

Charles Mwewa Intro to Law Lecture Outlines

ADR I – Questions & Answers

1. **What is a Conflict?** Conflicts happens when the underlying interests, which include needs, hopes, desires, fears, aspirations or activities are incompatible with those of another person or other people with whom we have conflicts.
2. **What is Incompatibility?** This means that two or more elements in conflict cannot co-exist.
3. **When can Conflicts remain hidden or of no consequence?** If the parties are willing to overlook them or do agree to disagree.
4. **When does a Conflict become a Dispute?** When one or more parties is/are not able to clearly identify the value or interest and claims the right to maintain their own value or interest and blame the other party/ies for trying to avert that value, interest or even a belief.
5. **What are the common feelings of the parties in a Conflict?** Powerless, stigmatized, failure or hopelessness.
6. **What is true about Conflicts?** They are a common experience in real life. They can be neutral. They are a socially constructed event and they happen in every culture and relationships.
7. **What is positive about Conflicts?** Conflicts are triggered when people search for shared meaning and they can review individualized independence and perspective because differences in opinion or perspective are how humans perceive their own world.
8. **What are the four standard responses to Conflict?** Ignoring, yielding, contending, and cooperating.
9. **What does Contending involve?** Power-based approaches and rights-based approaches.
10. **What are Power-Based Unilateral Action methods?** They are methods in which one party acts to achieve a desired outcome without the cooperation or participation of the other.
11. **What are some of the examples of Power-Based Unilateral Action methods?** War (or military interventions), strikes, lockouts, peaceful protest, boycotts, physical, economic, or emotional bullying or a “boss” who thinks that they have the right to act unilaterally.
12. **What are the Rights-Based methods?** They manifest themselves through a fact-finding process (in advocacy, this is akin to the adversarial process) and they underpin a zero-sum outcome (win/lose situation) where, usually, a decision-maker makes binding decisions.
13. **What is a typical Rights-Based method?** Litigation or Adjudication. In this process, a neutral third party makes a ruling on contested questions of law or fact. The decision is usually enforceable and this is how legal precedents are created. Litigation, though, differs from regal or royal (authoritative) commands.
14. **What is the alternative to litigation?** Interest-Based methods.

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15. **What is the presumption of the Interest-Based methods?** That all interest-based processes will focus on producing an outcome that largely satisfies the interests of all the parties to the dispute.
16. **What do Interests define?** They define a party's needs, desires, hopes and aspirations.
17. **How are Interests discovered?** Through the parties' fears and concerns.
18. **What are the main Characteristics of Interest-Based methods?** They promote win-win outcomes as opposed to zero-sum or win-lose; the process is controlled by the parties themselves; and results have greater autonomy and self-determination giving the parties some relative satisfaction.
19. **What do parties discover when they dwell on Interests?** Options.
20. **What do Options entail?** They foster more creative decision making prowess and grow the pie.
21. **What does the concept of growing the pie entail?** It entails growing options rather than merely dividing it and seeking the biggest piece.
22. **Who makes the decision in Interest-Based methods?** The parties themselves. They are the better judges of what options will work best for them than a third party decision-maker.
23. **What are the two best examples of Interest-Based methods?** Negotiation and mediation.
24. **What are the five types of Conflicts?** Value Conflicts; Relationship Conflicts; Interest Conflicts; Structural Conflicts; and Data Conflicts.
25. **What are Value Conflicts?** They are intrinsically valuable goals derived from people's different ways of life, ideology, or religion. To intervene in Value Conflicts, it is advisable not to define the problem in terms of value but to allow parties to agree and to disagree by creating spheres of influence in which one set of values dominates and by searching for superordinate goals that all parties may share.
26. **What are Relationship Conflicts?** They arise from strong emotions, misperceptions or stereotypes. To intervene, it is advisable to control expression of emotions through procedure, ground rules, caucuses, and so forth. Then to promote expression of emotions by legitimizing feelings and providing a process. To do this, it is best to clarify perceptions and build positive perceptions, improve quality and quantity of communication, block negative repetitive behavior by changing structure, encourage positive problem-solving attitudes; avoiding poor communication or miscommunication and repetitive negative behavior.
27. **What are Interest Conflicts?** In this type of Conflict, perceived or actual competition dominates over substantive (content) interests. To intervene, focus on interests, not positions; look for objective criteria; develop integrative solutions that address needs of all parties; search for ways to expand options or resources; and develop tradeoffs to satisfy interests of different strengths.

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28. **What are Structural Conflicts?** These may manifest themselves into destructive patterns of behavior or interaction caused by unequal control (in power and authority), ownership, or distribution of resources. One's geographic, physical, or environmental position may hinder how they cooperate within certain time constraints. To intervene, there is need to clearly define and change roles; replace destructive behavior patterns; reallocate ownership or control of resources; establish a fair and mutually acceptable decision-making process; and changing negotiation process from positional to interest-based bargaining. Disputants may also modify the means of influence used to less coercion to more persuasion; change physical and environmental relationship such as closeness and distance; modify external pressures; and change time constraints such as from more or less time.
29. **What are Data Conflicts?** These conflicts arise where there is lack of information or presence of misinformation and parties may have different views on what is relevant thereby imposing different interpretations of data and different assessment of procedures. To intervene, try to reach agreement on what data are important; agree on process to collect data; develop common criteria to assess data and use third-party experts to gain outside opinion or break deadlocks.
30. **What are Competitive Tactics?** These happen when parties assume adversarial stance exists in regard to a conflict. When this happens, parties usually resort to competitive assumptions. As a result, their actions may be predictable and may escalate in violence.
31. **What are some types of Contentious Tactics?** They may include Ingratiating behavior; Gamesmanship; Guilt trips; Persuasive argument; Threats; Irrevocable commitments; or violence.
32. **When do Conflicts move from Contention and Escalation?** It is when tactics move from light to heavy — from persuasion to threats, and from threats to violence and issues move from small to large causing proliferation. When issues escalate, they move from specific to general, and the process changes from wanting or needing to doing well for self (or winning) to hurting the other party. And similarly, involvement will move from the few to the many, fixing divisions and establishing sides. Escalation may be psychological, and these are changes accompanying the polarization of interests leading to demonization and to fixed forms of stereotyping.
33. **How do you intervene to de-escalate?** Move from the general to the specific, from the many to the initial few; shift parties from contention to problem solving; reintroduce perceived common ground; and appeal to common humanity and to a perceived feasibility perspective.