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HRM624 Conflict Management

Final-Term Subjective

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Question No: 1 (Marks: 3)

List down the six stages of mediation process?

Mediation is a type of assisted negotiation that uses a third party (or panel of third parties) to help disputants negotiate their settlement.

Mediation is a highly fluid process; it is possible to conceptualize mediation as occurring in a series of stages.

Following is the list of all the stages of mediation

1. Initial client contact
2. Introductory stage
3. Issues clarification and communication
4. Productive stage
5. Agreement consummation
6. Debriefing and referral

Question No: 2 (Marks: 3)

What do you understand by Neutral Evaluation?

Neutral evaluation is a process in which an expert in the subject matter of the dispute, or a legal expert, is hired to give an assessment of the strengths and weaknesses of each side's case.

Neutral evaluation has many variations and is known by a variety of terms, used in often inconsistent fashion.

Question No: 3 (Marks: 3)

In which cases mediation is recommended?

Labor and employment relations

State civil litigation

Federal Civil Litigation

Divorce and Custody cases

Neighborhood disputes

Disputes involving consumer grievance against commercial entities

When interpersonal conflict occurs

When a negotiation leads to impasses or when it is anticipated that negotiation is not likely to settle the dispute.

Question No: 4 (Marks: 3)

Legal issues involve in ODR

Legal Issues in ODR

There are some issues which are involved in ODR e.g.

1. Where did the dispute arise? (Cyberspace dispute choice of law problem)
2. Where is ADR taking place? (ADR choice of law problem)
3. How can settlements be enforced?

Question No: 5 (Marks: 3)

Why 'Dual Concern Model' of negotiation can not be considered as the perfect solution of conflict?

Limitations of Dual Concern Model

Research in the field of negotiation is highly complex and situations vary significantly. Dual concern model assumes that no disputant has negative orientation, which is not the case. Sometimes, a disputant may be sadist and get pleasure by harming others.

Question No: 6 (Marks: 3)

A major reason of regulating the mediation is to protect the rights held by the participants in mediation and others affected by the process ; discuss three points for protecting other s rights in mediation.

1. Due process consideration
2. Safety issues
3. Conflict with other rights

1. Due Process Considerations:

Limitations on coercion in mediation; informal consent; lifting of confidentiality to protect the rights to give evidence in other proceedings are some of the considerations.

2. Safety Issues:

Mediation in abuse situations is concerned with the safety issues.

3. Conflict with Other Rights:

Confidentiality of mediation involving the government; effects of laws rendering proceedings open to the public

Question No: 7 (Marks: 3)

Define the concept of Collaborative Law.

Collaborative Law

A form of lawyering currently seen primarily in family law and based on a contractual relationship between a lawyer and a client is called collaborative law. This contract generally specifies the lawyer's duty to seek collaborative and interest-based document with the other disputant. If litigation commences, the lawyer is required to withdraw from representing the client

Question No: 8 (Marks: 3)

Write down any six dimensions of ethics in mediation.

Following are the dimensions of ethics in mediation.

1. **Self-determination:** A mediator shall recognize that mediation is based on the principle of self-determination by the parties.
2. **Impartiality:** A mediator shall conduct the mediation in an impartial manner.
3. **Conflicts of interest:** A mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator.
4. **Competence:** A mediator shall mediate only when the mediator has the necessary qualifications to satisfy the reasonable expectations of the parties.
5. **Confidentiality:** A mediator shall maintain the reasonable expectations of the parties with regard to confidentiality.

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6. Quality of the process: A mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties.

Question No: 9 (Marks: 3)

Define the concept of Cognitive Load?

Cognitive Load

A competitive conflict sets the stage for the use of stereotyping: the sharing of information is minimized and the stress and emotionality of a competitive and escalating conflict add to the cognitive load of the situation.

Think through whether you have actual knowledge that a stereotype is true and what the implication of your knowledge is for this situation: don't apply stereotypes unless absolutely necessary and only in the manners that respect the dignity of the other negotiator.

Question No: 10 (Marks: 5)

Business partners, in an ongoing business venture are disputing over the future allocation of power and responsibility. Which of the two mediation approach (Facilitative or Evaluative) is useful in this situation and why?

Evaluative mediation

In evaluative mediation, the mediator works to narrow the gap between the demands of each disputant by expressly evaluating the merits, strengths, and weaknesses of each disputant's position and by strategically communicating these evaluations to the disputants. In extreme forms of evaluative mediation, the centerpiece of the process may be a single evaluation of the likely outcome if the dispute is taken to court.

- In evaluative mediation, the mediator's primary function is to narrow the gap between the positions taken by the two disputants. Evaluative mediation assumes that negotiation will be a process of positional bargaining. Another way to think of this process is that evaluative mediation is a process of BATNA clarification.

•Question No: 11 (Marks: 5)

How a mediator can help disputants in the conflict resolution?

By gathering information, framing the issues, developing options, negotiating, and formalizing agreements.

- To narrow the gap between the demands of each disputant by expressly evaluating the merits, strengths, and weaknesses of each disputant's position

- To promote effective negotiation or dialogue

- To assist the disputants in negotiating or in coming to an agreement by using many strategies and techniques

- To encourage the parties to reach an agreement provide an environment in which the parties can communicate constructively with each other and assist the parties in overcoming obstacles to settlement.

By using collective bargaining situation depending upon the following rule; "you give, so far as is possible, what is less valuable to you but more valuable to the receiver; and you receive what is more valuable to you and less valuable to the giver."

Question No: 12 (Marks: 5)

Which type of powers Jirga posses according to the "Frontier Crime Regulation (FCR) 1901"?

Powers of Jirga under FCR

Theoretically, a Jirga's findings are in the form of an advice, but custom has elevated these findings to the level of a court verdict which usually translates into law. (a kind of ADR). This law is applicable only to the tribal areas. The council of elders has jurisdiction in both civil and criminal matters. No appeal is generally allowed against Jirga verdicts although the commissioner can review any case.

A jirga has sweeping powers to impose penalties in criminal cases. It can award punishments in the shape of fines, whipping, life imprisonment, demolition of a convict's house and the blockade by a hostile or unfriendly tribe. Technically, under the FCR, a jirga cannot award capital punishment.

Question No: 13 (Marks: 5)

List down the disadvantages of ADR conducted Online.

Disadvantages of ADR Conducted Online

Here are some of the disadvantages of the ADR conducted online.

1. Disempowers computer-illiterate; people who write poorly
2. Disempowers people with impaired access to Internet
3. Lack of body language, technology problems may produce meta-disputes
4. ADR neutrals lose non-verbal information
5. Disputants may abandon process

Question No: 14 (Marks: 10)

Discuss "Pure Mediation" in detail with its merits and demerits.

Pure Mediation

Pure mediation is a facilitative process whose goal is to promote collaborative, integrative, principled bargaining. (It is very important to note that the goal of pure mediation is *not* to reach agreement but, rather, to promote the sorts of negotiation behaviors that will lead to reaching agreement.)

Pure mediation is often seen in community and divorce mediation, and it is being found in other contexts in increasing numbers. This form of mediation is also becoming more accepted by the legal profession. It is highly facilitative, and the breadth of issues dealt with is as broad or narrow as the disputants wish it to be.

There are many advantages to pure mediation. Since pure mediation facilitates principled bargaining, the agreements reached tend to be highly creative, win-win outcomes that optimized the use of resources. Pure mediation may have longterm benefits for disputants who must continue a relationship.

Pure Mediation

Goal: It is to facilitate Collaborating/Integrating negotiation between the disputants.

Focus: as narrow or broad as the disputants decide to make it. It is highly facilitative and non-coercive.

Mediators work to restore or maintain a cooperation cycle and to deescalate the conflict.

Advantages:

1. Best at retaining the advantages of cooperative negotiation – optimal outcomes, preserved relationships, psychological ownership.
2. Even if agreement isn't reached, substantive improvements in relationship and narrowing of conflict often result, making other dispute resolution easier and faster.

3. Disputants often have issues clarified, which empowers them if other dispute resolution processes are needed.

Disadvantages:

1. More time-consuming than evaluative processes (short term).
 2. May not be appropriate for marginally functioning disputants.
 3. Marketing problems – disputants and their attorneys often prefer evaluative approaches.
- If mediator is incompetent this is a poor option.

Question No: 15 (Marks: 10)

Write any three dimensions of ethics in mediation in detail

1. Self-determination:

A mediator shall recognize that mediation is based on the principle of selfdetermination by the parties. Self-determination requires that the mediation process rely upon the ability of the parties to reach a voluntary, un coerced agreement. Any party may withdraw from mediation at any time.

2. Conflicts of interest:

A mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator. The need to protect against conflict of interest also governs conduct that occurs during and after the mediation. A conflict of interest is a dealing or relationship that might create an impression of possible bias. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related manner, or in an unrelated manner under circumstances that would raise legitimate questions about the integrity of the mediation process. Pressure from outside the mediation process should never influence the mediator to coerce the parties to settle.

3. Advertising and solicitation:

A mediator shall be truthful in advertising and solicitation for mediation. Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of a mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.