



Institute of International Experts

國際專家學會

**How to Resolve Disputes in the
Workplace Through Mediation**
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Published 6 books on mediation and arbitration



Heading Summary



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

Conflict & Dispute

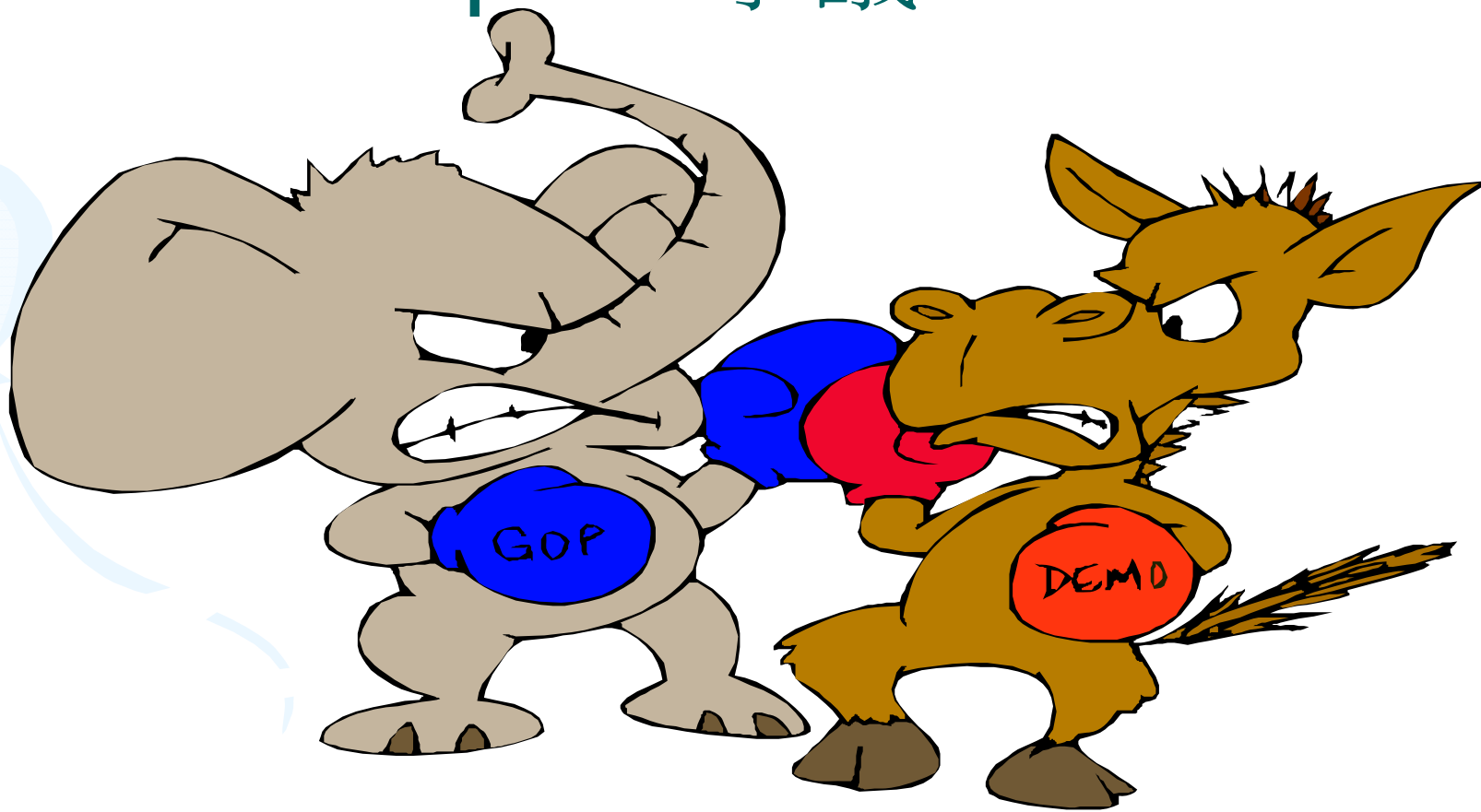




Conflict & Dispute

- 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

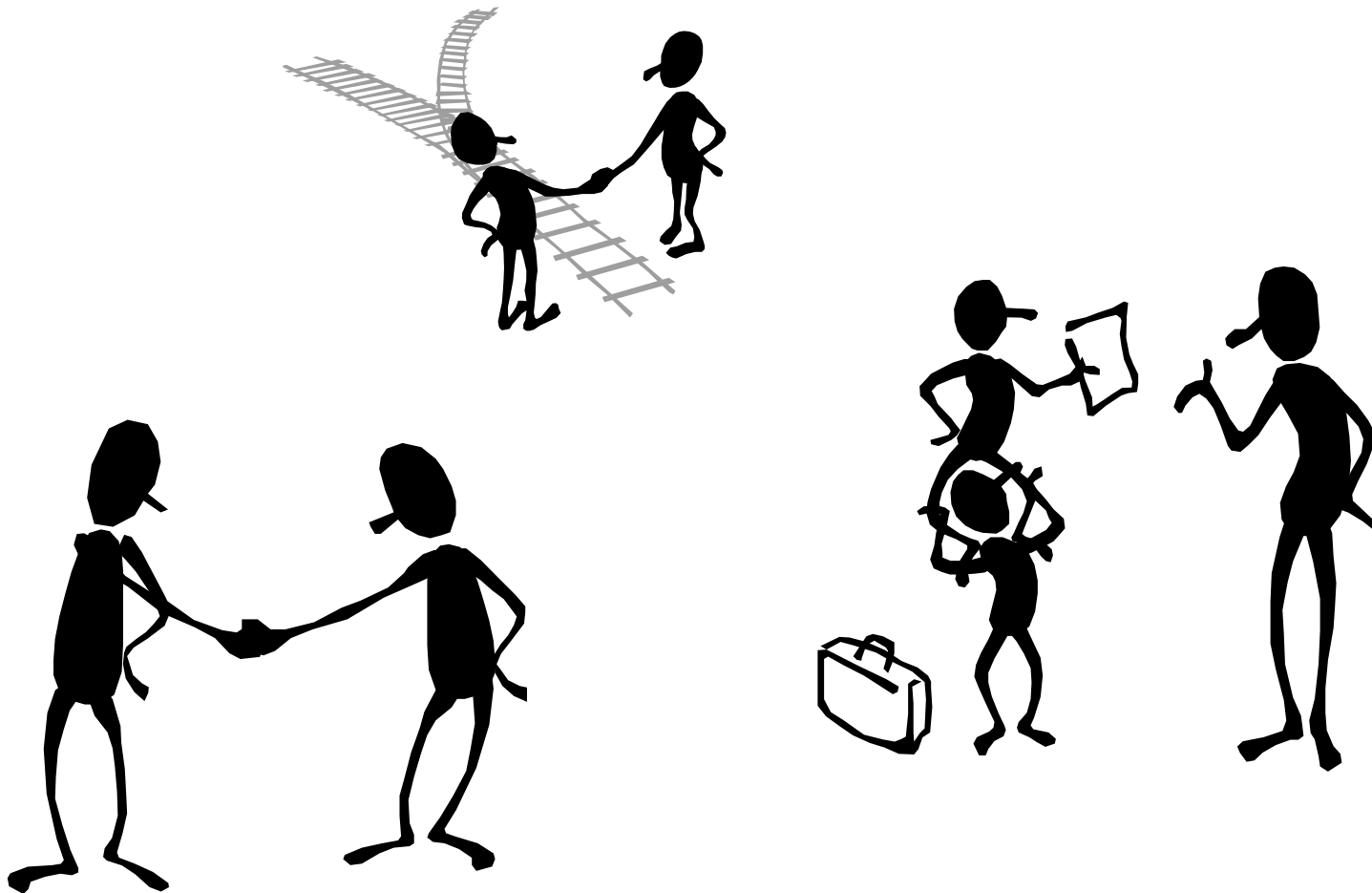




What is Mediation

- 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 (V/O)
- 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

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

Roles of a mediator

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

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**

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]

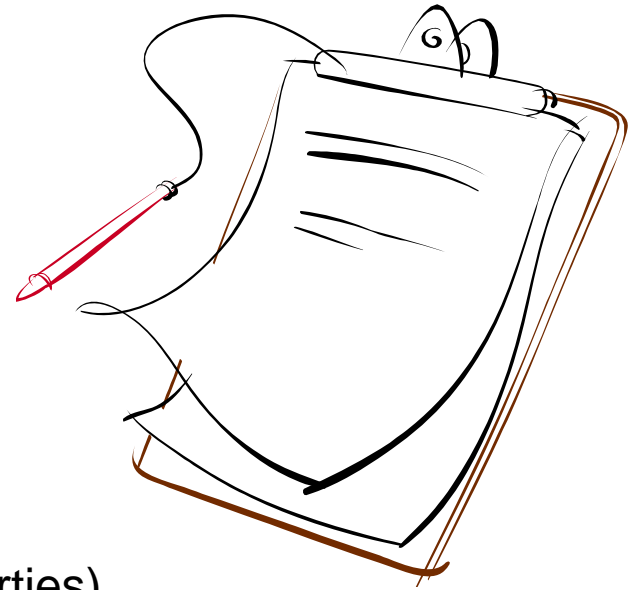
Mediator's opening statement

- 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

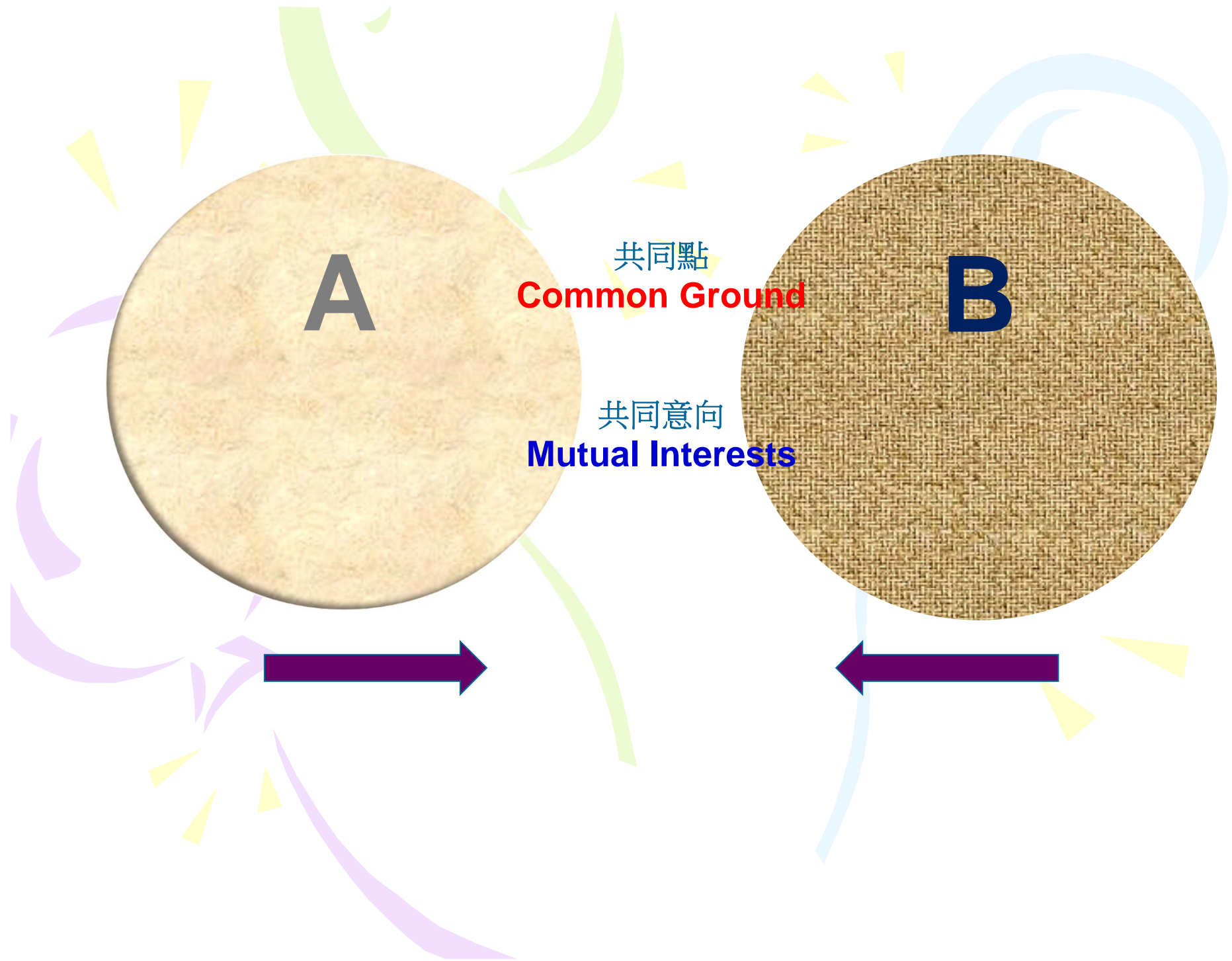
Notes-taking

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 behaviour indicates possible areas of disagreement.
8. Don't talk too much.
9. Beware of the effect **of your own behaviour** 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

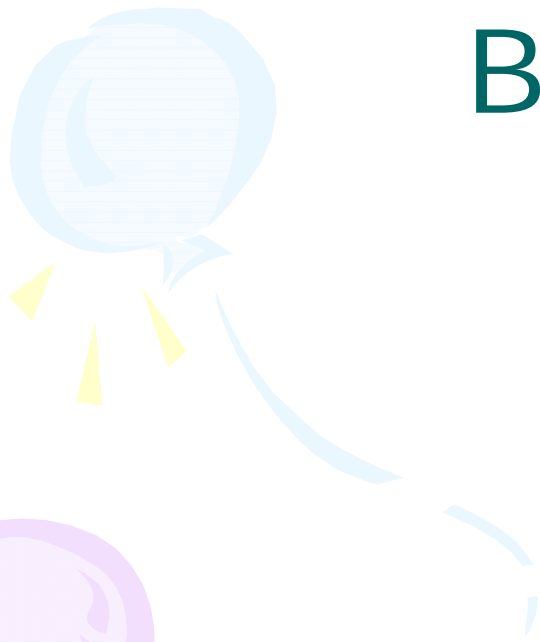


Active Listening

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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

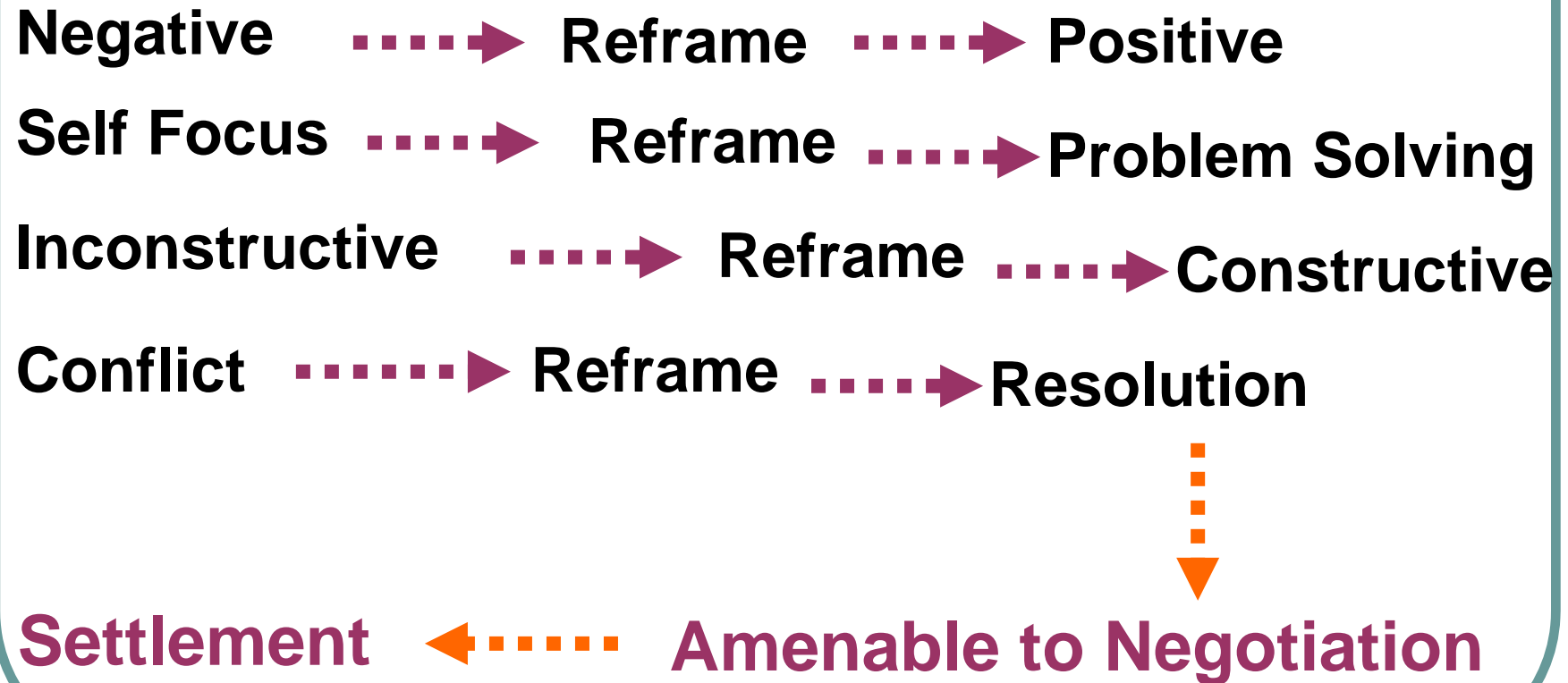
Past → Present / Future

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

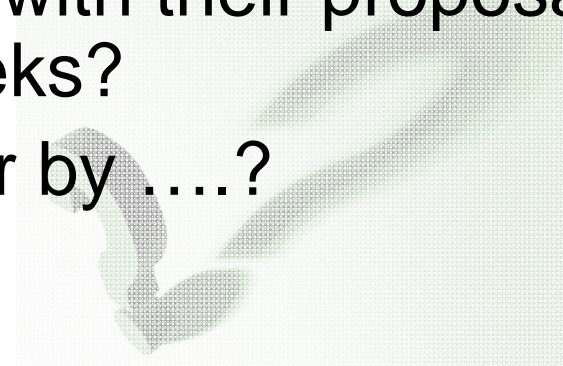
Crossing the Last Gap

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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