



Institute of International Experts

國際專家學會

How to Resolve Disputes
Through Mediation
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Published 6 books on mediation and arbitration



Heading Summary

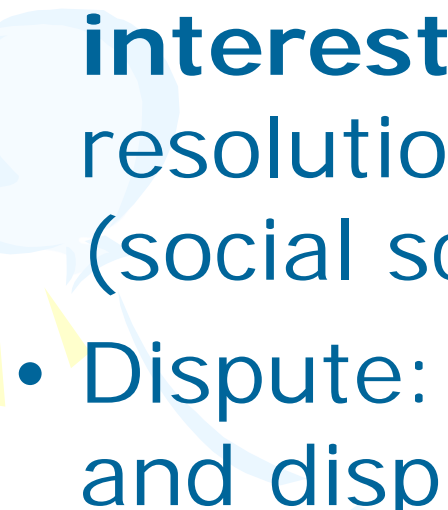

- Introduction to mediation in the resolution of disputes
 - Different forms of mediation
 - Different Stages and Skill set required in mediation
 - The quality of the mediator
 - Difference of mediation vs. arbitration
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Conflict & Dispute





Conflict & Dispute

- Conflict:
Disagreement/Incompatibility of **interests** over issues; capable of resolution, prolong, conceptual (social science)
 - Dispute: Claim made by one party and disputed by other; **involve real actions** (more legalistic)
 - Unresolved conflict leads to disputes
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Dispute 爭議

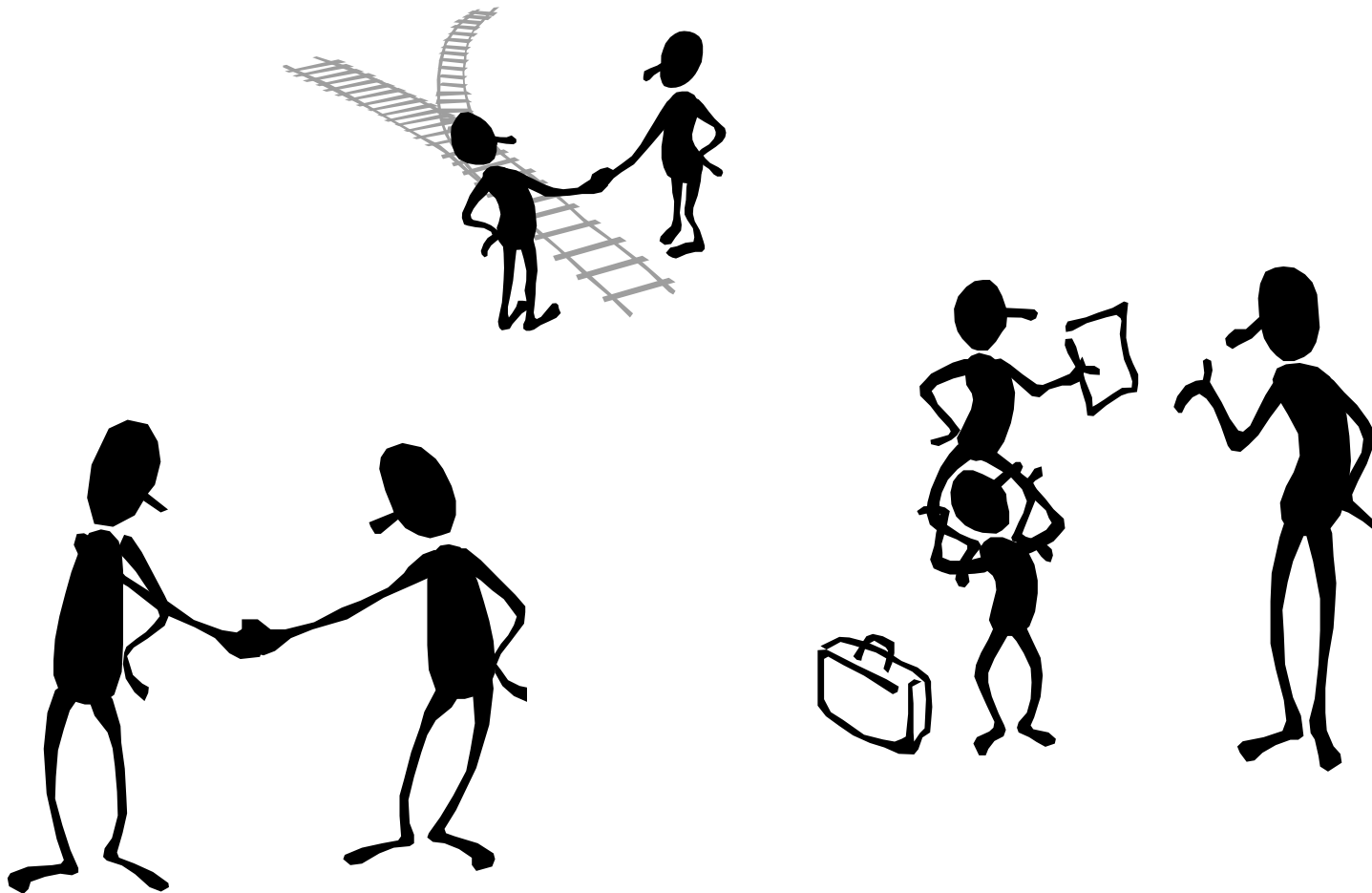




What is Mediation

- Mediation is a **flexible** process, with the consent of the parties to find a natural **impartial third party** to arrive at a mutually agreeable **settlement**
- **Confidential** & non adversary
- **Parties' determination**
- Option generation, realistic solution
- Maintain relationship

Different types of mediation



Types of Mediation

- Facilitative Mediation (Commercial, Work Place)
- Transformative Mediation (Empowerment, family disputes)
- Settlement Oriented Mediation (Construction)
- Evaluative Mediation (IP)
- Narrative Mediation (Victim/Offender)
- Peer Mediation (School)

Application of Mediation

- Commercial: trading, IP rights, Shareholders, Consumers, Agency, Distribution rights
- Construction
- Insurance (Travel, PI), financial products
- Labor & Employment
- Community: building management, rubbish, land boundary, family (divorce, estates)
- School, work place
- Health Care
- International border

Roles of a mediator

- Gate Keeper (fairness)
- Enabler (make the impossible comes true)
- Climate Assessor (Emotions)
- **Communication Builder**
- Ideas Generator (Options)
- Agent of **Reality**
- **Enforcer**

Functions of a mediator

1. **Developing trust and confidence :**

- Reliable, impartial, neutral, even-handed
- No personal views/values
- Enforce guidelines and ground rules
- **Observe confidentiality**
- Show concern, respect and empathy
- Good communication and interpersonal skills

Functions of a mediator

2. Establishing a framework for **co-operative decision-making** :
 - Physical
 - Emotional
 - Procedural

3. **Analyzing the conflict** & appropriate interventions :
 - Supervise gathering and **exchanging** of information
 - Facilitate disclosure and acknowledgement of **party needs**
 - **Clarify** and define the issues (Parties may not know what they want)

Functions of a mediator

4. Promoting **constructive communication** :
 - Encourage agreement on facts
 - Develop a shared perception of the problem

5. **Facilitating negotiation and problem-solving** :
 - Shift positional bargaining to interested-based bargaining
 - Identify and emphasize common ground
 - Use **objective** criteria
 - Future orientation
 - **Separate people from problems**
 - Invent options for mutual gain

Functions of a mediator

6. Educating the parties :
 - Observe ground rules
 - Use of reality tests
7. Empowering the parties
8. Imposing pressure to settle
9. Promoting **reality**

Qualities of a mediator

- Aware one's own values
- Non-judgmental
- Flexible thinking
- **Be nice**
- **Be positive**
- Be confident
- Act unobtrusively in a dispute
- Be sensitive
- **In control of process and timing**
- Be sensitive to feelings
- Sense of humor
- Be concerned, **with heart**
- Understand the issues QUICKLY (**Prepare**)



Quality

Stage of Mediation

PAST

PROBLEM DEFINING
STAGES
(Chunk Down)

**Opening
Statement**

Parties' Statements

Mediator's Summaries

Agenda Setting

First Joint Session

First Separate Sessions

**Subsequent Joint /
Separate Sessions**

Agreement

PROBLEM SOLVING
STAGES
(Chunk Up)

Closing

FUTURE

Mediator's opening statement

- Appropriate meeting, greeting and modes of address
- Identifying prior association with parties or representatives (avoid conflict of interests)
- Nature of mediation and core principles:
Confidentiality, Parties are decision maker,
Termination and Voluntary and Without Prejudice
[Privilege]

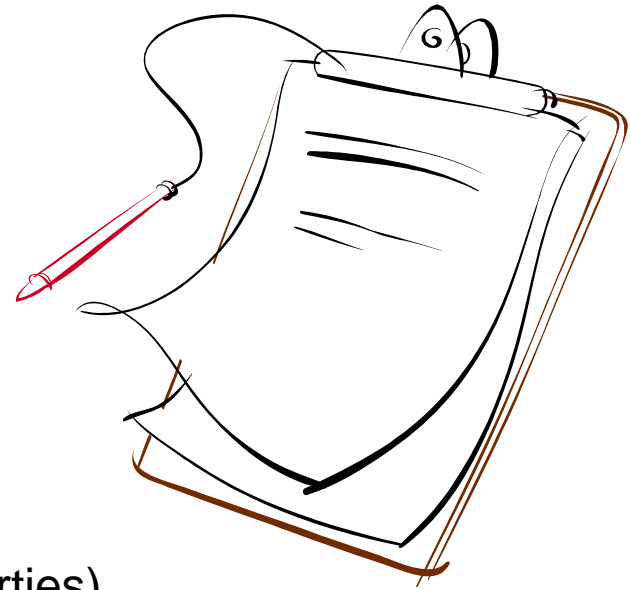
Mediator's opening statement

- Process and procedure of mediation
- Grounds rules
- Documentation checking and confirming authority to settle
- Appropriate answering the parties' queries
- Invite parties' commitment to complete whole process and trying to settle

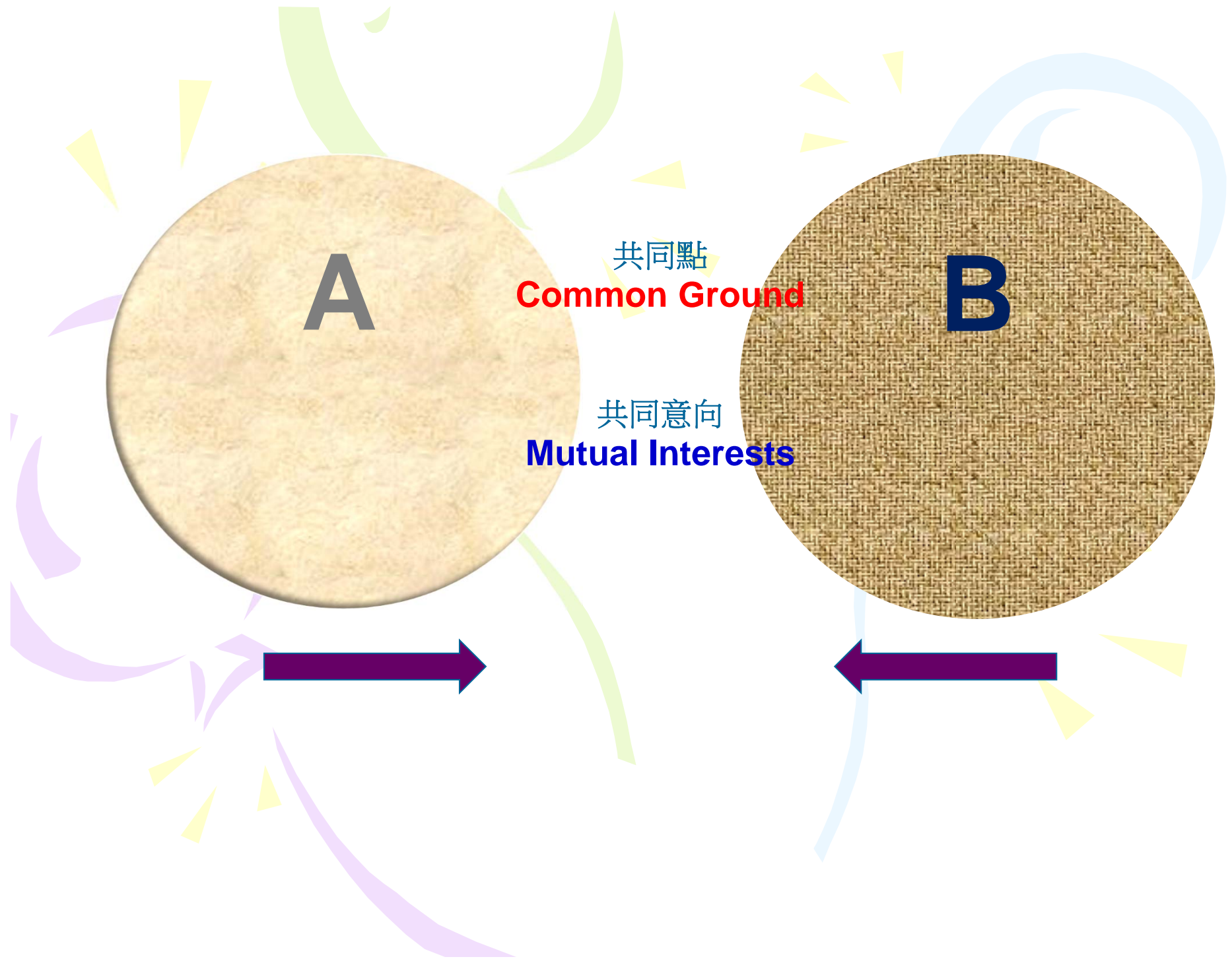
Notes-taking

Guidelines for note-taking :

- Ask for permission
- Explain
- Stress the principle of **CONFIDENTIALITY**
- In an abbreviated form
- Maintain eye contact
- Take notes in a consistent manner (for both parties)
- If necessary, read the notes back to the party for verification



Mediation Skills



A

共同點
Common Ground

B

共同意向
Mutual Interests

An interactive communication process

互動的溝通過程



Communication Skills

- **Effective communication**
Six Elements of Communications
(COMMA + E)
 1. Communicator
 2. Objective
 3. Media
 4. Message
 5. Audience
 6. Environment



Communication Skills

- Two Channels of Communication
 1. Verbal Component
 2. Non-Verbal Component

Mediator communication guidelines

Use simple and plain language

1. Speak in a neutral and impartial manner.
2. Show empathy and concern to **gain trust** and confidence.
3. Be specific.
4. Don't use special jargons.
5. Don't hesitate to ask for clarification.
6. Make the **verbal** and **non-verbal** messages congruent.

Mediator communication guidelines

7. Pay attention to the other party when one party is talking. The nonverbal behavior indicates possible areas of disagreement.
8. Don't talk too much (**Silence** is a good weapon).
9. Beware of the effect **of your own behavior** on the parties and the mediation process.
10. Avoid indirect and non-specific communication.

Mediator's Skill Set

1. Paraphrasing (Understanding)
2. Perception Check
3. Summarizing
4. Questioning



Active Listening

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Body Language



F E L O R

1. Facial Expression
2. Eye Contact
3. Leaning Forward
4. Open Posture
5. Relaxed

Reframing

- **Modifying party's statement**

- **Words / phrases**

- **Context**

Recast



- **Positive / Right Direction**



- **Agreement / Settlement**

Reframing a statement

Accusation / hostility → neutral language

Position → Interest

Person → Problem

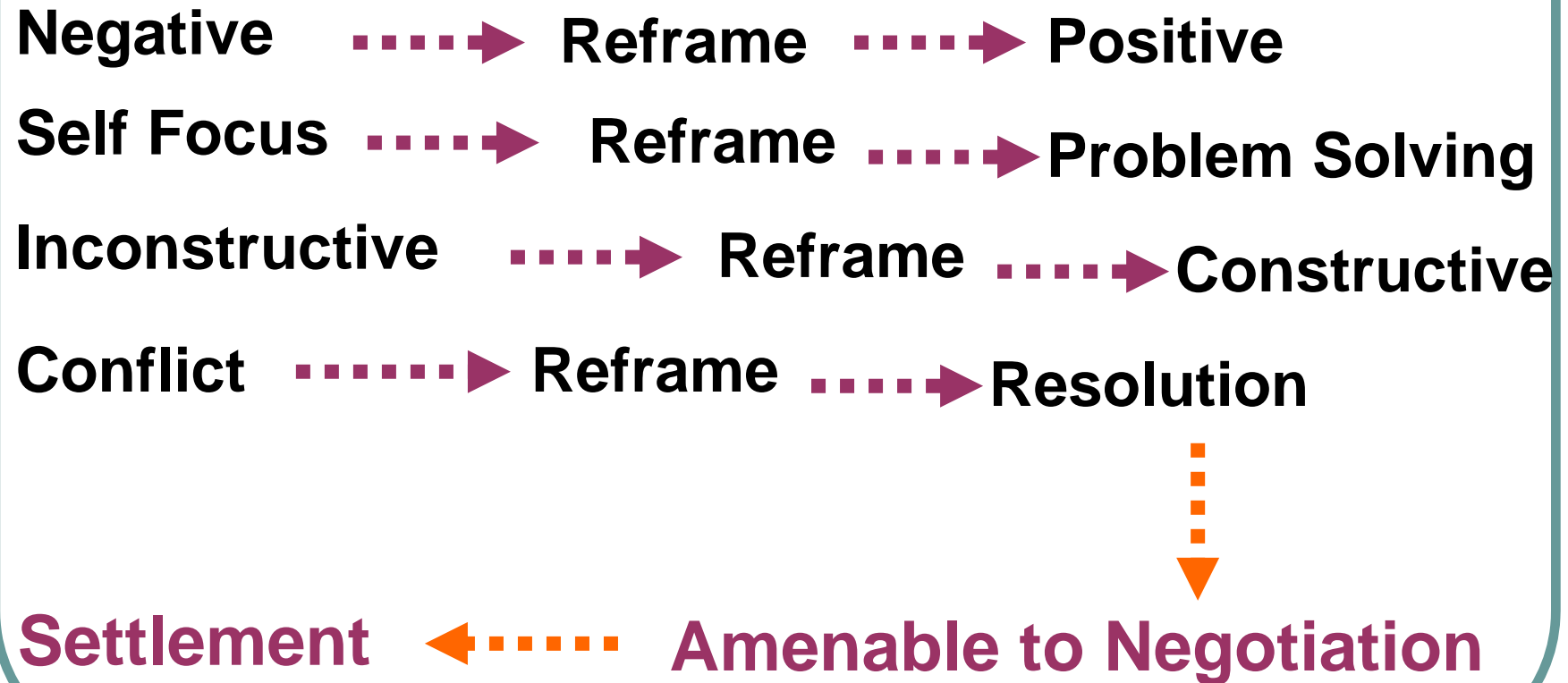
Past → Present / Future

Negative perception → Positive

Reframing the Context

change Context → change Meaning

Purpose :



Facilitation skills

1. Acceptance Skill (nodding)
2. Reflection Skill (Mirroring)
3. Reassurance Skill (reduce anxiety/insecurity)
4. Leading Skill (Summary table)

Leading skill

- Can be direct or indirect
- Be careful of direct leading: just enough to keep the mediation process moving ahead
- Tool?
- Summarising table

How to identify interests?

- Position is likely to be concrete and explicit
- Underlying interests may be unexpressed, intangible, and inconsistent
- Ask “why?”
- Put yourself in their perspectives
- Ask “why not?”
- What interests of theirs stand in the way
- “點你先至會接受？” - what type of question?
- **Probing question**



Handling Impasses and Deadlocks (silence from both sides)

Handling Impasses and Deadlocks (silence from both sides)

- What are impasses and deadlocks?
- Refuse to make further concessions
- Threatened with termination
- Deadlocks are destructive
- Endanger the existing relationship

- Mediator has to
 - Diagnose
 - Hypothesis
 - Intervene (Time to think)

Crossing the Last Gap

Techniques

1. Split the difference
2. Toss a coin
3. Break the last issue into smaller issues
4. Make the **last offer**
5. Aim at procedural settlement
6. **Adjourn** and let the parties exchange their final offers
7. Adjourn and let the parties consider the final offers
8. **Shaming** the parties

Options generating questions

- If you could convince Y to extend the time for payment of what you owe her, is there something you would be willing to give Y in return?
- What if you agree to go along with their proposal for a trial period of certain weeks?
- What if you increase your offer by?

Mediation vs. Arbitration

- Arbitration:

Neutral, Impartial 3rd party, subject to procedural law, hearing similar to court, based upon law, facts, and precedent cases; adversarial manner; limited appeal; enforceable internationally; decision by arbitrator/arbitrators; can select specialist as arbitrator.

Conclusion

Mediation is an **art** and must be learnt through **practice**. Exposure through **interaction with people, learn** from others and **sharing** of information can all assist a person to become a better communicator/mediator. Mediator needs to have **hearts** throughout the process

Question & Answers

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