victoria Law Foundation website

Allow the students playing roles in the mediation time to familiarise themselves with the characters involved in the story.

- Brainstorm as a group the different perspectives and needs of each character to determine what their attitude might be to the mediation
- Consider the different objectives of each party that might be important in understanding what they will want during the mediation

To give added realism to the activity, you may wish to set up the classroom to look like a hearing room, with desks joined to form a single table, and encourage the use of appropriate clothing and props.

Understanding the real case and its outcome

The mediation scenario is based on the real case of *Grant v Australian Knitting Mills and Another* [1935] HCA 66; (1935) 54 CLR 49.

The facts of this case are outlined in a later section. If you decide to provide this background information to students, it is preferable to do so after they have enacted the mediation scenario as the scenario directly follows the facts of the case. This will enable students to properly engage with the activity by not knowing the outcome of the real case.

The monetary figures that appear in this scenario have been approximately adjusted for inflation in the present day from their original figures.

Research and discussion activities

These activities can be used in the following ways:

- Answers to the questions can be discussed as a class or in small groups
- Students can write brief answers in their notebooks
- Students can write extended answers where questions require more in-depth answers

Some tasks may lead to further discussion, for example:

- Activity 3: discussion of methods of dispute resolution where people may be concerned for their safety or where the dispute may involve a breach of criminal law
- Activity 6: discussion of the Australian Industrial Relations Commission and its role in dispute resolution

Internet sites

After the script, there is a list of useful internet sites. These sites provide further resources related to mediation and forms of appropriate dispute resolution.

Setting up the mediation

1. Separate the classroom into groups of 7 students

This can be a group of 5 if necessary, just remove the role of Dr Grant's solicitor and Alex Vassiliou's solicitor.

Each group will consist of the following parties:

- Mediator
- Dr Grant and Dr Grant's solicitor
- Alex Vassiliou – company secretary of Australian Knitting Mills and Alex Vassiliou's solicitor
- Chris Martin – managing director of Chris Martin & Company Limited and Chris Martin's solicitor

2. Give each team in the group their own set of secret facts

Advise them not to share their secret facts with one another for the mediation to occur successfully.

3. Commence scripted mediation

After each individual/pair reads over their secret facts and are comfortable with their perspectives the students can commence the mediation. You may wish to give each party 5-10 minutes to prepare a summary of their views of the issue in dispute based off the secret facts. It is recommended the students take brief notes on what occurs during the mediation to aid their reflection assessment.

Explain to classroom the mediation process

You may wish to say the following:

- Mediation is a process by which, if the parties are willing, can be used to attempt to resolve all sorts of disputes, indeed even some which could not be resolved using conventional court or tribunal systems
- Mediation offers the disputing parties the opportunity to achieve a practical solution to their dispute without the cost, time and personal and financial stress associated with court procedures
- It is a flexible and informal approach to settling disputes and gives the parties an opportunity to have their say and to agree on an acceptable solution to their dispute
- It is preferable not to have too many people attending the mediation, but parties can be assisted by a lawyer or another representative or a support person of their choice
- The mediator does not make a decision for the parties. The mediator guides the parties through the mediation process, ensuring that everyone involved has a fair say and that no-one unfairly dominates the process
- The impartial mediator will assist the parties to develop options and possible approaches to resolving the dispute
- All parties are given the opportunity to talk about their concerns and this is designed to help identify the issues in dispute
- The mediator will explore the options with the parties in an attempt to reach a negotiated settlement. It's not the mediator's role to give the parties legal or expert advice
- The mediator will not impose a solution on the parties.
- The settlement will only be legally binding and enforceable if both parties agree

Explain the mock mediation scenario

You may wish to include the following information:

- Today there are three parties: Dr Grant, who bought some underwear which he claims was the cause of a very unpleasant experience, Chris Martin & Co from whom the underwear was purchased and Australian Knitting Mills who manufactured the items in question
- Parties have been asked to prepare an opening statement summarising their views on the issues in dispute and setting out how they would like to see the dispute resolved. They have been asked to bring any important papers and to be prepared to discuss the issues frankly
- The mediator may ask to talk to the parties in private to clarify points or to discuss settlement options and possible hearing outcomes
- At the end of the mediation, parties should be prepared to sign a written settlement agreement if the matter is resolved



Secret facts

For Dr Grant and Dr Grant's solicitor:

These are your secret facts - or what you know about the situation from your character's perspective. Do not share them with other teams for the mediation to run successfully.

Your version of the facts:

You are a well renowned doctor in South Australia. Due to your community spirit, you make a lot of house calls to help people but unfortunately it gets rather cold most visits. You decide to head down to Chris Martin's store to buy a new pair of long johns (underwear). At last, you will be warm on those freezing house visits you do out of the goodness of your heart.

The Prince Albert underwear are quite nice but a bit too pricey for you (you're a doctor on a budget). Fortunately, the friendly Chris Martin employee recommended the cheaper Golden Fleece brand, which you were promised is 'just as good' as the Prince Albert luxury line.

What a score! You bought two pairs of the Golden Fleece underwear, manufactured by Australian Knitting Mills (AKM), and wore the first pair soon after. One day you go out to do some gardening and that night you don't change your long johns before going to bed. In the middle of the night you wake up with severe pain and extremely itchy skin. Yikes! Despite the extreme pain, you decide as a 'skilled physician' to ignore the pain and you continue to wear the same pair of underwear for the rest of the week.

The next week you finally decide to wash the first pair and put on the second set. You don't really think the underwear was at fault, but the next day you woke up in severe pain again so you rang your dermatologist friend, Dr Upton.

Dr Upton suggested that it was probably the long johns that caused your condition and instructed you to stop wearing them instantly. The skin lesions got worse and worse and Dr Upton confined you to bed for 17 weeks. The pain was acute. Agony! You felt swindled because you bought the Golden Fleece underwear instead of the luxurious Prince Albert's.

You started to feel better for a little while and headed to New Zealand for a holiday. However during the trip you relapsed! The pain was so terrible that you were admitted to hospital. You have been out of work for 12 months which has been a significant financial burden – you can't afford any long johns now.

Desired outcome:

You are devastated and hurt from the suffering you have experienced as a result of wearing Australian Knitting Mills' (AKM) underwear. You want to make AKM pay for the suffering they caused you, but you want to settle outside of court at all costs, because you don't want anyone to know you never change your underwear. You're a doctor, imagine the PR crisis! As you are still maintaining your tight budget, you also want to avoid the expensive costs associated with court.

You have experienced significant financial burden having been out of work so the minimum amount of money you will accept is \$500,000. Even though you don't want to go to court you are willing to threaten AKM and Chris Martin that you will make this incident public if they don't give you your desired outcome – you've been so ill!



Secret facts

For Alex Vassiliou and Alex Vassiliou's solicitor:

These are your secret facts - or what you know about the situation from your character's perspective. Do not share them with other teams for the mediation to run successfully.

Your version of the facts:

You are the secretary of Australian Knitting Mills (AKM), which manufactures the Golden Fleece underwear. You've been the secretary of AKM for 10 years and have 15 years' experience in the garment-manufacturing industry. You consider yourself an industry expert in the long john business. You've got a large ego and you aren't afraid to show it.

Dr Grant did purchase the Golden Fleece underwear and you understand that he broke out in a rash, but you can't possibly fathom that the rash was caused by your products. You are not aware of any complaints from the six years AKM has been manufacturing the Golden Fleece underwear. Over these six years, 4 million pairs of the garment have been sold Australia wide without drama.

You are adamant about the fact that AKM uses six different carefully managed processes during manufacturing to ensure that no harmful substances are left in the material.

When Dr Grant returned his underwear to the store you sent them to the head of the underwear department. You asked to have them examined by the company's chemist who could not find anything dangerous in the underwear. After being reviewed by the company's chemist, it was also sent to two independent chemists and they also reported that there was nothing dangerous in the underwear. There was only small traces of sulphates and chlorides found which are neither arsenic nor dangerous.

Desired outcome:

You want to avoid a PR scandal, so you want this to avoid going to court or the media at all costs. However, you're pretty sure that it wasn't the underwear that caused the rash anyway. It's likely that he had a pre-existing skin condition or alternatively got the rash from being unhygienic and not washing his underwear regularly. Yuck!

Regardless, your main goal out of this mediation is not having this case escalate to trial because then you may lose significant business which will be detrimental to your company. As such, you are willing to offer a maximum of \$650,000 in damages to make this go away and even a few pairs of underwear too.

Additional facts for solicitor:

You've worked closely with Alex Vasilliou ever since he became the secretary of AKM and you know him well. You've had plenty of experience in controlling Alex's ego and pride for the sake of getting better legal outcomes for AKM.

Although your client is convinced that Dr Grant had a pre-existing skin condition, you realise the significance of there being small traces of sulphates being found in the pants as this could reflect badly on the company's image if it lands in the media.

You realise that this story becoming public would be very bad for the company so you are willing to be reasonable and negotiate with Dr Grant and you will urge Alex to do the same for the sake of Australian Knitting Mill's public image.



Secret facts

For Chris Martin and Chris Martin's solicitor:

These are your secret facts - or what you know about the situation from your character's perspective. Do not share them with other teams for the mediation to run successfully.

Your version of the facts:

You are a successful small business owner. You own a store called Chris Martin & Co which is a large and general retailer. You sell a wide range of clothing and purchase stock from overseas and locally, including the Golden Fleece undies from AKM.

You are planning to expand your business and you have already bought another premises to renovate. Although your original store is reasonably successful, you want to avoid as much extra cost and reputational damage as possible because you don't want to harm your business expansion. When it comes to Dr Grant's allegations, you are very defensive and unhappy that he is seeking compensation from you.

Dr Grant came into your store in June last year wanting woollen underwear. You showed him a British brand but he said it was too expensive. Instead you gave him the 'Golden Fleece' brand manufactured by Australian Knitting Mills. Dr Grant asked if it was of good quality given that it was cheaper than the British product, but you assured him that it was and he bought two sets of the underwear.

You feel bad that Dr Grant got a rash but all you did was sell the products. Your store receives the Golden Fleece underwear in packs of eighteen and all you do is unpackage them and put them on the shelf. Because of this, you feel like AKM should be responsible for the problem as the manufacturer, rather than yourself as the retailer.

You've also been told by Alex Vassiliou that all the sulphites weren't washed out of the underwear based on AKM's testing. This might be problematic if it becomes public knowledge even though the sulphites aren't toxic, as you don't want your customers to know that your underpants might be chemically contaminated.

You are somewhat frustrated by Dr Grant because you think he might be lying and trying to just rip you off. However, you trust your solicitor and will ultimately do what they suggest is the best option because you know they have your best interests at heart.

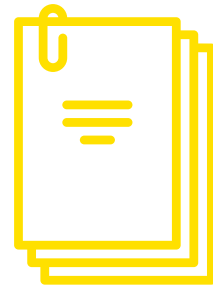
Desired outcome:

You want this story to stay out of court and the media because it will tarnish your store's brand and reputation and harm your business expansion. Ideally you don't want to pay anything because you think the problem is AKM's fault. But if you do need to pay, you don't want to pay more than \$50,000.

Additional facts for solicitor:

You have a client who trusts you and you are able to control him. As such, you can be outspoken and forthright with your client. You realise that pursuing this to trial will not have a favourable outcome for your client and instead you will urge your client to settle out of court.

Under the Sale of Goods Act 1895, Chris Martin may face liability. There has been previous case law in Scotland of a similar nature which may influence this decision if it goes to court. As such you want to avoid taking this to court and highly urge Chris Martin to settle this incident out of court.



Scenario

Scene	Mediation room
Cast	The mediator Dr Henry Grant Chris Martin, managing director of Chris Martin & Company Limited Alex Vassiliou, company secretary, Australian Knitting Mills Limited Dr Grant's solicitor Chris Martin's solicitor Alex Vassiliou's solicitor

Stage 1: Formalities

During this stage, the mediator introduces the process

(The mediator should take notes throughout the process because they are required to summarise and clarify the key issues in this debate)

Mediator The mediator should introduce the process. The following things should be explained:

- Who you are and what your role in the mediation is
- The duties and obligations of your role
 - i.e. Don't take sides
 - i.e. Help to reach a satisfactory resolution for all parties
- The obligations of the participating parties
 - i.e. Don't speak over the top of another or interrupt
 - i.e. Confidentiality of the proceedings
- Explain the process of the mediation
 - Each party shares their side of the events
 - Clarify key issues in contention
 - Identify elements that might help to negotiate a settlement
- Remind parties that they can have a break at any time

Example of possible speech:

My name is _____ and I am your mediator this morning. I must remind you that I am not here to _____ take sides, I'm here to help you find a satisfactory agreement and if necessary, assist in writing an agreement. Feel free to speak but do let the other party finish first and remember that everything said in this room is confidential which means that any statements made here cannot be used against the other party if the complaint is unresolved.

When one party is speaking, please listen very carefully and do not interrupt, even though you will undoubtedly see things differently. If you want to respond to any particular matters raised, I suggest you make a note for yourself as you will have an opportunity to raise issues later.

Please also let me know if you need a break and we will make sure this occurs at an appropriate time.

After each party explains their version of the story, we will clarify the key issues by discussing any points of difference. We will then begin to identify the elements that may enable you to successfully negotiate a settlement. It may be useful at some stage for me to meet with each party privately and, if that happens, I will ask the other parties to leave the room for a short while.

Stage 2: The Mediation Commences – Understanding Key Facts

The mediator proceeds to introduce the parties or ask all the parties to introduce themselves.

Mediator	Ask each party to tell their version of the events that led to the dispute, one at a time. Invite Dr Grant to go first as he is the person who initiated the complaint.
Dr Grant	Explain your situation, based on your emotions in your set of secret facts. Some of the things you should include are: • You went into Chris Martin's store to buy long woollen underwear because it is cold during winter and on Mr Martin's recommendation you bought two pairs of the 'Golden Fleece' underpants • The hurt, pain and suffering you're experiencing as a result of the rash • That you want AKM and Chris Martin to pay for the suffering they have caused you

Example of possible speech:

On 3 June 1931, I went into Chris Martin's city store in Adelaide to buy some long woollen underwear. I'm a medical practitioner and I do quite a few house calls each week. It can get very chilly around the suburbs in winter so I wanted underwear that would keep out the cold because sometimes I have to leave the car a fair distance from some of the houses I visit.

The shop assistant at Chris Martin's recommended 'Golden Fleece' underwear made by Australian Knitting Mills in Melbourne. On his recommendation, I bought two sets: two singlets and two pairs of underpants.

Alex V Interject that it is your best product

Mediator Remind the parties to not interrupt

Dr Grant Continue sharing your version of the events based on the secret facts. Things you should say include:

- You wore one of the singlets and underpants when you were gardening and when you went to bed that night, you felt itchy around the ankles
- The next day you were in extreme agony

Chris Martin Interrupt that Dr Grant probably picked something up while gardening.

Mediator Reminder of the process of mediation and that people can't interrupt.

Example of possible speech:

Let me remind you of the rules of this process, Chris. Henry has the opportunity to tell his side of the events. You will have your chance in a moment, so please let him have his say.

Chris Martin Get angry at the process and threaten to leave.

Example of possible speech:

Look this is a complete waste of time. Obviously he's just trying to squeeze money out of us for something we didn't do. I might as well just go back to my shop.

(Chris' solicitor tries to calm him down)

Mediator Remind Chris that he is welcome to leave but that he would likely want to talk to his lawyer first as this is the best opportunity to come to a sensible settlement.

Example of possible speech:

Chris, please. Of course you can leave if you wish, but I would like to talk to you first. This is the best possible opportunity that all parties have to come to a sensible settlement and I think your solicitor will agree. Do you want to speak to them briefly?

Chris Martin's solicitor Based on your secret facts, remind Chris of the benefits of mediation over other forms of dispute resolution. Things you might like to include are:

- The opportunity to resolve this dispute without having to incur costs associated with court
- You will reach an outcome sooner
- Going to trial with this will be extremely costly and time consuming in the end
- The court might deliver a binding outcome which you don't like
- Avoid having it become publicly available in the media

Chris Martin Agree that mediation is the best method to resolve this dispute and say that you will stay until the conclusion.

Mediator Ask Dr Grant to continue with his story.

Dr Grant Continue sharing your story. Things you might like to include are:

- That you washed the first set of the underwear and you then put on the second set.
- That you woke up in incredible pain the next day and asked your friend, who is a dermatologist to come visit you
- The dermatologist told you that it was the underpants that caused this skin issue and that the skin lesions were so bad that you were confined to bed for 17 weeks

Example of possible speech:

I washed the first set of underwear and put on the second set. The next Sunday, I changed again, not really thinking that the underwear was at fault. The next day, I was in so much pain! I rang a colleague of mine, a dermatologist, Dr Upton. He saw me straight away.

I mentioned the underwear and he told me to get rid of it. I took both sets back to Chris Martin's and told the manager that they had given me dermatitis.

The skin lesions just got worse and worse. Dr Upton confined me to bed and I was virtually unable to do anything for the next seventeen weeks; the rash became generalised and very acute.

Mediator	Thank Dr Grant for sharing his side of the story and invite Alex to tell her side of the story.
Alex V	State what your version of the story is based on your secret facts. First you should state what facts you don't dispute and then state what facts are in contention. Some factors you might include are: ▪ Don't dispute that Dr Grant bought and wore 'Golden Fleece' underwear ▪ Don't dispute that he had a skin rash but don't believe that the rash was caused by the 'Golden Fleece' products ▪ Use six different processes in the manufacture of the products so have high safety standards and that no harmful substances are left in the material ▪ That you had the garments that were returned by Dr Grant tested three times, once by the company chemist and twice by independent chemists ▪ That AKM has been manufacturing these garments for 6 years and in that time that we have never had any problems ▪ Testing shows that the wool is slightly alkaline with small traces of sulphates and chlorides but no arsenic nor dangerous chemicals were present
Dr Grant	Interject that you did not have a skin condition prior to wearing the underwear according to your doctor.
Mediator	Remind Dr Grant that he has had his opportunity to share his version of the story and that if he has any questions or comments to make that he should write them down and wait until it is his turn. Invite Chris Martin to share his version of the story.
Chris Martin	Share your version of the story based on the secret facts that you received. Things you might like to include are: ▪ Dr Grant came into your store and asked for woollen underwear and was shown another brand but he said it was too expensive, so he brought Golden Fleece instead ▪ All you do is unpack the products you receive from the manufacturer and put it on the shelves so you can't be blamed

Stage 3: The Mediator clarifies key issues in contention

Mediator	Recap the main issues that you have written down as the parties were sharing their sides of the story. Let the parties know that they can let you know if you have got something wrong. Some of issues you might want to discuss are: • Dr Grant bought two sets of underwear from Chris Martin's store. These two sets were manufactured by Australian Knitting Mills. • Dr Grant contracted a serious skin disease which he claims was caused by the underwear. Both Alex and Chris believe this was a pre-existing skin condition or was picked up when Dr Grant was gardening and was not as a result of the underwear. • Chris Martin argues that they did nothing more than sell the product and they could not have known if it was contaminated with harmful chemicals and that they were entitled to assume that it was not.
Alex V	(Aggressive and angry) Explain that you are angry and frustrated by Dr Grant because you don't believe that he picked up the disease from your underwear and he had a pre-existing condition. Consider what outcome you want based on the secret facts. Demand to know how much it will cost to make Dr Grant go away.
Dr Grant	Demand \$1,000,000 from AKM for the suffering you have experienced and explain that you've been out of work for 12 months and that you deserve a large sum of damages. Demand a lifetime supply of underwear from Chris Martin's store.
Alex V & Chris Martin	Both interrupt and say that Dr Grant's demands are outrageous
Mediator	Ask to meet the parties privately and remind them again of the benefits of mediation discussed above. Explain that anything said in the private meetings will be in confidence and it won't be raised in discussions with the other party without consent.

Stage 4: Private meetings

Mediator	Ask to start with Chris. Suggest to Alex and Dr Grant that they chat with their solicitors and take a brief bathroom break etc. Ask them to write down the key points they want to discuss when meeting privately. (Dr Grant and Alex Vassiliou leave, accompanied by their solicitors.) Remind Chris that everything said in the meeting is private and confidential and can't be relayed to the other party without his express approval. Remind him that Henry asked for significant compensation from AKM and Chris Martin's store. Ask what he thinks.
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Chris Martin	Formulate a response of what your desired outcome is based on the secret facts. Somethings you might consider including are: ▪ You feel sorry for Dr Grant but that your company did nothing to harm him ▪ All you did was sell the clothes ▪ He wore the underwear for a whole week – it's his own fault ▪ Potential liability under the Sale of Goods Act 1895 and that you might be liable if we go to court ▪ A lifetime's supply of Prince Albert long johns is unreasonable
Mediator	Ask what offer Chris is prepared to make.
Chris Martin	tate a low offer based on your anger at Dr Grant and belief that he's lying about not having a pre-existing skin condition. An offer you might consider is: ▪ \$100,000 and six pairs of Prince Albert long johns
Chris Martin's solicitor	Remind Chris about the Sale of Goods Act and foreign case law in the secret facts to suggest that Chris should increase his offer. Remind him of the detriment of going to court and the fact that you might suffer substantial losses.
Chris Martin	Increase your offer. An offer you might make is: ▪ \$500,000 and ten pairs of Prince Albert long johns
Mediator	Ask for consent to tell Dr Grant.
Chris Martin	Say that it is fine. (Chris Martin and solicitor leave.)
Mediator	Invite Alex Vassiliou and solicitor to enter private meeting. (Alex V and solicitor enter.) Ask whether Alex had time to consider Dr Grant's offer.
Alex V	Express your anger based on the secret facts that Dr Grant is trying to rip you off for a pre-existing skin condition.
Alex's solicitor	Remind Alex of the secret facts. Somethings you might consider saying are: ▪ The scientific testing that you did showcase that the sulphites weren't completely washed out of the garments when they were manufactured
Mediator	Ask whether Alex can make an offer to Dr Grant in light of that information.
Alex V	State that you want to avoid court too but would like to hear a more reasonable offer from Dr Grant first. (Alex V and solicitor leave.)

- Mediator** Invite Dr Grant and solicitor to enter private meeting.
- (Dr Grant and solicitor enter.)
- Relay the offer from Chris Martin and that Alex wants to know what Dr Grant wants.
- Dr Grant** our solicitor told you that you could get a lot of compensation if you went to court, but then again, you could lose. State that \$500,000 is not enough. Suggest a number that is more than \$500,000 but less than \$1,000,000. Ask for an apology for the suffering they caused. Include a more reasonable number of long johns.
- Mediator** Reconfirm the offer and state that you will take the offer to Chris and Alex.
- (Dr Grant leaves. A few moments later Chris Martin, Alex Vassiliou and their solicitors enter.)
- Restate Dr Grants offer to Chris and Alex and their solicitors. Ask whether they accept.
- (The four talk briefly.)
- Alex Vassiliou** State that you agree to the offer in order to conclude this dispute.
- Mediator** Are you certain you agree on that?
- Chris Martin** Yes. We'll agree to that but no more.
- Mediator** In that case I shall call Dr Grant in and we can then have an agreement drawn up.
- (Mediator goes to door.)
- Dr Grant, would you come in, please?
- (Dr Grant and solicitor enter.)
- Dr Grant, I have told Chris and Alex that you would accept [repeat agreed offer]. They agree to that and are prepared to formalise that in an agreement. Are you willing to do that?
- Dr Grant** Yes, I am, and I'm glad it is all over. Thank you.
- (They all shake hands.)

Stage 5: Conclusion and Recap

Mediator

And that, ladies and gentlemen, is how the dispute settled.

The law of negligence in general, manufacturer's liability in particular, developed because the original Dr Grant was prepared to take a matter from the Supreme Court of South Australia to the High Court and all the way to the Privy Council in London. Our Dr Grant, however, had a happier and more peaceful life because he settled his own dispute with a minimum of fuss and expense and with his dignity intact.

Australian Knitting Mills Limited, sufficiently chastened by the harm done to Dr Grant, managed to stay out of court until the company was sold to Holeproof on April Fools Day, 1955. If you travel by train from Flinders Street to Richmond, keep an eye out on the northern side of the tracks, where Australian Knitting Mills' warehouse can still be seen.

John Martin & Co. Ltd (the company's real name) lasted rather longer, supplying underwear and other goods to the people of Adelaide until 1981, when the company was taken over by Parfit Investments.

Our Dr Grant went on to scratch out a living as a suburban GP. He gave the six sets of Prince Albert undies to his cousin, Hamish, for Christmas and wore silk boxer shorts for the rest of his long and happy life.

END



The real case and its outcome

The mediation scenario is based on a real case: *Grant v Australian Knitting Mills and Another* [1935] HCA 66; (1935) 54 CLR 49.

In this case, action was brought by Dr Grant in the Supreme Court of South Australia, claiming damages on the ground that he had contracted dermatitis because of the improper condition of underwear purchased on 3 June 1931 from John Martin & Co. Ltd and manufactured by Australian Knitting Mills Ltd.

The case was tried before Sir George Murray, Chief Justice of South Australia, and ran for 21 days. Murray found for Dr Grant against both John Martin and Australian Knitting Mills.

The action against John Martin & Co. Ltd had been brought in contract, and Sir George held that there had been a breach on the part of John Martin & Co. of the condition that the underwear was reasonably fit for the purpose required.

In dealing with the negligence action against Australian Knitting Mills, Sir George held that the underwear was supplied in the form it was intended to reach the ultimate purchaser, who would have no possibility of intermediate examination, and that the manufacturer failed to take reasonable care in the preparation of the garments, resulting in the injury caused to Dr Grant. Sir George awarded Dr Grant £2450 [worth about \$238,500 in 2018] against the two defendants. The case began in the South Australian Supreme Court on 8 November and ran until 22 December 1932, and returned on 17 February 1933 for judgment, a total of 21 days. There was a later, brief, hearing relating to costs.

Unfortunately for Dr Grant the matter did not end there. Australian Knitting Mills and John Martin & Co. lodged an appeal in the High Court of Australia against Sir George Murray's findings.

Four judges of the High Court, sitting in Melbourne, heard submissions over six days from 13 to 20 June 1933, and the judgment was delivered in Sydney on 18 August.

In a judgment running to 63 pages of the 1933 volume of Commonwealth Law Reports, three of the four High Court justices explained their finding that the evidence failed to support Dr Grant's claim against both Australian Knitting Mills and John Martin & Co. Although Justice Evatt agreed with Sir George's findings, the decision of the Supreme Court of South Australia was reversed. Things were looking grim for Dr Grant.

In 1933, it was still possible to appeal decisions of the High Court of Australia to the Privy Council in London. In fact, matters from the State Supreme Courts could go on appeal from the High Court to the Privy Council until 1975.

On 21 October 1935, four years and four months after Dr Grant had made his fateful purchase at John Martin's, five Law Lords, seated in the magnificent Privy Council chamber in Downing Street, brought an end to the tale of Dr Grant and his troublesome underwear.

In a clear and concise judgment of just 11 pages, their Lordships accepted that the disease suffered by Dr Grant was of external origin and that the evidence pointed strongly in favour of Dr Grant's case.

Their Lordships concluded that the disease contracted and the damage suffered by Dr Grant were caused by the defective condition of the underwear which John Martin & Co. sold to him and which Australian Knitting Mills made and distributed for retail sale. Their Lordships were not satisfied that the Chief Justice of South Australia was wrong and found no adequate reason to upset the judgment he had made.

In the quaint wording of Privy Council judgments, their Lordships concluded by saying that they would 'humbly so advise His Majesty' that the judgment of the Chief Justice was right in the result and should be restored against both John Martin & Co. and Australian Knitting Mills. Dr Grant won his final appeal and received his award of damages.

How much simpler (and cheaper) it would have been if this dispute could have been solved in some other way – perhaps by mediation.



Reflection Activity

In this mediation task students were required to work together to resolve a dispute. After completing this activity, students should write a short reflection about their experiences during the exercise.

Objectives:

The objectives of this task are to:

- Analyse the methods and institutions that determine criminal cases and resolve civil disputes
- Explain key concepts in the resolution of a civil dispute
- Gain an understanding of the available remedies such as damages and the ability of these remedies to achieve their purposes
- Understand the different methods of dispute resolution and their appropriateness
- Gain an understanding of the responsibilities of key personnel in a mediation
- Practice engaging in negotiation and working to the different objectives of people
- Practice going from joint mediation to private sessions and back again

What should be included in the reflection?

The reflection should include:

- A short report and overview on what happened during the mediation process
 - ♦ i.e. was anyone particularly disruptive?
 - ♦ i.e. what was the outcome you reached?
 - ♦ i.e. do you think the outcome was fair?
- What might you do next time to make the process go smoother?



Research and discussion activities

A list of useful websites follows these activities, which you may find helpful when conducting your research.

- 'Mediation is informal and the process is controlled by the parties.' Discuss this statement, indicating the advantages of resolving a dispute by mediation.
- 'Mediation is not a viable method of dispute resolution unless all parties are willing to participate in it.' Discuss this statement.
- Using examples, explain the kinds of disputes that may not be appropriate for resolution by mediation.
- What is mediation? Why might this be an effective way of resolving a dispute? Write a short story illustrating such a dispute and showing its effective resolution.
- Outline the role of a mediator.
- Explain the differences between mediation and arbitration. Use examples to illustrate your response.
- What are some of the strengths of mediation and other forms of ADR compared to judicial determination?
- Conversely, what are some of the weaknesses of mediation and appropriate dispute resolution compared to judicial determination?
- In comparing mediation and judicial determination, how is the ability of courts to make precedent and develop the common law affected by parties resolving their disputes through mediation?
- How might the Australian law of negligence be affected if the original trial in which this scenario was based off was settled through mediation?



Useful websites

Dispute Settlement Centre of Victoria

<https://www.disputes.vic.gov.au/>

The DSCV provides free and accessible dispute resolution services across Victoria. This website contains information about common legal disputes, forms of alternate dispute resolution and advice.

Victorian Civil and Administrative Tribunal

www.vcat.vic.gov.au

VCAT uses mediation as a means of attempting to resolve a wide variety of disputes. This website has information about each of the VCAT Lists and its procedures.

Telecommunications Industry Ombudsman

www.tio.com.au

This website provides information about the services provided by the TIO and its methods of dispute resolution.

Australian Financial Complaints Authority

<https://www.afca.org.au/>

This website displays information about AFCA and its procedures to help consumers and small business with dispute resolution for financial complaints.

Victorian Courts and Tribunals

www.courts.vic.gov.au

This website has links to all Victorian courts and tribunals.

Victorian Department of Justice

www.justice.vic.gov.au

This is a very useful website for students, which contains current information about the delivery of justice in Victoria and about changes and proposed changes in the law.

Victoria Law Foundation

www.victorialawfoundation.org.au

This website provides access to a wide range of teacher and student resources for VCE Legal Studies and VELS Civics and Citizenship, and lists all of the Foundation's publications.

Australian Industrial Relations Commission

www.airc.gov.au

This website provides information about the Commission. Of particular interest to students is information about its role in assisting employers and employees in resolving industrial disputes.

