



Mediation Training

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Explanation

For trainers

Chapter 1

Before Starting the Training

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1 The Purpose of this Training Resource

For Whom was this material made?

[Tips to Trainer]

This training material is created to be used by all of those who teach mediation (trainers) and those who learn mediation (mediators and candidates) according to their level and necessity.

Almost all PPT texts are created for those who receive mediation training.

The footnotes of PPT slides are for mediation trainers (**[Tips to Trainer]**). In addition, slides with "**For Trainers**" indicated on the upper right corner are created for mediation trainers.

How was this material developed?

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[Tips to Trainer]

Improvement of mediation can be achieved by carrying out actual mediation as much as possible and closely reviewing the process and results.

Further, preparing training materials as a trainer of mediation and conducting mediation in addition to receiving mediation training on a regular basis are thought to contribute to the improvement.

I (Inaba) received a lot of training in the United States, and have been conducting mediation training since the year 2000 in Japan and other countries (improvement support of mediation conducted at courts in Indonesia, Mongolia, Nepal, Cambodia, etc. as part of legal improvement support through JICA).

I also prepared training materials for mediation in Japan and other countries where support was provided. In 2004 and 2005 I served as chief editor in preparing basic and intermediate editions of mediation training materials for the Japan Association of Arbitrators (JAA). These materials are referenced, translated, and utilized in the above-mentioned countries. However, since 2005 there have been developments in mediation methodology and theory, and my own training has also changed. Under these circumstances, since I conducted 3-day training this time (2016 - 2017) in Nepal as a part of cooperation for expanding the mediation system there, I decided to prepare training materials in English based on the results, with the cooperation of Satoko Tomita, Esq., who is the expert with long experience there.

I hope that many people will utilize them.

Please note that these training materials can be used freely, as long as the licensing requirements described below are met. It will be worthwhile to prepare it in JICA international projects, if many people will use it.

Explanation

Explain the Whole Program

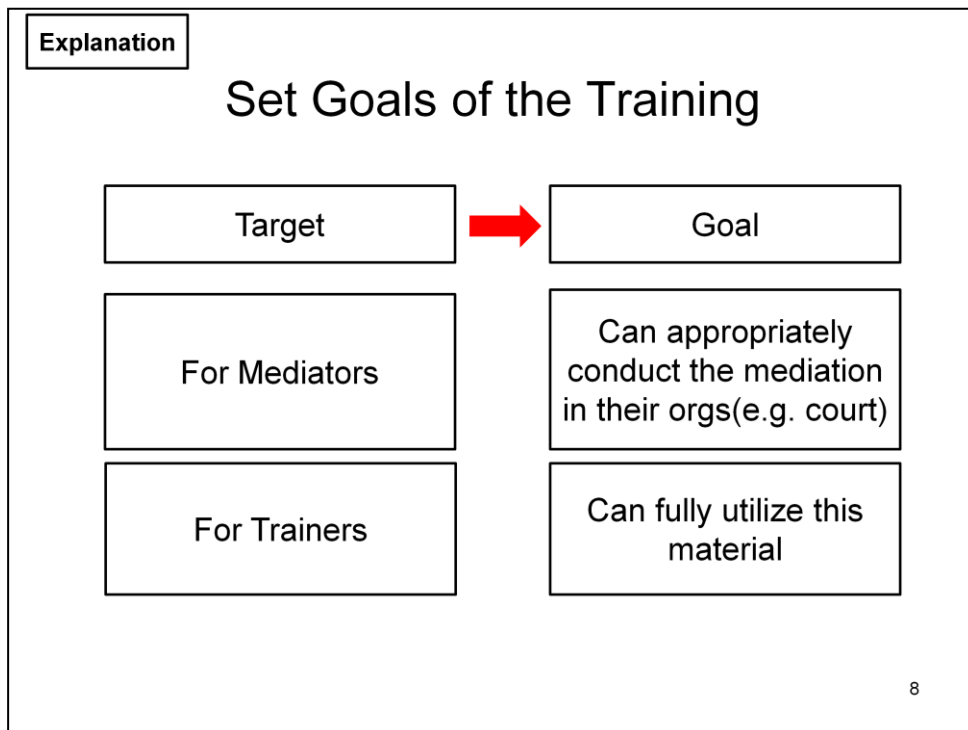
Basic

Advance

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If the training continues two or three days, please indicate the whole picture of the program. If you can explain why the whole picture is such, explain that as well.

Especially if the training has a specific purpose and points to be emphasized, let's explain it as much as possible.



This training has two objectives (what the provider wants).

As the first one of the objectives, the mediation techniques should be learned “from the basics by the first learner” and “on a new note by those who have already learned” (**for mediators**).

As the second objective, the content of training and how to proceed with it should be learned (**for trainers**).

Depending on the objectives, you can use the materials in any case by simplifying some parts, adding something, and/or switching around the order of contents.

As a way to do that, the essence of training that I (Inaba) am doing in Japan and abroad will be generously provided.

While the outcome is a more specific objective (what the recipient can realize), mediation can be properly conducted in the organization (e.g. court) to which persons belong (mediators) and training can be done with this material (trainers).

Explanation

Notice for people leaning mediation

1. You don't have to fully understand the sessions. Please see, listen and feel them.
2. Bring back everything in the sessions that will help you later.
3. Don't be passive. Move your brain and join us actively.
4. Your feeling matters. Don't ignore it when you feel something wrong.
5. If you enjoy, laugh and feel excited in the sessions, we will be very happy.

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[Tips to Trainer]

1. The attitude to understand is important, but people tend to absorb knowledge by all means. In order to gain the most from experience, you should avoid the attitude like that of an honor student who tries to understand everything.
2. The materials can be taken home, and I'd like you to utilize them effectively. Various things are devised in training. It is very important to recall the contents of training.
3. Mediation training is not a lecture. Therefore, it is important for you to participate in person.
4. Mediation training gives stimulation to the processes and thinking that you normally think natural. A small sense of discomfort shakes your awareness.
5. You are moved in the process of mediation training. Do not be scared to be moved, and please laugh and have fun.

2 Training Method

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[Tips to Trainer]

Here, I will explain the methodology that is the basis of mediation training.

There are many attitudes and behavior change models and methodologies besides those listed here.

Examples:

The "LEARN approach" on patient transformation (in the context of medical care)

L Listen with sympathy and understanding to the patient's perception of the problem

E Explain your perceptions of the problem

A Acknowledge and discuss the differences and similarities

R Recommend treatment

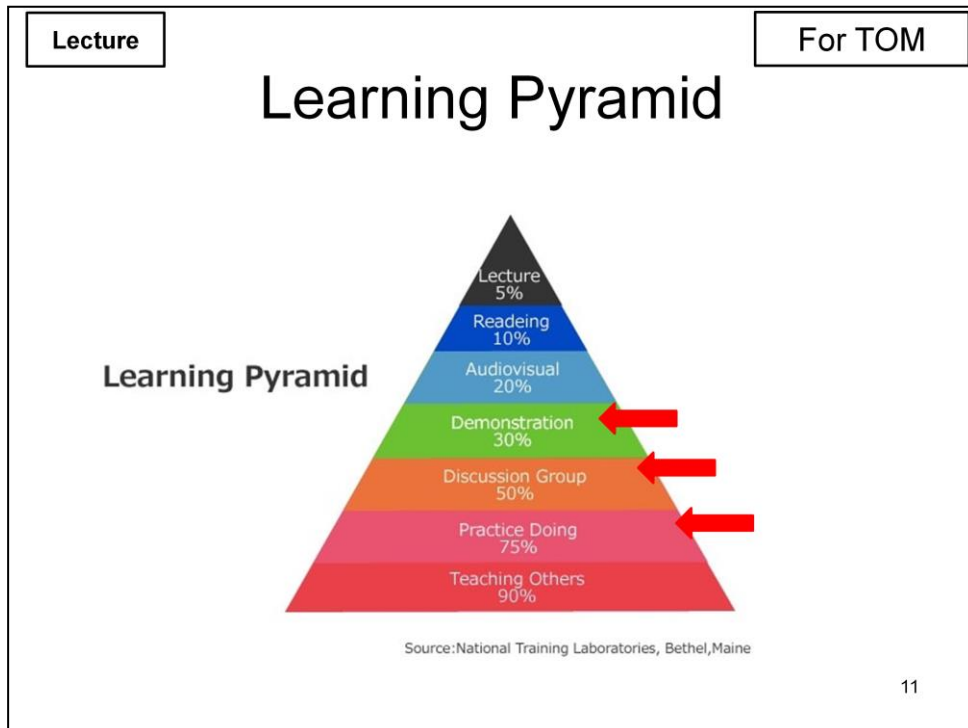
N Negotiate agreement

Berlin EA, Fowkes WC. The Western Journal of Medicine. 1983; 139(6):934--
- 8.

Behavior change stage model

Prochaska JO, DiClemente CC. Journal of Consulting and Clinical Psychology. 1983 Jun; 51(3):390- - 5.

Importance degree/confidence degree model, etc.



[Tips to Trainer]

As you may know, the learning pyramid is famous.

It is the results of research on learning retention rate conducted by the National Training Laboratories.

As indicated below, it may be said that learning retention rate is high; namely, educational effect is better, when the requirements for activity and autonomy are much higher:

Lecture results in a retention rate of 5%,
 Reading 10%,
 Audiovisual 20%,
 Demonstration 30%,
 Group discussion 50%,
 Practice doing 75%, and
 Teaching others 90%.

Therefore, we will use less lecture (conveyance of knowledge) and, as indicated by the arrows, more demonstration, group discussion (small group discussion), and practice doing (work).

Social Skills Training

- (1) **Instruction** By using words, picture cards and etc., trainers explain why the skills are necessary and what effects will arise if trainees acquire the skills.
- (2) **Modeling** Show the behavior (skills) of another person as a model. Or, show inappropriate behavior and have the participants consider what is wrong.
- (3) **Rehearsal** Trainees actually exercise the skills, by having lecturers and friends as their partners. The role-playing method is mainly used.
- (4) **Feedback** Review their behavior and response. If you find it appropriate, praise the participant. If the behavior or response is inappropriate, instruct the participant to correct it.
- (5) **Generalization** Enable the participants to demonstrate the learned skill in any situation(time, people, and place) other than in the training.

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[Tips to Trainer]

"Social skills" is the skill to participate well in interpersonal relationships and collective action. In other words, it is linguistic/nonverbal interpersonal behavior used to respond appropriately to the other person in an interpersonal situation, and the practice of mastering interpersonal behavior is called "social skills training." While the practice of this theory is mainly used for social skills training for children who are unbalanced in growth, this methodology is used as a reference in mediation skills, which are specialized/sophisticated social skills. The most important thing in conducting social skill training is to **have a desire** to learn social skills. It is important to be aware of what you are in trouble with and what skills you need to resolve it.

Attitude Change

- Attitude Change means to abandon the attitude formed and fixed based on external influences and form a new attitude. Generally, the attitude change is said to happen in the conditions such as,
- (1) The existing attitude toward an object is not very strong and the **degree of familiarity** with the object increases.
- (2) Influence is vivid and can be **experienced directly**.
- (3) The existing **framework** that has made the attitude sustainable is abandoned due to an accidental change.
- (4) A relationship motivated by the person's group or other people's groups changes.

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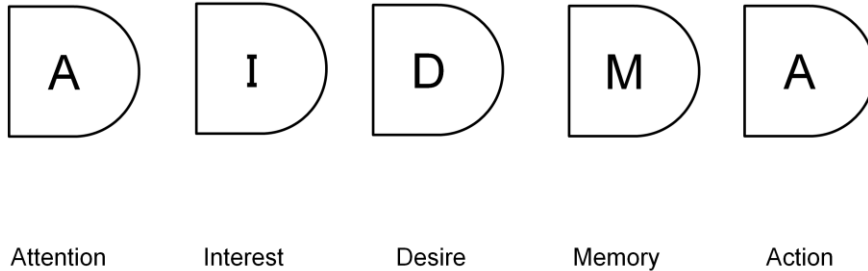
[Tips to Trainer]

Mediation training will prompt change of "attitude" through transformation from what you usually thought and posing of questions about things for you did not have any doubts.

Knowledge of social (cognitive) psychology about change in attitude and behavior is applied there.

Process of Attitude/Behavior Change

AIDMAの法則



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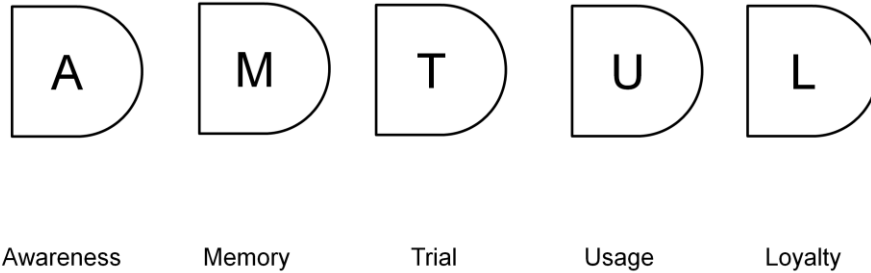
[Tips to Trainer]

This is the famous AIDMA model.

Attention → Interest → Desire → Memory → Action

Process of Attitude/Behavior Change

Principle of **AMTUL**



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[Tips to Trainer]

Since the rule of AIDMA has a weakness in persistence after attitude change, the Principle of AMTUL was created as a model, adding to AIDMA trial, daily use, and fixed use (equivalent to activities as a trainer or actual mediator after having received the training).

Awareness → Memory → Trial → Usage → Loyalty (Fixed Use)

PDCA cycle plan-do-check-act cycle



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[Tips to Trainer]

The PDCA cycle was proposed by Edwards Deming and others who had established quality control after the War. Therefore, it is also called the Deming Wheel.

The name PDCA cycle is a combination of the initials of the following four stages that make up the cycle:

1. Plan: Prepare a business plan based on past performance results, future forecasts, etc.
2. Do (Execution): Conduct the business according to the plan.
3. Check (Evaluation): Evaluate whether the execution of business is in line with the plan or not.
4. Act (Improvement): Investigate and improve the areas where the execution is not in line with the plan.

After having sequentially performed these four steps as one cycle, the last Act should be connected to the next PDCA cycle, and the business will be continuously improved through stepping up (spiraling up) the level of each step like drawing a spiral.

Later, Deming emphasized the necessity to conduct elaborative evaluations and replaced Check with Study, to form what was called the PDSA cycle.

Mediation training itself is the mediation.

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Mediation training is a mediation.

While what is mediation will be described in detail in this training, in a nutshell, it is **an activity to shake people's frame, including cognition.**

Training also requires you to realize that the trainer usually "thinks natural" and "what is not made into a word with uncomfortable feelings," etc., which is the experience of the state described by "**the scale fall from your eyes**" in Japanese.

Talking with a person who until now had been thought to be conflicting brings out the transformation of one's own view and the other party's viewpoint through expressing one's own perspective (including opinions, concept of values, etc.) and trying to understand the viewpoint of the other party with the proper involvement of an appropriate mediator (this is the technique of mediation).

There is similarity between the relationship between a mediator and parties, and that between a trainer for mediators and mediators.

A training begins, before the training starts.

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If so, **training has started before mediation training begins.**

1. Start by checking the training place in advance.
2. Check whether there is adequate space (a room equipped with windows without a feeling of oppression is appropriate), whether desks and chairs can be moved, and whether communication methods by personal computer, projector, screen, microphone, etc. are appropriate.
3. Are there white board (pen and eraser), flip chart, bell, stopwatch, sticky notes?
4. Are handouts/materials, pens/notes, etc. readily placed?

Preparation should be done with training in mind.

These preparations are to be conducted.

3. Share the Common Image of Mediation

There is no common understanding on the mediation.

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Mediation is used in many contexts.

The problem in doing training is that **the concept and practice of mediation are used in various contexts and environments and there is no common recognition among participants.**

I have felt this in particular when training experts and non-specialists together or when training in different countries.

Minimal definition of mediation is that there are both parties and there is a mediator serving as a third party.

However, there are different types of mediations.

There are a variety of mediations, from so-called promotional type to evaluation type and transformable type.

Among those who conduct a mediation for the first time, there are people who cannot imagine that there are many operational approaches in mediation due to the involvement of a third party.

Also, there are many people who cannot imagine ways other than those of their own mediation and those traditionally done in that country, and for that reason

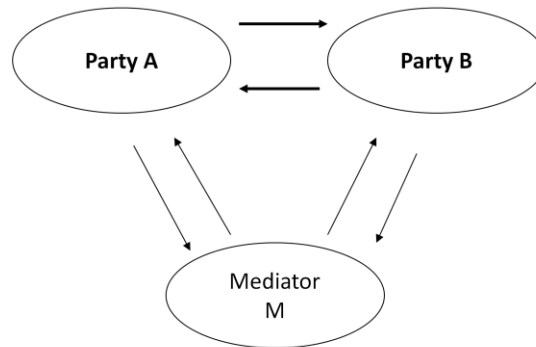
many people cannot accept the way of operations that I think of (I feel there are many such people among lawyers).

There is a way to do this by playing a different form of mediation at the venue (or showing a video of such play) (I also adopted such a method in the beginning).

However, if there is no video, this will be burdensome to the trainer, and there are also participants who feel repulsion to video presentation. Now, I think it is necessary to be involved slowly to shake the attitudes (framework) of the participants.

I think that a big issue for a trainer is how to overcome the difficulty of introducing a particular mediation type in the absence of common recognition among participants regarding mediation.

The Structure of Mediation (dialogue with third person's intervention) From Mediator in center to Parties in center



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The minimum structure of mediation is a mechanism by which a conflict is resolved where there is a conflict (in some cases possible conflict) between the parties, in which a third party is involved (intervening).

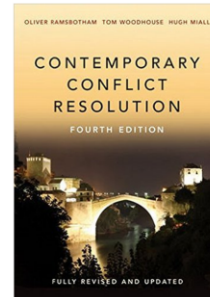
The above figure indicates the mechanism.

I think **there was a mechanism to solve a conflict between the parties with involvement of a third party in every country** (there is Musyawara in Indonesia, involvement of a village chief in ancient times in Japan, etc.). However, many of the old mechanisms were used to limit the subjective involvement of the parties, and to promote social stability through customs, power, and authority.

Modern mediation draws a line to this and **recognizes the subjective involvement of the parties. The focal point is changed from mediators to the parties.**

The theory and practice of mediation

Of Different types of
mediation



By Different types of
mediator

In Different types of
conflict situations

Oliver Ramsbotham et al. Contemporary Conflict Resolution. 2016

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Contemporary Conflict Resolution (English) 2016/2/23 is an appropriate recent literature citation to understand that mediation is diverse.

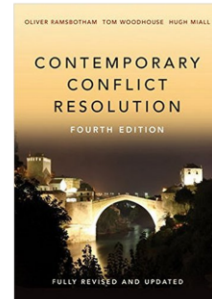
It teaches us that there are many ways of thinking and practices, since there are different ideas and types of mediation and scenes where disputes are handled (situations of conflict, resolution by a court, etc.).

From different academic background

Anthropology

Psychology

Development
education



Oliver Ramsbotham et al. Contemporary Conflict Resolution. 2016

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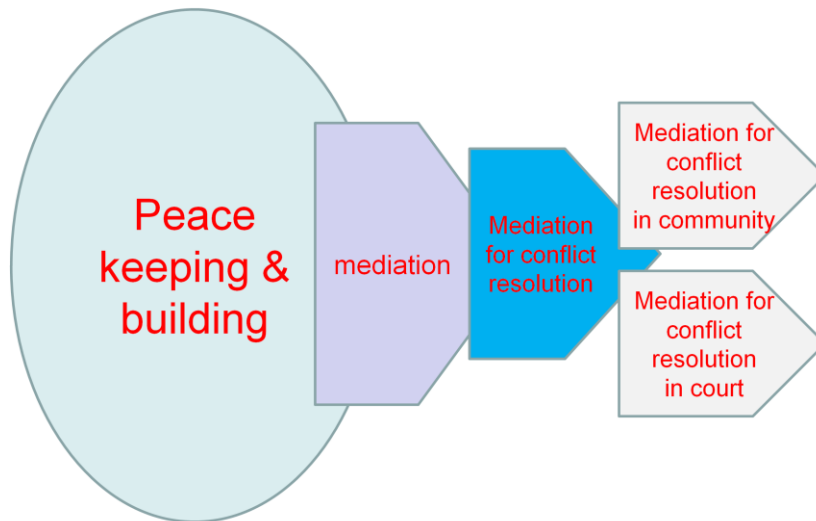
It also varies depending on the specialized area and the methodology to analysis used by persons who study mediation (researchers/practitioners).

There may be psychological approaches (coaching, counseling, assertion), approaches from the aspect of anthropology, which is a social science to study human origins and social relations, and the standpoint of education. Of course, there are also approaches from the studies of conflict resolution and international relations.

For example, many differences are assumed at least as phenomena between the case where a mediator is involved when adult parties solve a dispute mainly involving money at a court, and the case of Peer mediation where a colleague child is involved in a trouble or conflict of opinions among children at a school.

Here, let's go along with the participants understanding of "**There are diverse ideas and practices about the way of mediation.**"

mediation



There are many means of peacekeeping and peacebuilding (as opposed to violence or intimidation), and mediation is one of them.

And, what was used as a method to solve individual disputes is mediation for resolving conflicts.

And, it is done in the area (community) or at a court (a court attachment).

**Directive 2008/52/EC of the European
Parliament and of the Council of 21 May
2008 on certain aspects of mediation in civil
and commercial matters**

A globally standardized definition of
Mediation is shown with the relation to
the intervention of judges

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As mentioned above, we will introduce what the EC created, since argument (regulation) cannot be done under the circumstances that mediation definitions are different and each participant assumes different things.

DIRECTIVE 2008/52/EC

**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2008
on certain aspects of mediation in civil and commercial matters**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:En:PDF>

We are citing the description about the definition of mediation (Chapter 3).

Definition of MEDIATION (Art. 3)

- (a) 'Mediation' means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, **on a voluntary basis**, to reach an agreement on the settlement of their **dispute with the assistance of a mediator**. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.
- It includes mediation conducted by a judge who **is not responsible for any judicial proceedings** concerning the dispute in question. It excludes attempts made by the court or the judge seized to settle a dispute in the course of judicial proceedings concerning the dispute in question.
- (b) 'Mediator' means any third person who is asked to conduct a mediation **in an effective, impartial and competent way**, regardless of the denomination or profession of that third person in the Member State concerned and of the way in which the third person has been appointed or requested to conduct the mediation.

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According to this definition, the conciliation conducted by the conciliation board in Japan (with a judge serving as a chief conciliator) and a judicial settlement performed by a judge do not meet the criteria of mediation as defined by the EC. The Supreme Court does not state the conciliation in Japan as Mediation in English, but as Consolidation.

The Mediation for Dispute Resolution

Guide for Regulating Dispute Resolution(2013)

(Felix Steffek et al.)

=A functional and modular approach that regards parties first

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In such circumstances, many practitioners and researchers jointly issued guides to resolve disputes as indicated below.

The key is Party First and the functional/modular approach.

http://www.mpipriv.de/files/pdf4/Guide_for_Regulating_Dispute_Resolution_GR_DR_Principles.pdf

FELIX STEFFEK AND HANNES UNBERATH (COORDINATORS) ,
LIN ADRIAN, ALDO DE MATTEIS, GIUSEPPE DE PALO,
FREDERIQUE FERRAND, REINHARD GREGER, JANA HARTLING,
ULRIKE JANZEN, 2 SHUSUKE KAKIUCHI , LARS KIRCHHOFF,
PETER G MAYR, ISAAK MEIER, KRISTIN NEMETH, MACHTELD
PEL, ANNEKEN K SPERR, AND IVAN VEROUGSTRAETE

Guide for Regulating Dispute Resolution(2013) (Felix Steffek et al.)

I. Dispute Resolution Mechanism

A. Choice of Procedure

•The regulation of dispute resolution should start with and focus **on the parties**.

•Generally, the parties and not the state should choose the dispute resolution mechanism (principle of **self-determination or party choice of process**). While consensual dispute resolution is preferable over resolution forced on (one of) the parties, there is no preference of one sort of dispute resolution mechanism over another. Regulation may reflect, however, that certain dispute resolution mechanisms may be particularly well suited for specific types of disputes.

Guide for Regulating Dispute Resolution(2013) (Felix Steffek et al.)

I. Dispute Resolution Mechanism

B. Regulating Dispute Resolution

- The regulation of dispute resolution mechanisms both within a single jurisdiction and internationally should follow principles that permit **rational choices to be made by the parties** and **include clear criteria informing that choice.**

Guide for Regulating Dispute Resolution(2013) (Felix Steffek et al.)

I. Dispute Resolution Mechanism

C. Functional and Modular Approach

•A modular approach referring to the characteristics of dispute resolution procedures facilitates principled regulation. The following characteristics can be used to classify dispute resolution mechanisms; they generally refer to the control of or choice by the parties:

- Initiation control: whether the parties' consent is needed to initiate the procedure;
- Procedure control: whether the parties determine the procedure;
- Result-content control: whether the parties determine the content of the result (i.e. whether the procedure is non-evaluative);
- Result-effect control: whether the parties' consent is needed for the result to be binding;
- Neutral choice control: whether the parties choose the neutral;
- Information control: whether the procedure and the information obtained during the procedure is private;
- Interest-based: whether the procedure is interest- or rights-based;
- Intermediary: whether the procedure includes intermediation by a third person.

Guide for Regulating Dispute Resolution(2013) (Felix Steffek et al.)

I. Dispute Resolution Mechanism

D. Policy Choice

- Regulation of dispute resolution should be based on the following fundamentals: normative individualism (as expressed in human and constitutional rights), party choice, just dispute resolution for the parties and efficiency. Individuals have a right to effective and fair dispute resolution.

4. Training Structure

Mediator Training in Foreign Countries, particularly in USA

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Mediation training has a history devised in the United States. I think that there are many things to learn from this history.

[Training Tips] This part can be omitted.

Program On Negotiation (PON)



- In 1979, Harvard Negotiation Project (HNP) was established: Roger Fisher, William Ury, Bruce Patton
- In 1983, Program On Negotiation (PON) was established: James Sebenius, Lawrence Susskind, Howard Raiffa, Frank Sander
- Currently presided by Robert Mnookin
- The Program on Negotiation (PON) is a consortium program of Harvard University, Massachusetts Institute of Technology, and Tufts University and serves as an interdisciplinary research center dedicated to developing the theory and practice of negotiation and dispute resolution in a range of public and private settings. PON's mission includes nurturing the next generation of negotiation teachers and scholars, helping students become more effective negotiators, and providing a forum for the discussion of ideas.

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First of all, let me introduce Harvard's PON.

PON is famous for negotiation research and practice, and is a tow vehicle of conflict negotiation studies.

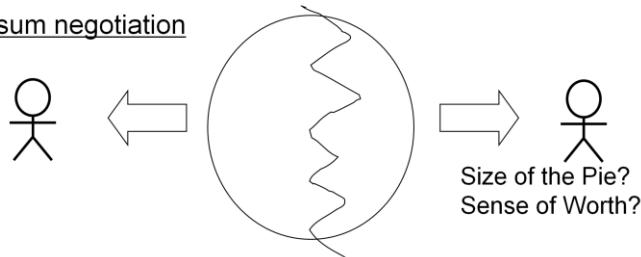
Getting to yes and so on are translated into many languages.

For details, please learn from the website, etc. and publications.

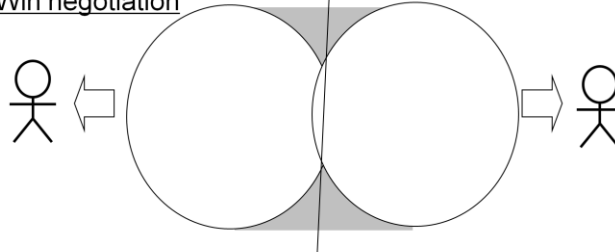
Professor Frank Sander showed the concept of multi door in the United States (courts have a lot of dispute resolution doors, such as arbitration, mediation, etc., as well as lawsuits and trials), which led to the practice of a court-attached type in Washington DC (special district), and I was also taught by him.

Dispute Resolution utilizing Theory of Negotiation

Zero-sum negotiation



Win-Win negotiation



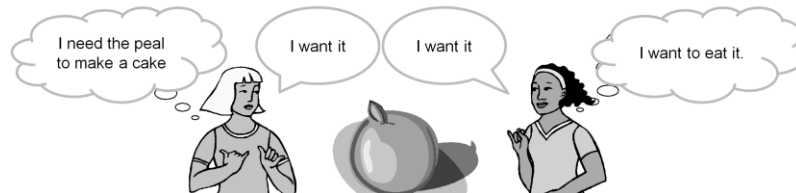
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In the viewpoint of ordinary disputes such as a trial, in many cases, zero-sum (adding to zero) negotiation is imaged. In this relationship, if one party takes, the other party loses. In such a dispute, the parties have to be competitive.

On the other hand, in Win-Win negotiations, the size of the pie can be expanded by creating solutions and developing options. Also, by using the difference of concept of values of both sides, a kind of trading can be achieved, which may lead to a solution in which both sides are invested. In voluntary negotiation, assisting type mediation draws out the power so that the two sides can conduct Win-Win negotiations (empowerment).

Dispute between sisters on an orange

Sisters had a quarrel on an orange. They finally settled down by agreeing that each got a half of the orange. The older sister ate the fruit and disposed its peel. The younger sister disposed the fruit, while she used the peel to make a cake.



The younger's interest/intention	The younger's claim	Issue	The elder's claim	The elder's interest/intention
I want to make a cake. Thus I need the peel.	I want a whole orange.	How to handle the orange(who/how to get the orange)	I want a whole orange.	I want to eat an orange. I need the fruit.
	I want the peel of a whole orange.		I want the fruit of a whole orange.	

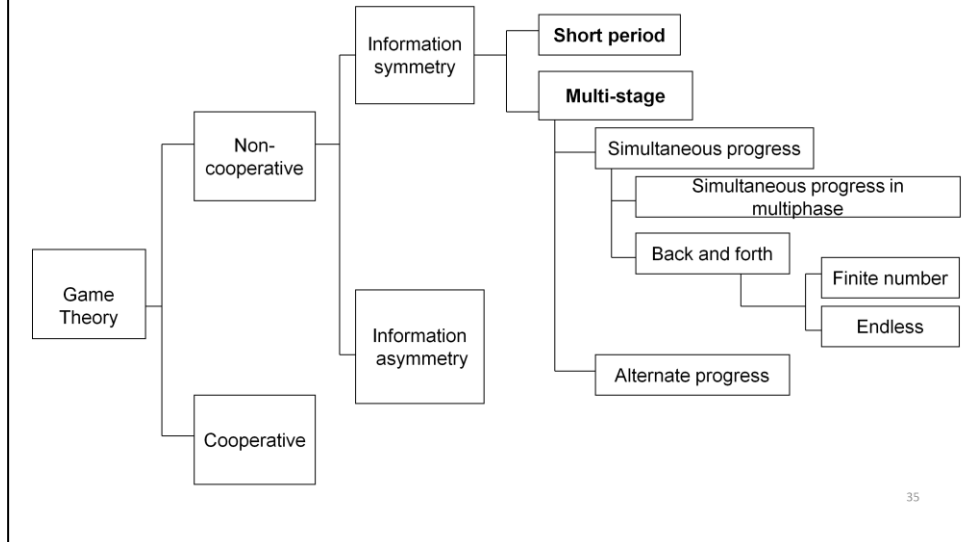
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To explain what Win-Win negotiations are, an example of a dispute between sisters over an orange is often used as a graphical explanation.

In case of a trial, etc., in light of the logic of law a discussion is held on whether the parties' assertions are recognized as legal rights. However, when both parties have the right to own and dispose of an orange, solution thereof is at most to divide it in halves. Meanwhile, when digging into interests and real intentions behind them, it is found that the older sister wants the orange's pulp because she wants to eat it and the younger sister wants its peel since she wants to make a cake. If you stick to the assertion and the right that they each want one whole orange, you will not be able to understand the real intentions. In this case, if you know the real intentions, the dispute can be resolved almost automatically.

As shown in the above figure, the claims have changed from "I want one whole orange" to "I want the peel" and "I want the pulp." It is important not to stick to the claims, but to explore the interests and the real intentions behind them.

Birds-eye-view of Game Theory



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Among them, information symmetry means "all the players participating in the game share the same information on the rules of the game, and know that the others share it." However, in actual society, producers/sellers have more information about products than consumers. This state is called information asymmetry. In many cases, game theory is built on information symmetry as standard. Herein lie the clarity and limitations of game theory.

Lecture

Straus Institute for Dispute Resolution

Ranked number one for Dispute Resolution by *U.S. News & World Report* for 10 consecutive years, the Straus Institute at the **Pepperdine** School of Law offers MDR, LLM, and certificate programs for students and professionals.



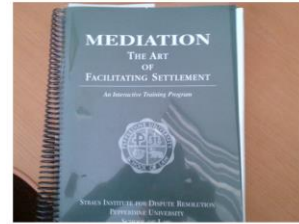
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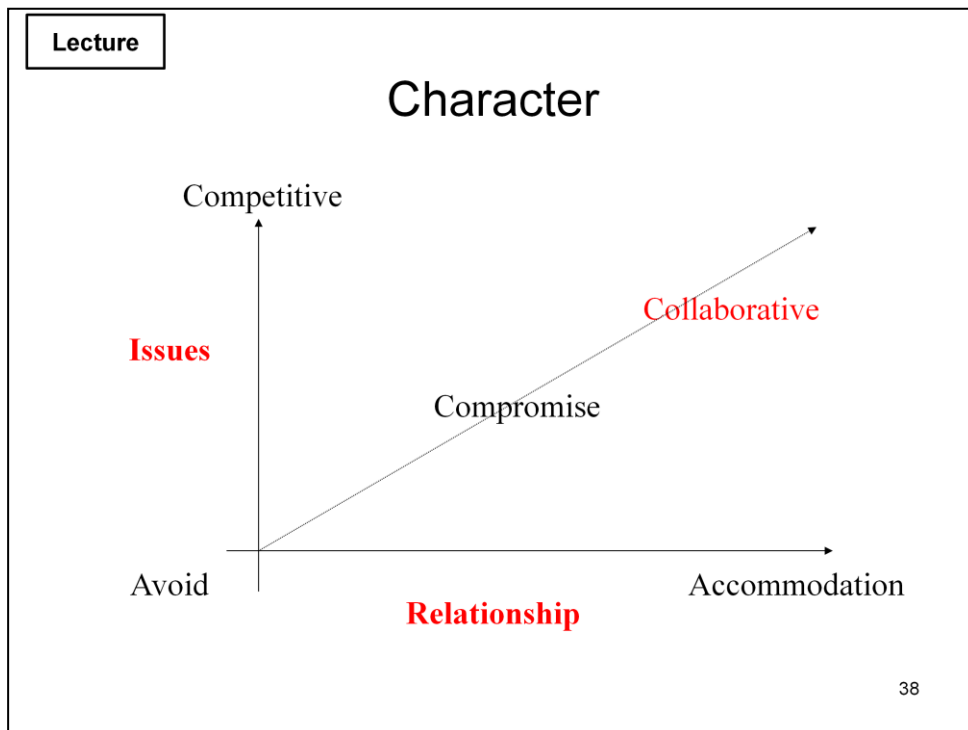
<http://law.pepperdine.edu/>

Pepperdine University is famous for meditation training, within and outside the United States.

Outline of the Course

- Title of the Course:
 - Mediation of the Litigate Case
- 42 hours over 6 days
- Approximately 30 students
- Approved by the State Bar of California as Mandatory Continuing Legal Education: (MCLE)





This figure is shown to make it easier for the parties to grasp the characteristics of the strategy that the parties can adopt (which the mediator will pursue accordingly), depending on whether aiming toward resolution of the issue or aiming at the relationship.

This figure is a level of "rough understanding" but no specific suggestion is given as to what kind of concrete approach should be taken.

"Avoidance" is an attitude of escape from dispute. It is to run away from the dispute as if there is no such dispute. This is not a desirable condition, because both parties have nothing to gain, but there is an advantage that dispute has not occurred. In reality, it often seems peaceful at first sight.

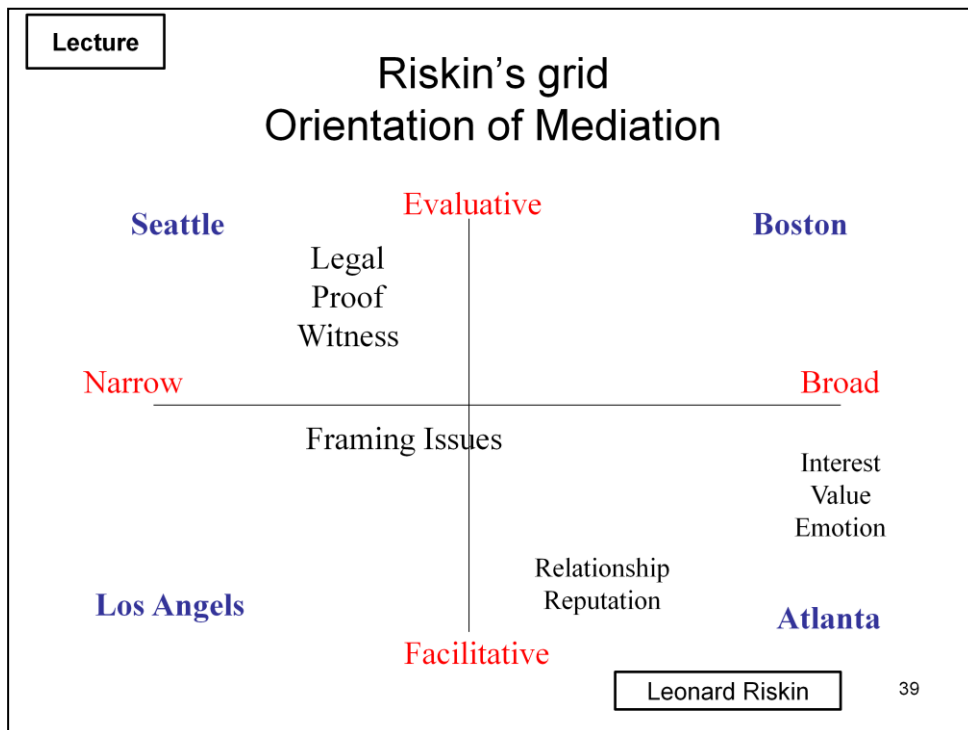
No dispute will occur even with the attitude of "obeying the other party." While the other party gains a benefit, it is an attitude to give up one's own advantage. This is also undesirable.

"Competition" places emphasis on one's own interests, but it is an attitude not emphasizing the relationship. When a dispute occurs, usually both parties are competitive.

"Compromise" is a way of thinking that moderately balances one's own interests and the other party's interests equally. However, both parties remain unsatisfied.

"Collaboration" is a way of thinking that emphasizes one's own interests and the other party's interests equally. Voluntary negotiation assisting type mediation aims for a collaborative solution.

Voluntary negotiation assisting type mediation does not aim to persuade the parties to move on to "avoidance," "compromise," or "obeying the other party" under the name of reciprocal concession, but rather both parties place emphasis on their respective interests and find a solution that can satisfy both parties.



This figure is called Reskin's Grid and gives the whole picture used in training at Pepperdine University.

It is a flexible way of thinking that **allows differentiation of mediation approaches between lawyers and non-lawyers.**

(1) the horizontal axis depicts a "problem definition continuum" from "narrow" to "broad"

(2) the vertical axis depicts the spectrum of mediator behavior from "facilitative" to "evaluative."

These axes intersect at their mid-points, producing four quadrants representing four types of mediators.

evaluative narrow,

evaluative broad,

facilitative narrow, and

facilitative broad.

Evaluative mediators assume that the parties need guidance towards an appropriate settlement based on the applicable law, industry practice, or other professional standard. Evaluative mediators tend to be experts in these standards.

By contrast, **facilitative mediators** assume that the parties either have or are able to obtain their own substantive information. So they see their role primarily in terms of improving communication between the parties to help them make their own decisions.

STAR

Stage	Task (What)	Action (How)	Result
Convening			Willingness
Opening			Safe and Hope
Communicating			Expression Understanding
Negotiating			Flexibility and Innovation
Closing			Informed Decision

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In training at Pepperdine University, since a mediation has several stages (phases), a table like the one above is used, causing the trainees to specifically think about what kind of work should be done at each stage of the mediation, what kind of action should be taken in order to make such things be done, and what should be achieved and targeted in doing so. They call it STAR.

This way of thinking is called **process mediation**, and in most cases the mediation is based on the methodology/analysis theory by which specific work is thought to be dividing the process into such stages, although there are some differences, such as whether to make it 5 stages or 7 stages, etc.

NCRC



ANNUAL FIGURES



2,000+
dispute resolution
services provided



80%
mediation
agreement rate



1,400+
mediations
performed

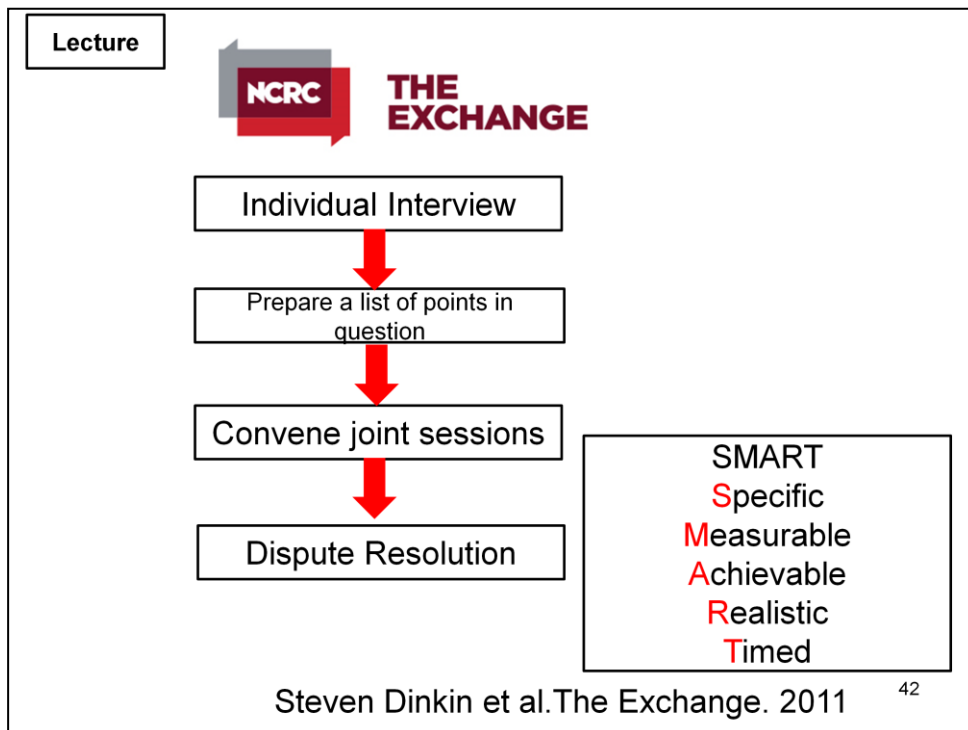


1,000+
mediation and conflict resolution
trainees enrolled in U.S., Europe,
Asia, and Latin America

Mission Statement: We provide the resources, training, and expertise to help people, organizations, and communities manage and solve conflicts with civility.

Built on the principle that every dispute has a solution, the National Conflict Resolution Center (NCRC) serves a variety of communities in both the public and private sectors — regionally, nationally, and internationally. Our mission is to resolve issues with the highest possible degree of civility and equitability to all parties involved.

NCRC was founded in 1983 by the University of San Diego Law Center and the San Diego County Bar Association. With more than 30 years of experience and over 20,000 cases managed, NCRC is recognized as an international leader in mediation instruction and conflict resolution.



The Exchange is a practical and interactive course that teaches leaders useful conflict management skills. It adapts the National Conflict Resolution Center's time-proven mediation strategies by offering a step-by-step approach for resolving conflict. The course looks at the impact of conflict and the cost of failure to manage it effectively.

Participants learn specific communications skills for conflict situations and a four-stage process to follow. Participants will learn how to manage conflict between others, how to handle issues when they are involved in the conflict, and how this process is also applicable to non-conflict situations when a more collaborative approach is necessary.

Work

Chapter 2. Basic Training

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1. ICE BREAKING

[Tips to Trainer]

Mediation training has various techniques for ice breaking (ice literally dissolves, and communication becomes active).

Everyone, please try some of these techniques.

Among them, while I think some of you know about it, I will show you the procedures, etc. for **introducing someone else**.

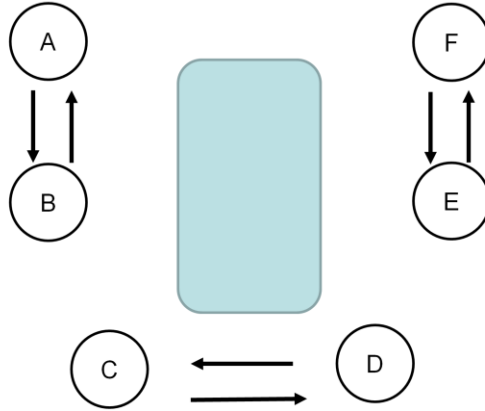
I think this should be used in the case of a group where participants interact with each other less frequently.

Protocol

Step 1

Introduction of Others

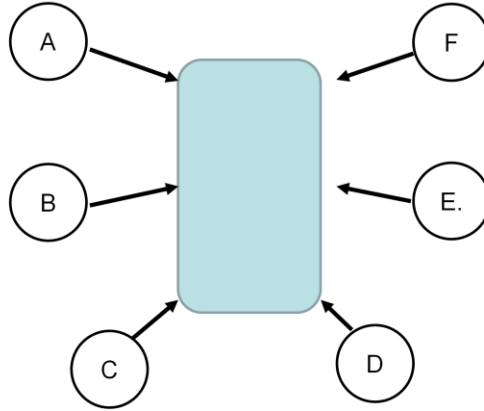
Form pairs and partners mutually introduce themselves
(for about one minute).



45

Introduction of Others

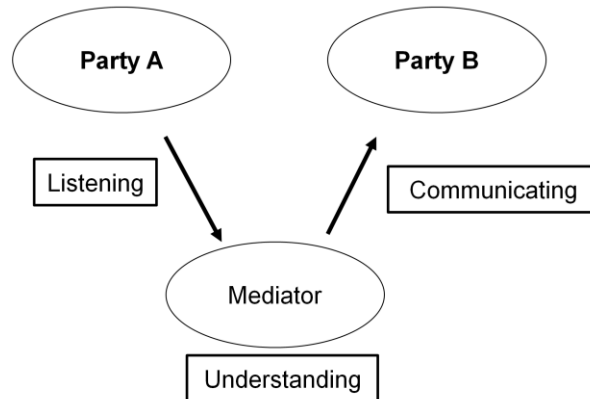
A introduces B to all the other participants based on what A heard from B.



[Tips to Trainer]

The trainer should briefly show it to those who could not understand it fully.

Meaning of Introduction of Others Structure of Mediation



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[Tips to Trainer]

When you carry out the work, please fully explain the aim.

Usually, the explanation is as follows:

Introduction of another person shows a scene in a mediation.

In mediation, the mediator will summarize A's statement and convey the summary to B.

However, this is different from when A talks directly to B. In other words, the mediator's bias is included.

In the case of the sitting together in the same room (both parties present type), which is explained later, there is not such a harmful effect, but in the case of the sitting separately in different rooms, the bias may come in, or the mediator may be tempted to use this difference (this is a so-called telephone game in which the mediator's subjective view is included, and hence the mediator also feels the temptation to control the information).

I wanted you to realize this. Mediation has already begun.

2. Recognition of Sense of Purpose



Sticky Note

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[Tips to Mediators]

When mediation training is conducted, various people are mixed as the participants.

Those who participate in the training for the first time, those who have already received a considerable degree of training, those who do not have any practice, those who are abundant in practice, those who are so-called citizens and those who are so-called experts (lawyers, etc.).

People with different experiences and qualifications gather together.

In such a situation, you need to understand what kind of people are there in order to understand the participants.

At that time, it may be a good idea to have each one introduce himself/herself, but we will ask the following questions.

Recognition of Sense of Purpose

1. This training includes many participative and experiential activities. It is important to tackle each of them earnestly in a relaxed way.
2. This session aims to recognize the participants' sense of purpose and share it. The participants' clarification of their own problem consciousness and understanding of the other participants' problem consciousness are helpful for future study. This session also aims to visualize each participant's way of thinking, opinions, and way of feeling and share them in a certain scene on the premise that the sense of values and problem consciousness differ among the participants.
3. We distribute blue and red tags. Write on the **blue tag "eagerness and expectations for what you would like to learn or come to know in this lecture," reflecting your comparatively positive feelings.** Write on the **red tag "anxiety, uneasiness, and fear concerning participation in this lecture," reflecting your negative feelings.**
4. First, (1) **introduce yourself briefly in the group** and (2) **have a short discussion.** Then, (3) **write your feelings on the tags.** The tags will be collected and (4) **stuck to vellum,** which will be put up so that the tags can be checked during the training.
5. When writing your feelings on the tags, pay attention to the following:
 - Write one thing on one tag (if you run short of tags, ask us for more).
 - It is unnecessary to write your name.
 - Attempt to write them as concretely as possible.
 - Question us whenever there are unclear points in the process.

[Tips to Trainer]

Participants may be a bit offended by this training.

We do not have to be asked such questions, since we take time from our busy schedules to participate, or what should be offered is a trainer's issue, not a participant's, etc., etc.

However, since there are surprisingly some participants who join the training from force of habit, checking your purpose once again will become a self-analysis through determining the goals for the few days or expressing your anxiety.

The thing to watch is to **write concretely.** When people are asked a question that requires them to think, they tend to give a perfunctory answer (for example, want to refine skills, etc.). Please, however, try to answer it in a bit more detail (for example, what should be done when both sides talk about individual circumstances at the initial stage of mediation and it is difficult to proceed to the main theme, etc.).

If you do not have sticky notes, you can make an arrangement for the participants to write it in notebooks and have them make oral presentations.

Worksheet

What do you “expect” from this training and what “anxieties” do you have about this training?

Expectations	Anxieties

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[Tips to Trainer]

This training has three objectives.

The first one is the participant’s objective. Have each participant verbalize his/her purpose (expectations and anxieties) and set goals again.

The second one is the effect on other participants. There are those who have the same expectations and those who have different expectations; similarly, there are those who have the same anxieties and those who have different anxieties.

The objectives of all the participants will be shared through understanding this.

The third one is the effect on the trainer. By knowing participants' expectations and anxieties, the trainer will customize the coming training to match the participants.

At the same time, this is also a basis of evaluation for the trainer. If expectations have increased and anxieties have decreased by the end of training, the training has been successful.

However, in the opposite case, it may be a failure (although this cannot be said unconditionally, since there is a case where a new anxiety surfaces).

Distribute Later

What do you “expect” from this training and what “anxieties” do you have about this training?

Expectations	Anxieties
<p>I would like to understand the parties' feelings and strengthen my receptiveness.</p> <p>I would like to summarize what a party said (problems) and communicate it to the other party.</p> <p>How to communicate with a party who has a strong sense of self-assertion and his or her own rights and has no ears to hear what others say: I usually feel such a party's arrogant speech and attitude; I would like to learn what I should do to create a relationship of trust.</p> <p>Although I have taken this type of training several times, it is difficult to use what I learned from such training in actual mediation cases. I would like to accumulate attempts until it emerges naturally.</p> <p>How should I talk to the parties to elicit sympathy from them? I often receive comments to the effect that when I communicate a party's assertion to the other party, I only consider the asserting party's feelings. I would like to be good at communicating the gist. And more other things.</p>	<p>I have a doubt that “it is all right to do nothing if both parties reach an agreement.” I would like them to reach an agreement that fulfills social justice (I feel stress when the parties reach an agreement in spite of the existence of either party's disadvantage).</p> <p>Can today's lecture be used for actual mediation cases?</p> <p>I feel shamed if my lack of experience (or my lack of knowledge or wisdom) comes to light.</p> <p>What should I do if a discussion is held about a matter unfamiliar to me? Can I keep my concentration for many hours?</p> <p>I worry about my power of expression. For example, can I get into a party's role during role-playing? I am the worst at taking participative training. I would like to tackle today's lecture squarely and become fond of this type of training by the end of the lecture. And more other things.</p>

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[Tips to Trainer]

This is a worksheet indicating "Expectations" and "Anxieties" from training mainly attended by lawyers. Please use this as a reference.

3. Theories of Mediation

Invisible Power

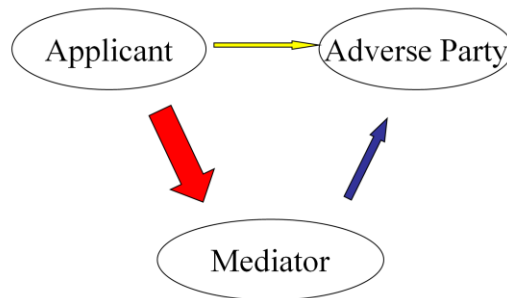
Dynamics

[Tips to Trainer]

In mediation, invisible power works between parties and between the parties and the mediator.

This will be easy to understand from the knowledge of psychology.

The 1st Phase of Mediation (Sitting together in a room)



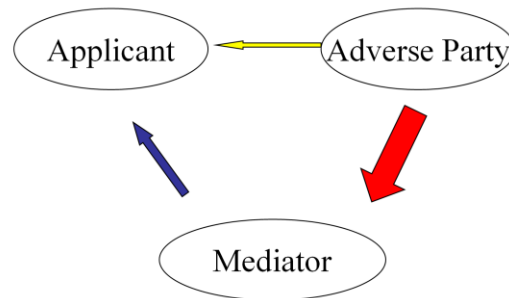
54

[Tips to Trainer]

In the case of mediation with the parties sitting together in the same room, when hearing the circumstances from the applicant, for example, the applicant does not address his/her own assertion to the adverse party from the beginning (although there are cases like that), but first seeks the mediator's understanding, such as "Mediator, I have done the right thing and my claim has good reasons, while the adverse party cannot be justified and has no ground. So the mediator should strongly assert my reasons to the adverse party." Since the adverse party is in the same room, it is natural that the adverse party "gets angry" and this situation is sometimes likely to lead to irregular remarks or irregular behavior.

At this stage, the mediators will patiently listen to the adverse party. From the adverse party's view, the relationship with the mediator who is trying to listen to the (seemingly) unjustifiable remark by the applicant is on the verge of falling into a "crisis."

The 2nd Phase of Mediation (Sitting together in a room)



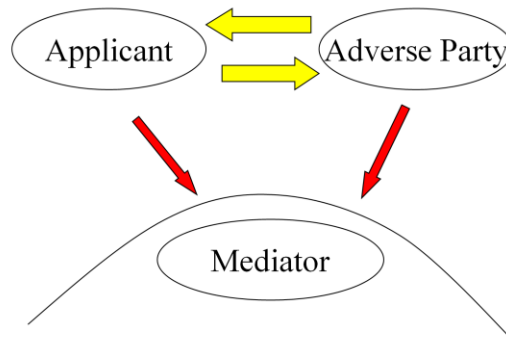
55

[Tips to Trainer]

Now, it's the time for the adverse party to speak. The adverse party also does not address his/her own assertion to the applicant from the beginning (although there are cases like that), but first seeks the mediator's understanding, such as "Mediator, I have done the right thing and my claim has good reasons, while the applicant cannot be justified and has no ground." Since the applicant is in the same room, the applicant "gets angry" and this situation is sometimes likely to lead to irregular remarks or irregular behavior.

At this stage, the mediators will patiently listen to the adverse party. From the applicant's view, the relationship with the mediator who is trying to listen to the (seemingly) unjustifiable remark by the adverse party is on the verge of falling into a "crisis."

The 3rd Phase of Mediation (Sitting together in a room)



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[Tips to Trainer]

In the mediation with the parties sitting together in a room, an important aspect is how the mediator can withstand this scene (and actually enjoy it if the mediator has lots of experience).

At the beginning, the adverse party will not listen respectfully to what the applicant says. However, it can be heard, since they are sitting in the same room. Even this alone is important.

Since it is promised that the adverse party's turn will come and the adverse party can hear what is being said despite not being eager to listen, the situation changes slowly.

If the mediator is skillful, he/she sometimes rephrases what the applicant has said and conveys it to the adverse party.

The mediator should accurately express the applicant's assertion and rephrase it as easy-to-accept words to the adverse party such as "What the applicant says is ..., isn't it?" and "Can I rephrase what the applicant has said as ... " (paraphrasing). This technique will be explained again. As a result, the applicant realizes what was heard, and the adverse party gets a better understanding.

The same thing is reflected in listening to the adverse party's story. Trust and neutrality as a mediator in a relationship which has been temporarily in crisis is not favorable to the applicant or at the applicant's side, but the same is true with

respect to the adverse party and the applicant. A mediator expresses it as "treating the parties with respect as equal human beings" by which the parties should treat the applicant and the adverse party "as equal human beings." Namely, it is the process of noticing that at the same time that the applicant has certain assertions, the adverse party also has assertions through the mediator "playing the model."

By doing so, it is often seen that the mediator's role disappears, and the parties begin negotiations on their own initiative. This is the magic formula of voluntary negotiation assisting (promoting) type mediation.

In many cases, the mediator cannot tolerate the "risky balancing on a wall" which is the situation that this trust and neutrality has compromised, leading that the mediator scolding the party who has said too much or may give up mediation with the parties sitting together in a room.

Concern & Sympathy

[Tips to Trainer]

Concern is like a subjective direction attributed to external things, resulting from an objective relationship with the case. Sympathy is intrinsic (you may think that).

First of all, let's take an example of the relationship between a seller validating a sales contract and the buyer invalidating the sales contract.

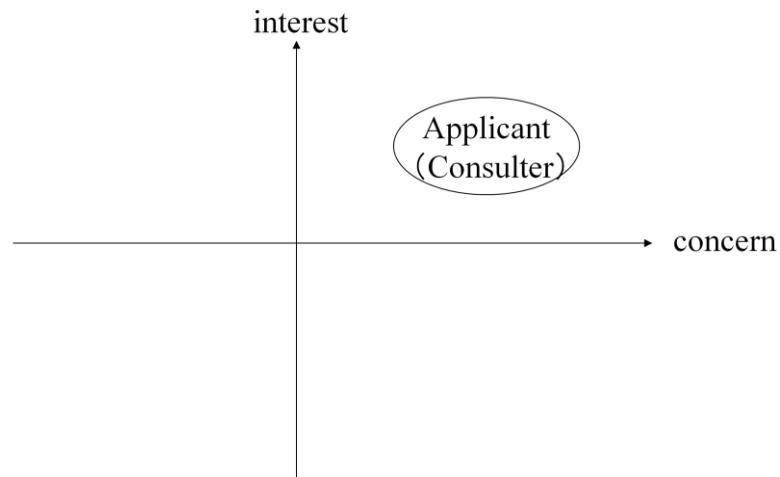
The parties involved in the trading must be interested in knowing whether the buying and selling is valid, whether there is a delivery obligation, or whether there is a payment obligation. Interest comes from the nature of the dispute and it makes us have interest.

Therefore, we also have mobilization and incentives to resolve (advantageously if possible) from our interests. This is the applicant.

On the other hand, how about sympathy? Sympathy is the movement of one's mind towards others, mainly a positive affection of mind.

Mediation is an activity of a third party (mediator) to place the applicant with interest (a person who intends to actively use mediation) and the adverse party who is not interested (in dispute solution) on a level playing field, to cause them first to be interested in solving the dispute, and to support the parties to have sympathy toward each other while gradually putting out the thought that they want the other party to understand themselves.

Interest in the Dispute & Concern to the Dispute (& its Resolution)



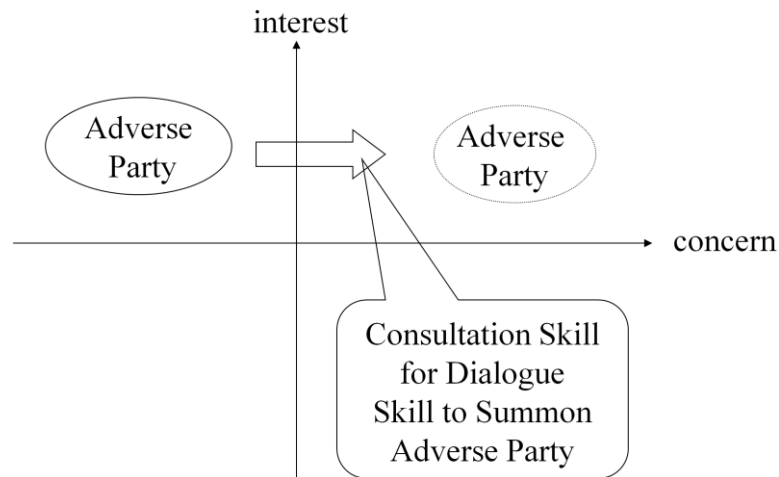
58

[Tips to Trainer]

The applicant (consulter/visitor) has interest (profit and loss) with the case (dispute). Such parties are called Interested Parties in English.

They are also interested in the case (resolution of dispute). The applicant has a need to change the present situation.

Interest in the Dispute & Concern to the Dispute (its Resolution)



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[Tips to Trainer]

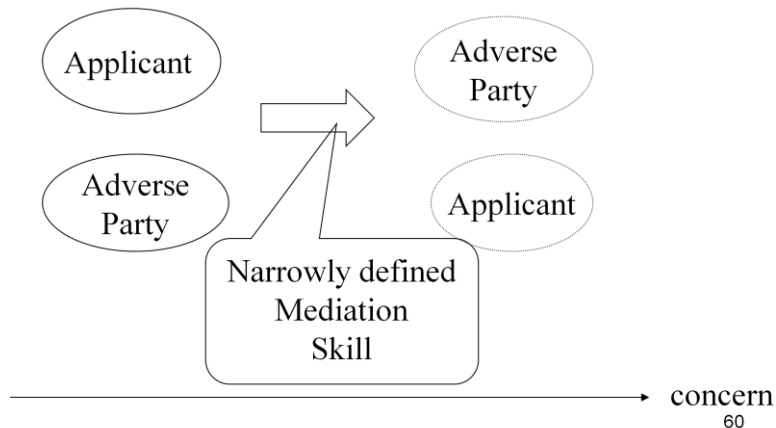
However, the adverse party has interest in the case, but he/she does not have interest in (dispute resolution) in the case (often a person who caused damage, as there is no need to change the present situation).

First of all, if the adverse party does not have interest, the dialogue will not be established with the other party.

Therefore, we will encourage the adverse party to get interest in the dispute, preferably dispute resolution. This may be done by an arranger (e.g. an administration office of a center or court), or there may be scenes where a mediator who has been assigned in advance makes contact with the adverse party.

In a mediation which has no power to enforce the adverse party to attend, it is difficult to urge attendance.

Concern to the Adverse Party of the Dialogue

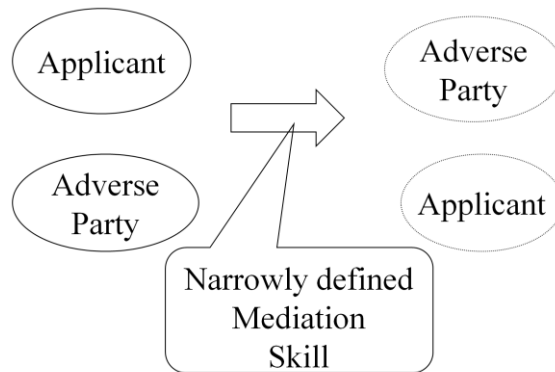


The adverse party is present, which establishes a relationship of three parties. However, even if both parties have interests in the case (although at different levels of strength), they will not make any progress toward dispute resolution on their own.

This is because the adverse party does not have interest in the other party. A person who is not interested in the other party is not interested in the other party's assertion.

Mediation Skill is narrowly defined as the ability to move this.

Develop from “Concern” to “Sympathy”



concern
61

Whether this concern is empathy for the partner is the key to success in mediation.

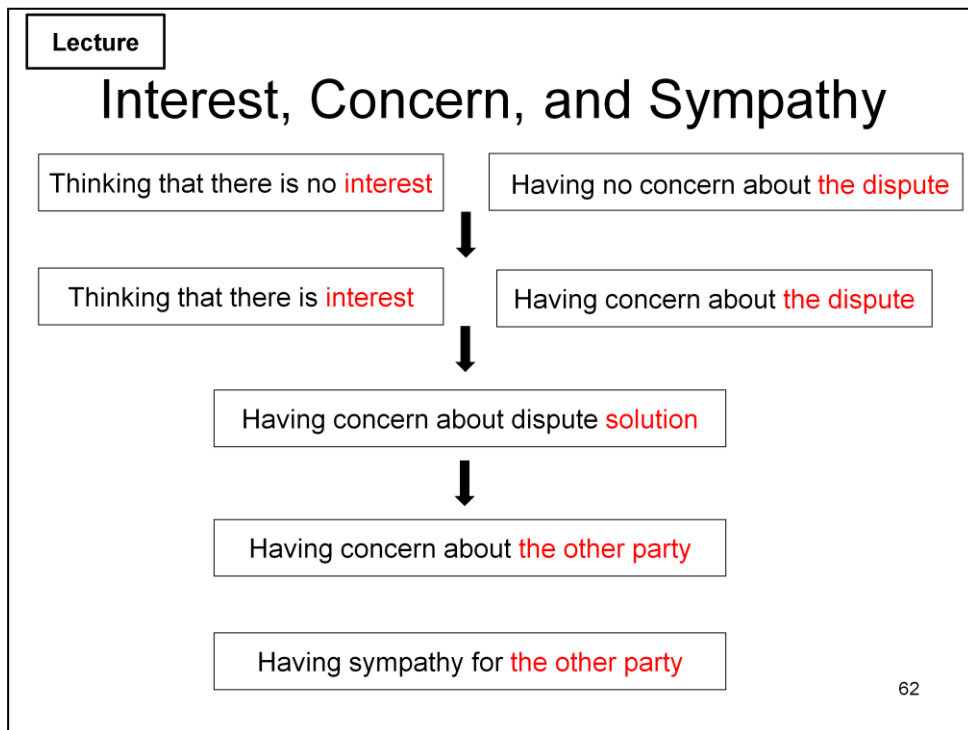
Of course the parties are involved in a dispute. For a party who has difficulty to have even interest in the other party, it is a difficult task to have sympathy towards the other party.

However, the mediator acts in mediation and leads the parties to it (have the parties realize it) by showing it to the parties.

While the mediator has no interest, the mediator will show sympathy to the parties through understanding the merits of dispute resolution by the two persons, supporting the parties with interest to solve the dispute, listening equally to the parties and having interest in both parties.

It is expected that the party is empowered by saying his/her assertion which is listened to, has composure by being listened to and sympathized with, has interest in the adverse party in an equal position, knows the position of the adverse party, and has sympathy toward the adverse party to the extent possible.

Sympathy will change the parties.



[Training Tips]

If possible, you may want to explain by a specific example so that this movement of mind and activities of the mediator can be understood.

Let's think about it in a hypothetical case where Mr. X (applicant) loaned money to Mr. Y (adverse party) who did not repay the money.

Mr. X loaned 1 million yen to Mr. Y from the savings that Mr. X had saved up by tightening his budget. However, after that, Mr. X needed the money back immediately since his business went wrong, but Mr. Y turned down the request.

First, Mr. X has interest in the dispute (trouble over loaning and borrowing the money) and also has interest in its resolution (repayment).

Mr. Y has interest in the dispute, but he is not interested in its resolution (repayment, etc.) (it is all right for him to keep the current status).

Therefore, it is important for Mr. Y to be interested in solving it. First of all, Mr. Y should attend the opportunity for a discussion. The regional center is required to seek cooperation from the adverse party at the stage of this calling out.

Even if Mr. Y comes to the opportunity for a discussion, Ms. X does not have interest in Mr. Y and Mr. Y does not have interest in Mr. X. What the mediator will do there is work that causes each party to have interest in the other party.

The mediator should set up the opportunity so that each party can talk about

the circumstances that he sees and what he thinks.

For example, the circumstances that Mr. X needs money as soon as possible since his business did not go well and that Mr. Y is close to getting profit now with the money spent in his business can become known for the first time after the dialogue has been established.

Here, each party should understand, “as I have circumstances, the other party has reasons or circumstances (regardless of whether I accept it or not) as well.”

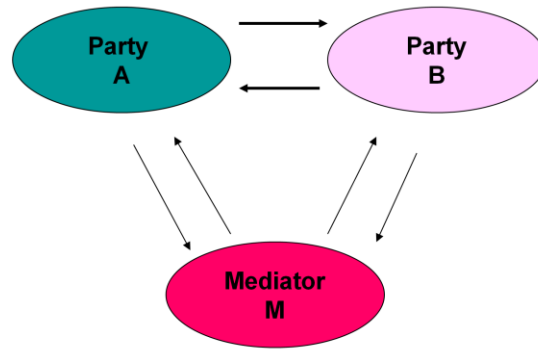
Furthermore, the mediator will be involved with the parties and ask about how to think about the circumstances of the other party. The mediator shows sympathy with the circumstances of the parties, and each party may also indicate sympathy with the position of the other party.

In this way, the parties will change through confronting reality, making the other party and the mediator mirrors and walls depending on the situation.

4 Approach to Mediation

Counsultation, Negotiation, Mediation

Structure of Mediation (Dialogue with the Participation of a Third Party)



To Explain Mediation in Comparison with “Trial”

“Alternative” in ADR (**Alternative** Dispute Resolution) shows an idea that ADR is s an alternative to a trial.

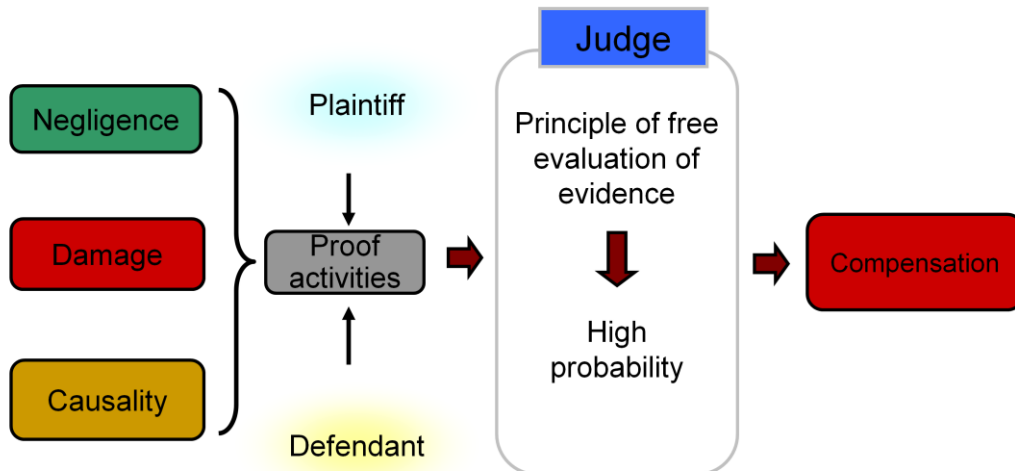
65

Since court cases became over-crowded around 1990, ways to solve a dispute involving a third party have been explored to avoid or substitute for a court case, and many methods (mediation, arbitration, etc.) were introduced as ADR. In this way of thinking, we need to explain a mediation as differentiated from a "court case."

[Training Tips] This part can be omitted.

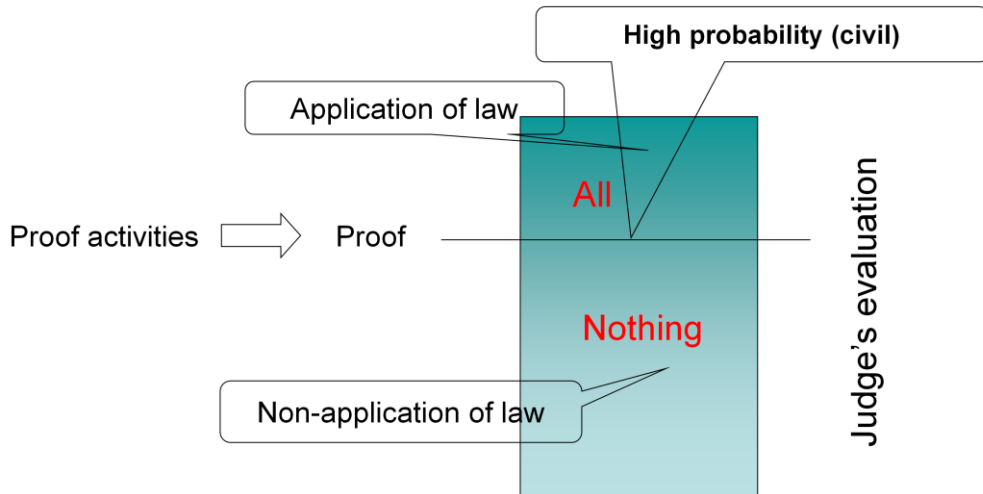
Requirements for Claims for Damages

Structure of Proof of a Default or Unlawful Act



A plaintiff who suffered from a tort such as a traffic accident is required to convince a judge by showing a causal relationship (relationship such that if it did not exist, the damage would not have been caused) with high probability by evidence (this is called conviction). This is the structure of a court case/litigation.

Proving Activities and Proof



The parties will conduct proving activities for a judge so that the judge will have the conviction of proof level concerning the existence of required facts (main facts) which will become the basis of the legal effects. While application of relevant laws is allowed if the judge reaches the conviction of proof level, application of the laws is not allowed if it does not reach the level (doubtful), and the disadvantage of the parties arising from this is the burden of proof. While the conviction is gradational, a lawsuit should spell out in "black and white" (need to draw a conclusion), so such a line is drawn systematically in this way.

Institutional Framework of Judicial (Civil) Trial

Tradition of rhetoric since ancient Greece

Application of legal standards to concrete facts

Establishment of concrete facts in the past

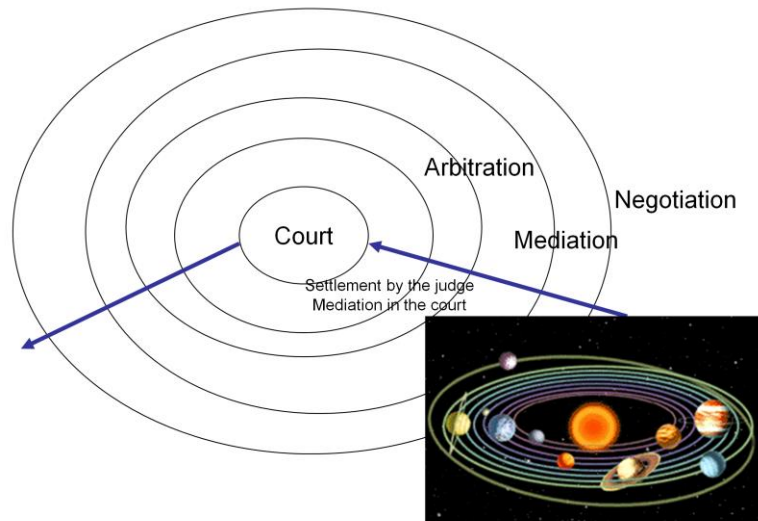
Ex-post and individual settlement of disputes in the past

Dichotomous thinking

Court cases have a tradition of rhetoric from the eras of ancient Greece and Rome, and it is said that it has been built up in conjunction with court arguments.

Its predominant features are pointed out as indicated above.

Thoughts of ADR-Court-centered Type-



ADRs are positioned like planets centering around a court case, which is the main way of thinking among lawyers.

And, this idea leads practitioners' attitudes towards mediations.

1. It is an implicit premise that a court case is the best solution (arrived at in the modern era). Therefore, mediation, etc. is evaluated as a subordinated judicial solution (it is ridiculed as Secondary Justice).
2. Therefore, a mediation should also be administered in a similar manner to a court case (laws and evidence are important, a third party should lead, etc.), or a lawyer should become a mediator in a mediation.

Modern mediation and training do not adopt this way of thinking.

To Explain Mediation in Comparison with “Negotiations.”

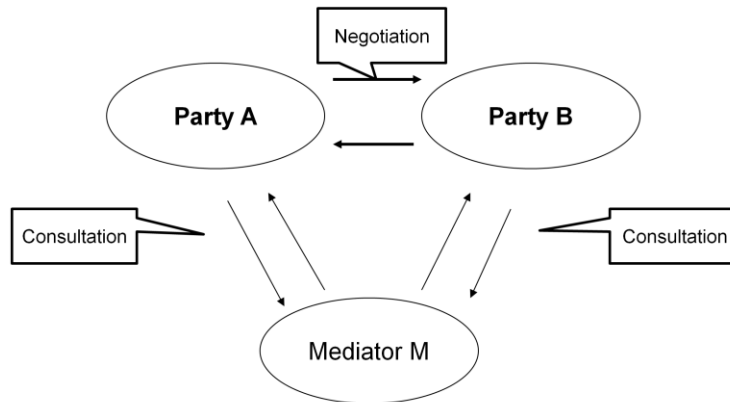
Mediation is a dispute settlement method whose value is different from the value of a trial or arbitration.

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Explaining mediation in comparison with negotiation should be consideration from the viewpoint of third party support in line with the dispute settlement behavior of the parties. It recognizes that the unique value of mediation cannot be achieved in a court case.

Lecture

Structure of Mediation (Dialogue with the Participation of a Third Party)
Two Consultations, One Negotiating Session



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What a mysterious structure mediation is. I am attracted by the productivity of three parties, rather than two parties.

[Tips to Trainer]

In a mediation with the parties sitting together in a room, the relationship between the party A and the mediator looks like "consultation."

At the same time, the relationship between party B and the mediator looks like a consultation.

However, the parties can change the scene to face-to-face negotiation, which can be considered a negotiation via the mediator.

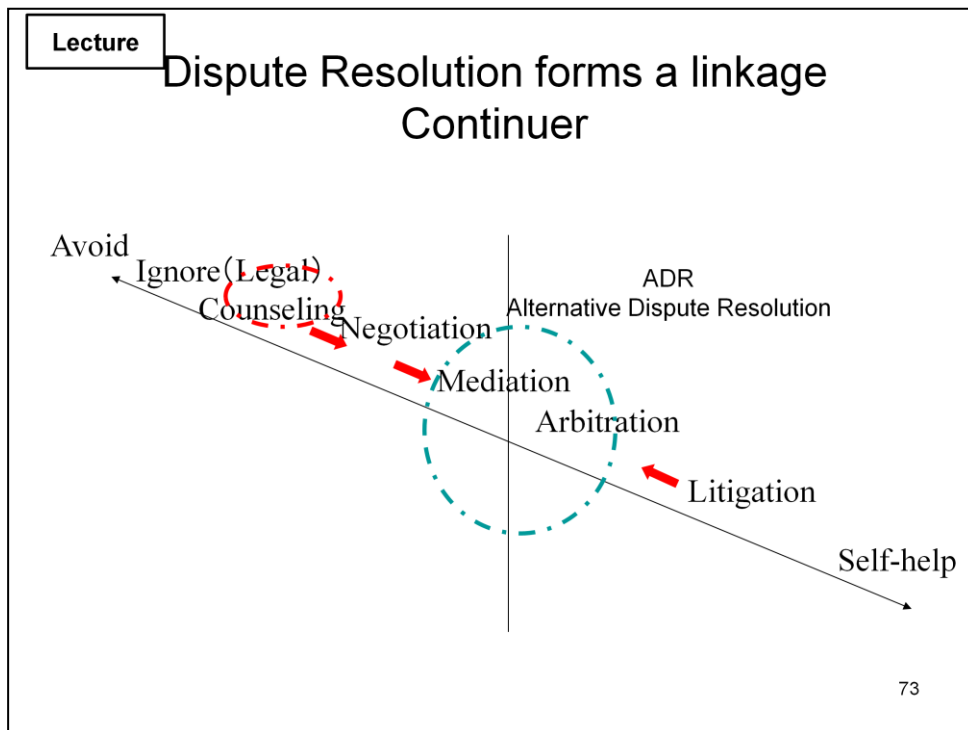
That is the relationship of two consultations and one negotiation.

Example of a Resident's Consultation

- Although Mr. A (a 19-year-old single man) worked as a part-timer for Light Freight Transport Company B for about 10 months, he was suddenly dismissed one month ago. Section Chief C in charge of labor affairs for the Company B explained the reason: because the volume of distribution decreased, the number of delivery men became more than needed. However, Mr. A had worked in earnest and liked to do the job. Because he could not accept the dismissal, he protested against Section Chief C in vain. Mr. A came to the city government for consultation.

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Let's do it in this case. What kind of advice do you give to Mr. A who consults with you?



Since the above is a schematic diagram, first of all, let's start by asking students the questions indicated below.

[Tips to Trainer]

Explain the case as described previously in the PPT. Well, what do you do? For the company and for Mr. A.

When receiving consultation of the case like the above, what kind of procedure/process do you recommend along with advising on the content at the same time?

Negotiation? Negotiation is quite difficult, as the other party does not express real intention.

Then, immediately lawsuit? This takes money, effort, and time.

If you have a mechanism like a convenient mediation here and there is a competent and reliable mediator, what about it?

(i) There may be a way of avoidance as a mature person's attitude (taking another way (for example, making an effort to change jobs) instead of confronting the company).

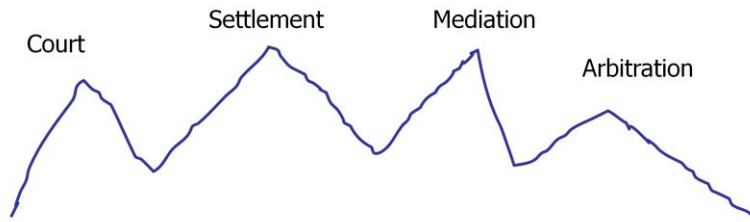
(ii) Mr. A may consult with experts.

(iii) However, since there is an adverse party, Mr. A may negotiate with him/her (there is a case where proxy negotiation is conducted by asking a lawyer).

There, thoughts come up all of a sudden. If (ii) and (iii) did not go well, we will not consider (v) litigation immediately.

Prior to going with (v), we have ADR in which a neutral third party is involved and tries to solve the dispute, and it is mediation here.

Thoughts of ADR-**Non Court-centered Type-**



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If so, mediation is required to have values that cannot be achieved in a court case.

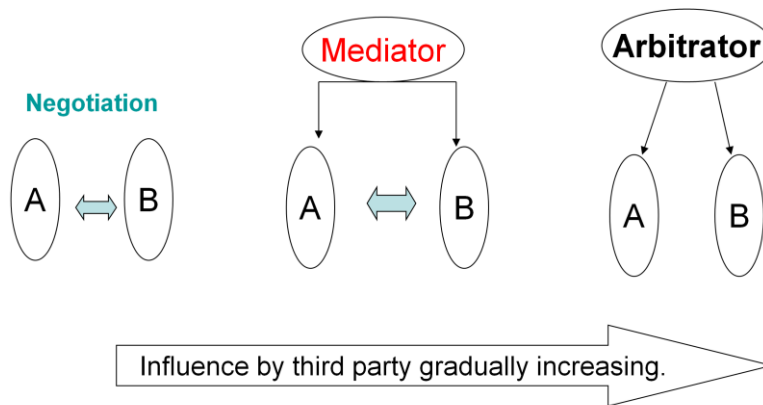
[Tips to Trainer]

It would also be useful here for beginners to think about the benefits and disadvantages of a court case and mediation.

For a court-attached mediation, it is necessary to compare a court case, court-attached mediation, and private mediation.

Deep analysis not like superficial analysis, such as saving money and time would be desirably required.

Influence by third party Outcome and Process



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Cohen : 28p~

When a third party is involved between the parties, the process will be affected in some way.

However, in order to understand the type of mediation, such explanation is possible here.

[Tips to Trainer]

In a negotiation, the parties A and B will decide whether they agree to hold a negotiation, what kind of negotiation will be done, and what kind of content should be put together.

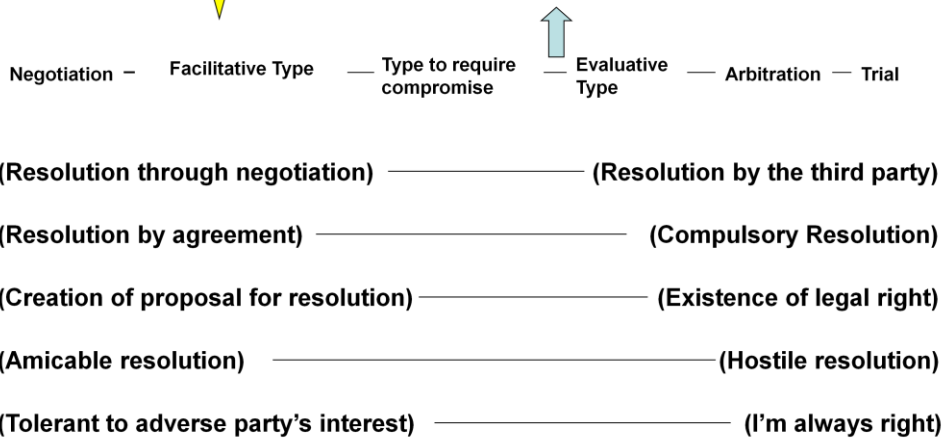
However, in an arbitration, the arbitrator mainly affects the results.

On the other hand, a mediator can influence how to proceed with the negotiation between A and B; that is, the process of discussion, or can influence the content (result) of the agreement between the parties.

Various Methods of Dispute Resolution



<Mediation generally defined>



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So, what kind of things do we think of as mediation? The type of mediation everyone thinks of is such that a mediator seeks a compromise between the parties (compromise seeking type), a mediator states opinions, or a mediator indicates the result of case evaluation (evaluation type).

However, what is classified as modern mediation here is to restore voluntary negotiation facing difficulties between the parties with a mediator's support (voluntary negotiation assisting type).

[Tips to Trainer]

If possible, I would like to play these three in front of you. To that end, scripts of "evaluation type," "compromise seeking type," and "voluntary negotiation assisting type" are developed for a simple case and played, or what was previously played is recorded, and participants watch it and notice "good parts" and "bad parts."

5. Types of Mediation and their Structures

Types of Mediation(Model)

	Evaluative	Arbitrative	Facilitative
Parties are	Hostile, Logical	Objective	Subjective
Merit	The issues are concluded by an expert like a judgement.	Promptly removing the disputes by using the authority.	Satisfaction led by the voluntary resolution.
Demerit	Parties stay in the hostile relationship.	Cannot reach the root causes of the dispute.	Patience is required. Agreements are not always made.

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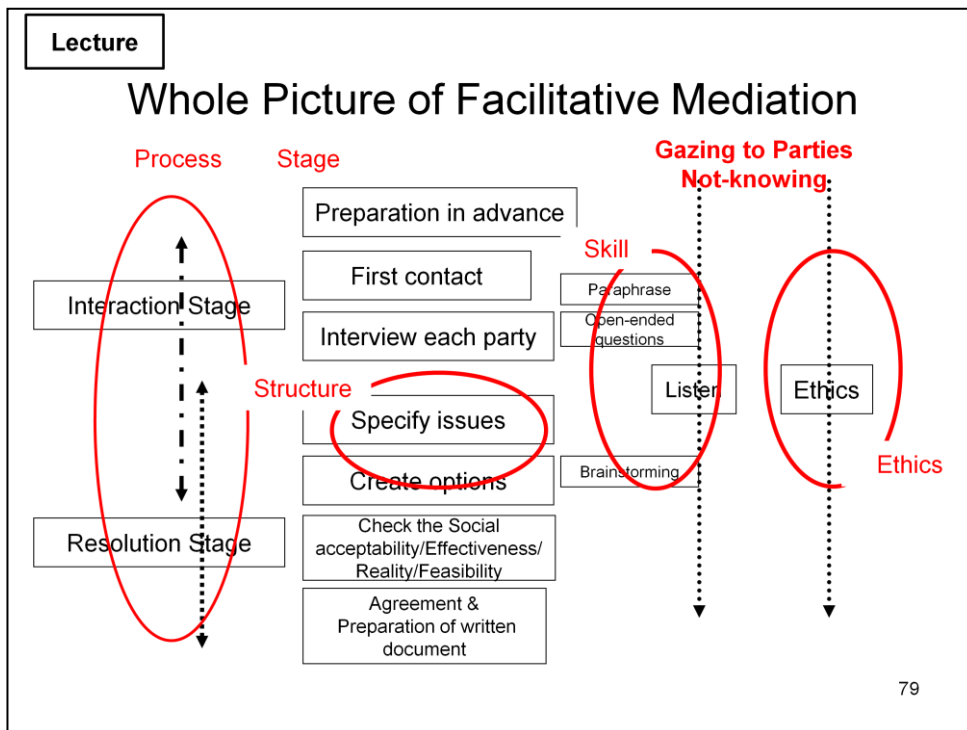
In theory, in addition to mediator-centered evaluation type and compromise seeking type (corresponding to consolidation in English), here it is possible to classify mediation as a parties-centered facilitative type and a voluntary negotiation assisting type.

Each has advantages and disadvantages, and the types have a complementary relationship.

In addition to the conceptual classification as described above, it is necessary to consider practical advantages and disadvantages.

[Tips to Trainer]

Please also think about creating each scenario, playing it, having the participants actually feel it, and pointing out strengths and weaknesses.

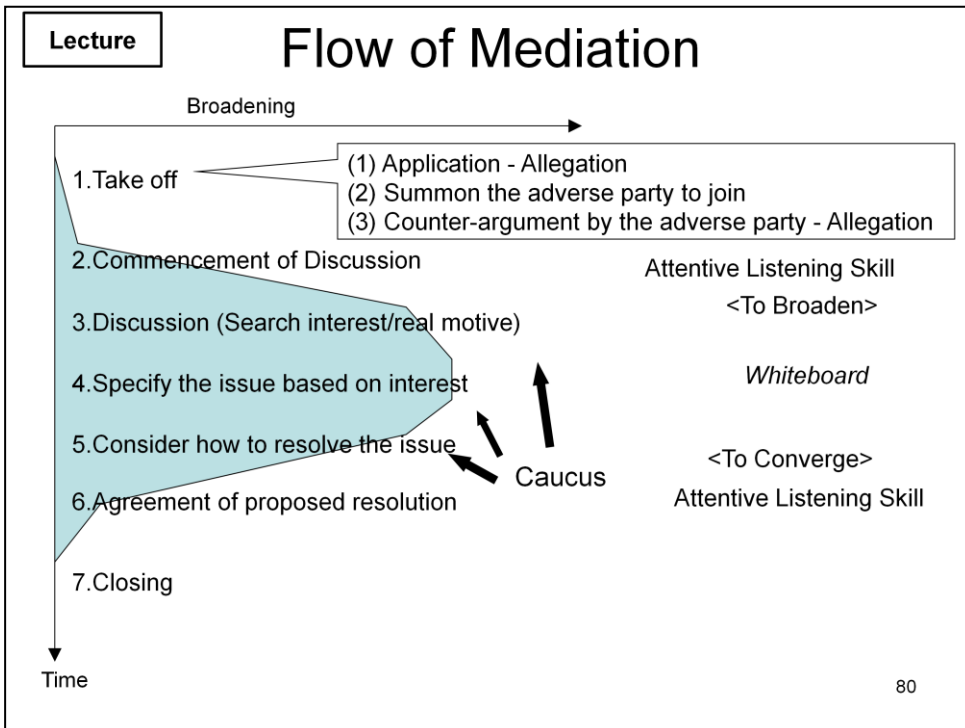


Facilitative mediation is also referred to as process mediation.

The mediator steadily assumes the process of discussion which cannot be seen by the parties, and intervenes in the process of discussion and advance it using skills and ethics appropriate for each.

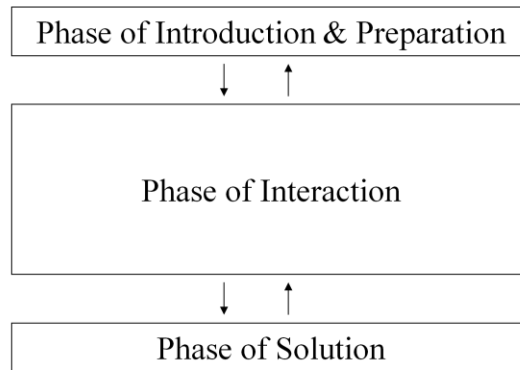
Red circles indicate a set of training.

In this educational material, "process," "stage," and "phase" are used almost synonymously.



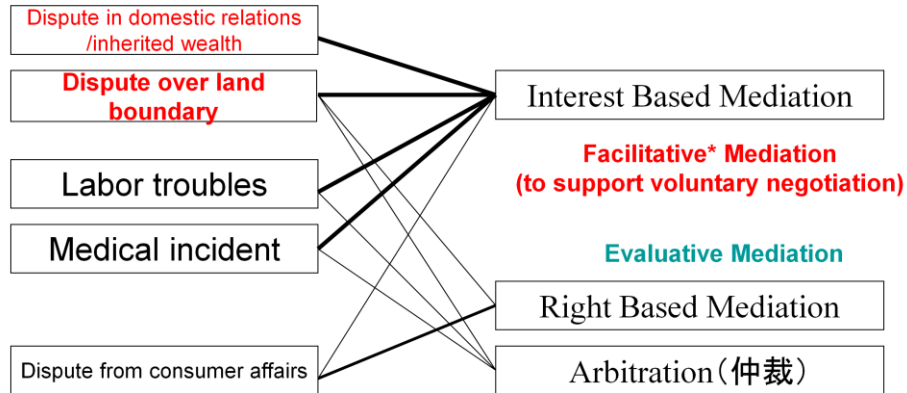
This a schematic diagram showing that discussion is broadened by attentive listening, specifying issues, and converging by solving the issues.

Phases of Mediation



This shows a structure of mediation as several PHASEs (phases or layers). If the phase of exchanging each information (including emotions) is enriched compared to the introduction phase, the phase of solution also becomes enriched, and in reality, how to enrich the exchange phase will decide the fate of mediation.

Matching of Field and Model of Mediation



There is "compatibility" in mediation. Facilitative mediation is used for disputes over land boundaries and neighboring conflicts and disputes between families. In such cases, it is usually a matter of adjusting the relationship.

Meanwhile, it is said that evaluation type mediation (i.e. Court case) is more efficient for types of disputes such as labor troubles and medical incidents in which there is imbalance in power relations and bias of information between the parties.

The same applies to consumer disputes (between companies and consumers).

However, even in labor troubles or medical incidents, there are many cases where mutual relationships and trust relationships based thereon exist in their roots, and promotional mediation is used in such cases.

It seems that facilitative type is basically used and evaluation type is used as an exception, which is a general tendency.

6. Mediation & Trial

General Characteristics of Trial and Mediation

	Mediation	Trial
Advantages	<ul style="list-style-type: none"> • Inexpensive • Prompt and short-term • Easy to use • Closed-door • A lawyer's assistance is unnecessary • Highly possible to keep the relationship between the parties • The parties take the leadership in proceeding with the procedure • Possible to reach an agreement flexibly 	<ul style="list-style-type: none"> • Having legal force • Open • Possible to gain clear judgment • Highly objective • Possible to file an appeal
Disadvantages	<ul style="list-style-type: none"> • Having no legal force • The other party may not agree to apply mediation • It is possible that no agreement is reached • Fact finding is not strict • Difference arises among mediators • The process tends to become unclear 	<ul style="list-style-type: none"> • Expensive • It takes a lot of time • Amateurs cannot understand • Confidential information may be leaked • The parties remained antagonistic • A lawyer's assistance is necessary

Because some trials, such as those for small-sum lawsuits, do not necessarily need a lawyer's assistance, the above-described classification does not necessarily apply to all cases.

7. Court Mediation and Private (Community) Mediation

Comparison between Court Mediation and Private Mediation

	Court mediation (Civil mediation, domestic mediation)	Private mediation (Professional associations, industrial associations)
Advantages	<ul style="list-style-type: none"> • Authority (parties' feeling of satisfaction) • Authority (enforceability, fact investigation) • Long history • Rich experience • Inexpensive * • Judge's participation (ability, experience) • Organizational handling (secretary, family court investigator, nurse's office) • Equipment (emergency buzzer, magic mirror for observation of children, etc.) • Storage of "case studies," "mediation reports," etc. 	<ul style="list-style-type: none"> • Almost no time limit (Saturday, Sunday, nighttime, etc.) • Possible to make time intervals closer • Almost no limit on place (convenient place for parties; parties disliking going to court) • Easy to follow application process • Careful progress by parties themselves • Face-to-face mediation is possible. • Quality of mediator • Easy to make new attempts
Disadvantages	<ul style="list-style-type: none"> • Parties cannot choose a mediator. • Time and place are greatly limited. • Effectiveness is strongly demanded. • In most cases, caucus mediation is adopted. • There are few people who used court mediation. 	<ul style="list-style-type: none"> • Almost all things are insufficient, including budget, authority, experience, equipment, and organizational handling.

* It is impossible to generalize about expenses. For example, private mediation may be free of charge. In addition, if attorney fees are necessary, it is difficult to make mediation inexpensive, whether court mediation or private mediation.

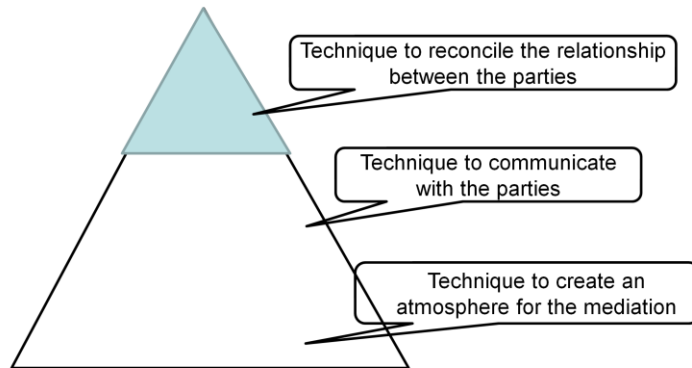
Work

8. Techniques to Communicate with the parties

Consultation requires skills

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Technique for the conciliation in family-related issues (Case Study No.325, 37-74 page, Kyoto Family Court)



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Evaluation mediation (CHOTEI) has been used in court-attached mediation in Japan for a long time, and the translated word the Supreme Court applies to it is "conciliation," rather than "mediation."

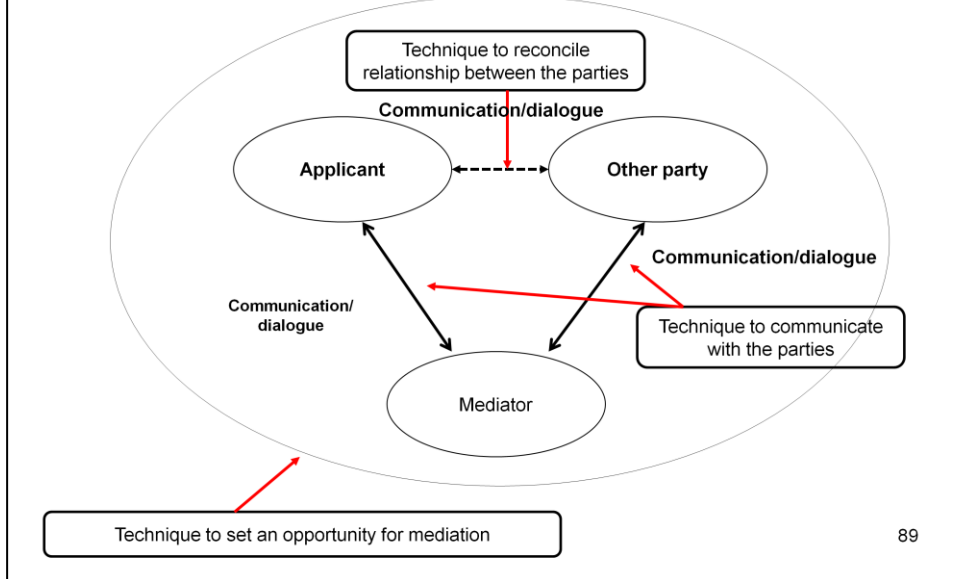
Therefore, training to improve skills and to coordinate the parties' relationship has been avoided, and, rather, emphasis has been placed on provision of information on substantive laws which is the basis of the evaluation.

However, there are many conciliation commissioners, especially domestic relations conciliation commissioners who have privately received external training or felt the necessity of training, since relations adjustment technique is required for actual conciliation.

For this reason, volunteers of the Kyoto Family Court have proposed techniques divided into three processes or scenes.

Lecture

Technique for the conciliation in family-related issues
(Case Study No.325, 37-74 page, Kyoto Family Court)



The above is the CHOTEI relation chart indicating the relationship.

Share how you have tried to work better as a mediator and what annoys you to other participants.

You are a professional in consultation.
What you feel annoyed also annoys others.

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Everyone has experienced the scene of consultation (listening to people). And consultation is positioned at the beginning of the parties' dispute resolution activities.

There, the person who receives each consultation is gaining insight. Mr. A and also Mr. B. However, since consultation is a closed space with a client (a client who is a consulter), there is a drawback that each client's insight is not shared.

First of all, let's train to share this.

On the other hand, I think that there are scenes and clients in relation to which each person feels difficult or that he/she is not good at. This is also shared, and first of all, let's share what you thought as having annoyed only you but with which others were also annoyed.

Worksheet

Share what each of you has devised in ordinary times and what annoys each of you.

What annoys you, what you have difficulty in doing	What you have devised

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Show the above and have the participants fill it out.

[Training Tips] Prepare two kinds of "sticky notes" with different colors and have each person write out experience (not correctly oriented) as much as possible.

The method is to write the above frame on a sheet of large-sized paper on which those notes are pasted, or to paste them on a white board.

After that, their contents will be introduced, show sympathy for what annoys a person, and try to take up any small idea or insight.

Distribute Later

Share what each of you has devised in ordinary times and what annoys each of you.

What annoys you, what you have difficulty in doing	What you have devised
<p>People who have their own conclusions and reasons and do not listen to others' opinions</p> <p>People who repeat their assertions without listening to what I say; people who strongly express anger from the beginning of a discussion</p> <p>Listening to an incoherent or irrelevant talk for a long time</p> <p>Because I cannot see the faces of phone callers, I feel anxiety about whether I can understand various offers from their standpoint.</p> <p>When I cannot satisfy the parties' wishes or find any solution due to difference in the way of thinking</p> <p>One-way conversation with a person who is coercive and seemingly logical. I sometimes feel too much sympathy with what such a person says and feel twisted around.</p> <p>I tend to be hasty in seeking a conclusion or a solution and show a hasty attitude.</p> <p>When I have to give an answer about something out of the scope of my decision. And more other things.</p>	<p>Express sympathy with the client as much as possible, select words and keep a neutral standpoint.</p> <p>Deal with the client in a quiet environment in which the client can feel that I am taking care of him or her.</p> <p>Confirm and clarify what the client says, repeating it.</p> <p>When I dealt with a client with a wrong impression, the client's wish was different than I thought, resulting in my bitter experience. If able to hear a client's wish, confirm it.</p> <p>Listen calmly and receptively to what the client says.</p> <p>Tone down your voice. First of all, fully listen to what the client says (only throwing in words of encouragement when the client is speaking).</p> <p>Check whether your understanding is right.</p> <p>Encourage the client to repeat what he or she wants to communicate to you so that you can slowly listen to what the client says.</p> <p>Use words and letters for checking whether you understand what the client wants to communicate to you. And more other things.</p>

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This power point slide is an example, so actually more variety will come out.

[Training Tips] If possible, it would be beneficial to take up some specific 'troubled' cases and discuss experiences of how to overcome them.

If the number of devices that come up is as many as the number of participants, they are not "correct answers" but, this is guaranteed to be "learning."

Let's take a look at some sample consultations.

- (1) a consultation with problems (bad example)
- (2) a well-prepared consultation (good example)

The case is common in both consultations.

Technique of consultation is the basis of all interpersonal communication, and mediation also has a "consultative aspect."

On the other hand, this consultation training has not always been emphasized.

However, I will introduce devised training for enabling you to respond appropriately so that the parties will have a sense of confidence in the consultation which is the first scene for the parties.

So, you actually play "problematic consultation" and "devised consultation" in the same case, which will be seen by the participants.

[Training Tips] While this training requires a person providing advice and a person to consult (client), if possible, it is necessary for the trainer to play a person providing advice. Prepare a scenario to introduce in advance and play it. It would be appropriate that the client will be played by a person from among the participants. Such a work is called a **fishbowl**.

[Inaba's Muttering] The aim of this program is to see "problematic consultation" and "devised consultation," which enables the participants to notice that consultation may vary depending on the response of the person who provides advice. Often, when you look at it, you may notice how your consultation correspondence was the same as what the consultant with problems is doing.

I sometimes notice that a person who thinks he/she is good at consultation in

reality does the same things in the consultation as those of the consulter having troubles.

The Case

- Client (Consulter) “B” is a 30 year-old woman and has two children. She is unemployed. Mrs. B realized that her husband was cheating on her, when she found that an email was sent to his cellular phone from a woman. B is now visiting an attorney “A” for the consultation.
- Find bad points of A’s legal consultation. We shall discuss which point is not good after A’s legal consultation.

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[Training Tips] Let a trainer perform the role of A (lawyer) and a participant act the role of B (client). A scenario will not be handed to the other participants observing this.

After having observed the play, have the other participants write "bad things" on sticky notes.

Distribute Later

Bad Sample

Client (Consulter) walks in the room.

Client: (Standing) Good afternoon. I am B to have your consultation today. How do you do?

Attorney: (Sitting) Nice to meet you. I'm A, an attorney. Please have a seat.

Consultation starts suddenly, getting straight to the point.

Attorney: Then, what's happened?

Client: (Slightly confusing as suddenly questioned,) · · *After an interval, *hemming and hawing, while I am married and the mother of two children, my husband is cheating on me. I am in trouble. I am thinking of divorce.

Attorney: Oh my, infidelity. Why did you think he was cheating?

Client: Why?? Why? You mean reason of cheating? · · *Client looks on, not understanding the point of the question.*

Attorney: You saw something to suspect, didn't you?

★Attorney received her while remaining seated. How does the client feel about the attorney?

★Don't you think it is necessary to think about how they sit, in terms of position and distance?

★Does the client understand the job and role of an attorney? ★Do you think any relationship of mutual trust may exist between the client and a strange attorney in legal consultation?

★In the situation that the client does not understand what an attorney can do and what roles he can play for her and no relationship of mutual trust is established yet, can she talk what she hesitates to speak without feeling psychological resistance? ★The reason to suspect he commits "infidelity" is a really sensitive topic, except in the case where she would like to talk. It is essentially a quite sensitive topic which can only be revealed to a limited close friend. How does client feel if such a topic is asked by an attorney suddenly?

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[Training Tips] The above script is not shown to the participants during actual performance. Let's set up an actual consultation room in a simple way and play out the scene as slowly as possible.

After the performance, let the participants write down "problematic comments, actions, and attitudes" on sticky notes and paste them on a sheet of large-sized paper or white board.

The following are examples of comments:

★ What kind of feelings does the consulter have towards the lawyer who remains seated while welcoming the consulter?

★ Isn't it necessary to think about sitting positions and distance between the two persons?

★ Does the consulter understand the job and role of the lawyer?

★ Is there a relationship of trust between the consulter and the lawyer whom the consulter has met for the first time?

★ Can the consulter talk about what is psychologically difficult to say to the lawyer without any resistance under the circumstances where the consulter does not understand the lawyer's job and the role in the relationship with the consulter, and has no confidence in the lawyer?

★ Isn't the reason for suspecting "cheating" a very sensitive topic unless the

consulter wants to talk about it? Isn't it a matter that the consulter can only talk about with her very best friend? How does the consulter feel when she is suddenly questioned about it by the lawyer?

Distribute Later

Good Sample

(Well-prepared consultation)

Client (Consulter) walks in the room.

Attorney: Yes, please come in.

Client: Good afternoon.

Attorney: (Standing) Good afternoon. I am A, an attorney. (Impression at the first contact affects consultation.)

Client: I am B.

Attorney: Thank you for coming, today. Please have a seat.

Client: Yes.

Attorney: From now on, let me listen to your story, however, can you start now? It looks like you are somewhat nervous.

Client: Yes, yes, I am.

Attorney: So, why don't you take a deep breath to steady your breathing before you start talking.

Client: Yes, I will.

Attorney: Although we talked on the phone, let me listen to your story in a relaxed manner. I would like to confirm a couple of points first.

Have you ever consulted with a lawyer or attorney before?

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[Training Tips] The above is not shown to the participants during actual performance. Let's set up an actual consultation room in a simple way and play out the scene as slowly as possible.

After the performance, let the participants write down "proper comments, actions, and attitudes" on sticky notes and paste them on a sheet of large-sized paper or white board.

Distribute Later

Good Sample

(Well-prepared consultation)

Client: No, I haven't.

Attorney: I see. I am an attorney. An attorney has obligations not to disclose any matter you talked about today to anybody and to keep your secrets confidential. The attorney's job is, as an attorney on behalf of you, to fully support you to resolve your trouble and problem using my ability as a lawyer. In addition, as your attorney, I am prohibited from giving any advice to your husband in his favor, as he may be an adverse party in the dispute.

Client: Oh, really?

Attorney: That's why I will never act in your husband's favor corresponding to his consultation because I have already started your consultation today. Don't worry.

Client: I see. Good. I was afraid my husband may be angry if he finds I have consulted with you.

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【Hints for Training】

The below is a sample of comments.

★ Attorney A told B to "Take a deep breath to steady your breathing" and alleviated her worry. This is a method to make a client relaxed and stabilize her rhythm by taking a pause before moving to the main topic of consultation in which the client tends to lean forward. **There are some methods other than this.**

★ Attorney A explained the attorney's role. The client does not know it well. Think about how you can explain. We shall concentrate to gain credibility in the attorney and to create an atmosphere to speak in relief in the first phase of the consultation. **Do you know any method other than this?**

Lecture

Advanced Skills of Consultation

One More Step Forward to Improve the Consultation

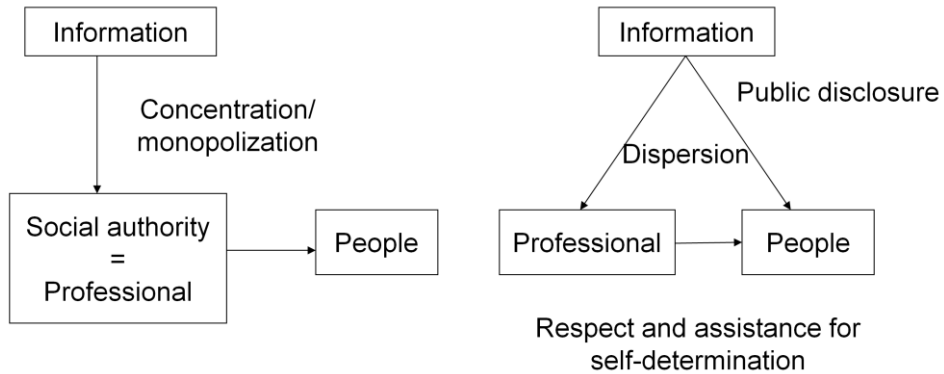
98

In order to advance consultation one step further, we need a training session that causes participants to be aware of the meaning of consultation activities and the points in which the consulter is likely to fall into.

[Tips to Trainer]

Since this part is advancement of consultation, you can omit it.

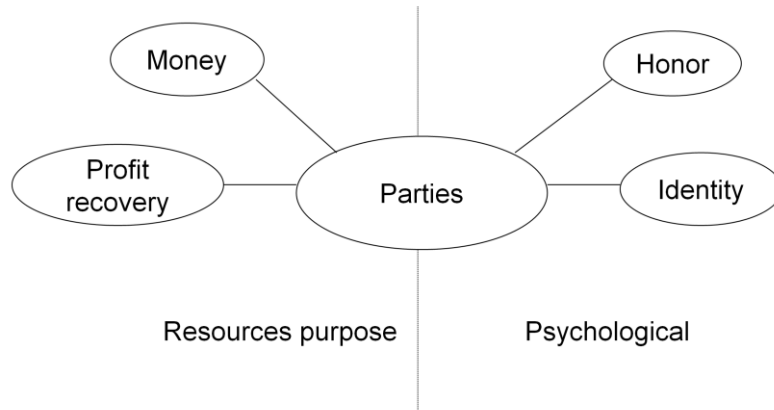
Changes in the Role of Professionals



99

The role of professionals is rapidly changing. A society that does not allow monopolization of information gradually raises a question as to what expertise is. Sharing information and people's acquisition of literacy (ability to understand and use information) will limit expertise. Under such circumstances, professionals attract lots of attention by supporting and assisting people's self-determination in the form of providing information rather than monopolizing information.

Multipurpose Nature of Dispute Settlement



100

What do the parties seek for dispute settlement? Do we understand it well enough? Don't we scrape off the parties' thoughts?

Do the parties only seek money? A court case recognizes only "payment of money" as a form of solution.

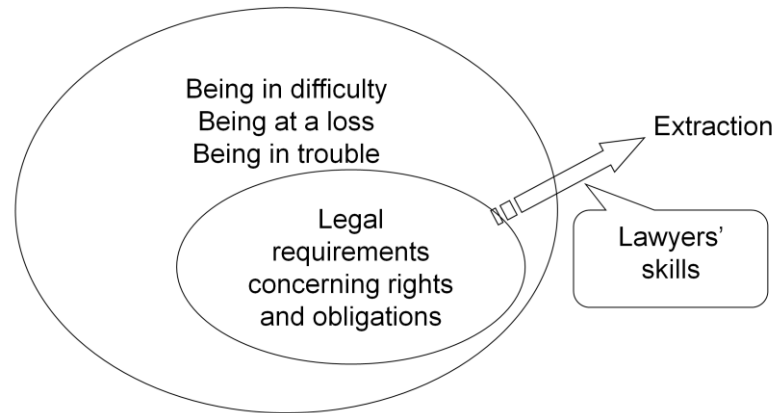
However, there are cases where the parties ask for honor, respect, etc.

[Tips to Trainer]

This PPT alone will not have a strong impact on the participants. If possible, think about using examples.

For example, what would a mother whose daughter's life was taken by a medical accident seek in consultation, and why does she ask for mediation?

Circumstances of Clients



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Disputes have legal and non-legal aspects. Lawyers reassemble the legal requirements concerning rights and obligations as "required facts" from the intermingled troubles and quarrels of the consuler. This is the essence of so-called lawyers' skills.

We are not trying to extract and solve the points that are easily handled.

[Tips to Trainer]

This PPT alone will not have a strong impact on the participants. If possible, think about using examples.

For example, there was a consultation (or mediation) seeking confirmation of the ownership of adjacent land. On the surface, it seems that the party wants to clarify the border specifying ownership, but in reality, the true cause may be in another point such as lack of greeting at the time of moving, leakage of daily life water, or a noisy outdoor unit.

Listen Carefully

- Careful listening
- Active work with positive concern and curiosity
- Active listening
- Putting aside your own experience, thoughts, opinions, feelings, expectations, etc.,
- For the time being, “try to listen (without evaluation)”
- And “try to understand as a story.”

These aspects are not static, but each one constitutes an active process.

The way of careful listening requires skills different from everyday listening. There are ways to listen in various depths, such as accurately listening to what the other party talks about, listening to what the other party feels and does not actually say, and even listening to what is still not clear in the party's mind or unclear things which cannot be expressed by words. As a mediator, training for listening to the words spoken by both parties neutrally and accurately would be required.

People talk about various things even through methods other than words. You can detect feelings, concerns, and desires of a speaker by looking at non-verbal communication cues such as line of sight, facial expression, posture, movement of the hands and legs, tone of voice, and way of speaking. The agreement or disagreement between what a person talks about and nonverbal messages can significantly affect communication and inter-personal relations. Sensitivity to notice these elements of verbal/nonverbal communication can also be cultivated through training.

Distribute only to the person who plays the role of client

Case

- Client: a woman
- I received a request for consultation from a male friend who is working for a company. He said that he would like to change his job. I am perplexed, because my advice is based only on my opinion and it is uncertain whether my advice is advantageous or disadvantageous to him. Although I feel very friendly toward him, I have not deeply associated with him. I think I can give advice more easily than expected. However, if I seriously consider how to give advice, I become unable to find appropriate advice. Therefore, I came here to seek consultation.
- (The case was cited from Hayao Kawai "Introduction to Counseling," p. 12 ff. Some revisions were made.)

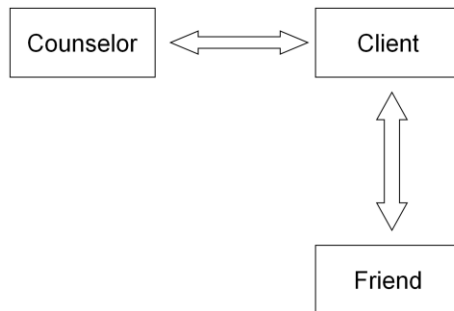
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Protocol

1. Pair up. If possible, the role of the client should be performed by a woman.
2. Give the above case description only to the client and ask the client about the following matters:
 - Please get into character of the client and express yourself with the emotions of things that really trouble you.
 - Please add details of the relationship with the friend, the current job/term of the friend, the job after change, etc. according to questions from the counselor.
3. The counselor consults with the client after having said that consultation should be done as much as possible. Duration of consultation is about 5 minutes.

Lecture (explanation of work)

Practice in Consultation Listening



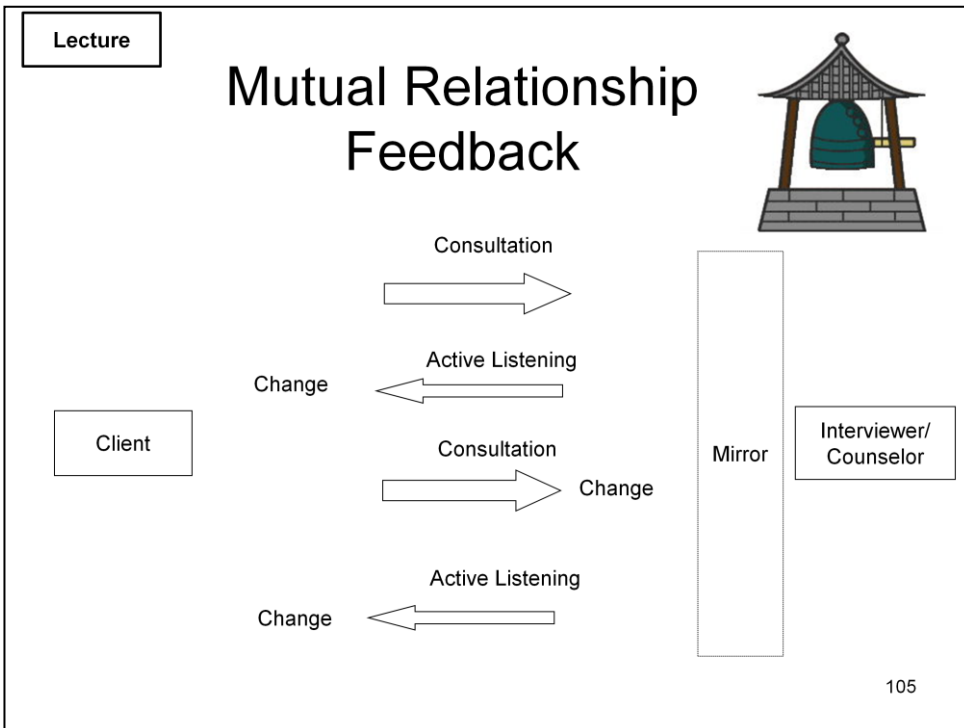
104

[Tips to Mediators]

The preceding PPT is structured as indicated above. While the counselor has received a lecture for "listening" and understands "listening" as a theory, this training is to confirm that the counselor can really do it.

Was the counselor interested in the relationship between the client and the friend and the circumstances of the friend, and did the counselor ask about those points?

This training is not a problem-solving type, but first, the counselor is put to the test in terms of **whether he/she was able to take "the client's trouble" (troubled by being asked an advice from a friend) as it is would be put.**



Listening skill is to strongly shake the first small movement/change. It is a dynamic process in which the counselor becomes a mirror and also changes by tagging along with the client.

Think like moving a temple's bell. The bell is heavy and does not move quickly, but it will move slowly if you push it many times at a slow pace.

Client's Thinking

The client does not know;
what the s/he really needs,
what choices exist,
why the situation has become entangled,
what the other party argues, and
what is the cause of the dispute.



S/he reorganize these while talking with the listener.

Do we think that a person coming to a consultation (the client) appears in front of you (counselor or mediator) after having fully understood his/her problem and the surrounding situation?

There are many cases where the client does not know what is the problem, what choices exist, etc. due to chaotic facts, etc.

Even if you press such a client for explanation of "What are you looking for?" or "What would you like to ask?," the client becomes confused.

The client will pull the facts together and understand the situation that s/he is placed in by talking with you. This is an image that the client constitutes the story once more in the dialogue with the listener rather than finding what was already there.

Client's Solution

When the counselor deals with the client,
listening to what the client says,
the client finds out what the problem is and
how to solve it
and solves the problem by him- or herself.



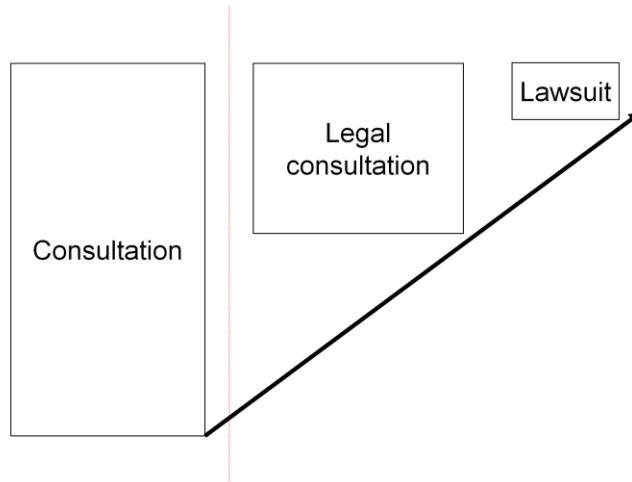
Persistent and undaunted listener

Client's Narrative

The narrative the client tells is a series of events that are connected with each other by the plot devised by the client. Because the narrative has a meaning as a whole, the meaning of each event can be clarified in the whole context.

↑
Accept the narrative as it is.

Image of Consultation from Now on



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Then, from now on, I would like to give the image of consultations that will accept the client himself/herself, without limiting to consultations covering only legal requirements.

Practice in Consultation

Be aware of Legal Issues

- Mr. X is a man in his 40s.
- Mr. X received a request from the city government about the construction of a road and concluded a land sale agreement at a price of 30 million yen. He received 20 million yen for the land. However, the construction did not begin soon.
- Mr. X feels anger against the city government, for the city government received a subsidy from the central government, but the plan did not progress. Because the sold land was his family estate and he feels an attachment to the land, he wants the city government to return the land to him if the road is not constructed. He has already spent 20 million yen.

Well, how do you consult?

[Tips to Trainer]

A little more detailed facts are as follows:

I (born in 1960) inherited the land and building located at the edge of A City as the eldest son when my father died five years ago (at the end of 2007), and moved to this house as a result of his death. Since my father had other assets, I converted them to money and distributed it to my elder and younger sisters. My mother died ten years ago. There was no inheritance trouble. But, two years later, I was relocated to B City with my family. At that time, since A City offered to purchase the land which it needed for its road project, after wavering, I sold it at the price of 30 million yen, considering the expenses for my children to proceed to the next stage of education and the residence at the transfer place, etc. However, I have not yet received 10 million yen of the total.

But, when I recently had an opportunity to go to A City and to see the building and land, the road has not yet been completed. While I sold the land and building inherited from my father because it was a highly public project that a road will be built with the national government's subsidy, I cannot accept the situation. I spent my life until high school in this house on this land. I told this to the city employee in charge (Mr. C of the Road Section) by phone, but he said to me that, as the person in charge,

he was not at the level to be able to give an answer about the progress of the construction. Would you please provide a consultation for me?

Two Ways of Treatment

Mr. X's thinking

Although he sold important land, the road is not constructed.

Lawyer's response

The agreement is valid. There is no condition that the land should be used for the road. If the agreement is cancelled, he must return 20 million yen.

In the end, a lawyer serving as a counselor responds in the manner stated on the right.

In doing so, are you facing the thoughts of Mr. A?

Preparations for Consultation

- What preparations are needed?
- “Room,” “sitting position,” “distance,” and “angle”
- Although it is necessary to show the attitude of listening, “the feeling of intimacy” may bring about excessive dependency.
- Create a tense relationship gradually.
- How to take notes
- Treatment of the documents the client brings
- Eye contact
- From one of them to one of one (consideration for individuality: do not label the client hastily)
- Counselor’s mental attitude

These are the preparations prior to the consultation stated in a tips-like manner based on the idea that mediation is also a process (stages/phases).

Opening of Consultation

- Opening greeting
- How to give an introduction
- Counselor's role
- What can or cannot be done within the framework of consultation
- If there is a problem in the association to which the counselor belongs
- Regarding the counselor's rash promise to cooperate with the client

The way of consultation varies between the case where the consultation is done independently and the case where the consultation is performed for triage (classification) by a mediation implementation institution to introduce to a mediation.

Process of Consultation

- Open-ended questions, paraphrase, etc.
- Questions about facts.
- Questions about process.
- Questions about feelings.
- Use language, taking into consideration what cannot be expressed by language.
- Give assistance in clarifying confused matters.
- Give assistance in finding what he or she want to solve.
- The counselor may hinder this process.

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While mediation is classified into listening to facts, listening to process, and listening to emotions, the parties talk about them in a mixed manner.

If the counselor is consciously aware of this, especially listening with emphasis on "listening to emotion" which is hard to question, the way of listening will become different from before.

Devise Questions

Three types of questions

Be conscious of what you should question.

Questions about process,
background, facts

Questions about
feelings

Questions about
demands and grounds

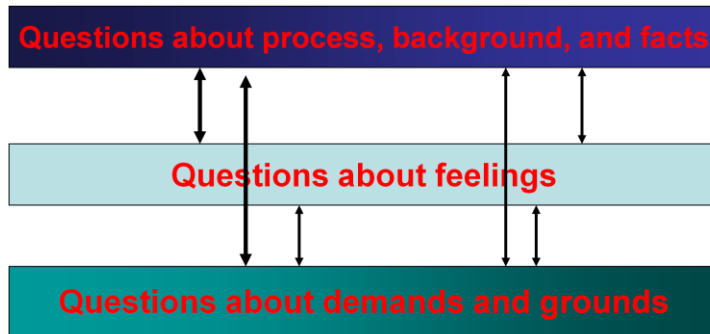
Teaching how to listen (nodding, eye contact, and repeating) is the "listening" training, but here we focus on what you listen to.

While we do not need to be conscious of listening to facts and process, we are not good at listening to feelings; that is, emotions.

Therefore, we need to be conscious of what you should question.

Devise Questions

Three types of questions



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All questions are related. These are closely related in the party's mindset, such that a party gets emotional by telling facts and there are emotions in the background of request escalation.

You should listen to it in the way of making it a little bit easier to understand, on which you should focus.

Devise Questions

about process

Questions about background

Questions about facts

- Open-ended questions
- **Extending questions**
- Extend time – pay attention to duration, such as a spot of time in the past – time-series questions
- From distance to proximity (excessive distance causes blur)
- Pay attention to time series → However, if the counselor repeats questions about what happened thereafter, the client will feel pressured.
- Extend human relations – from the client to related persons
- From unilateral communication to bilateral communication – simply say “You said ...” instead of questioning the client persistently about what the client said or did
→ the client’s response → the counselor’s response

Narrative

Devise Questions

Questions about feelings

- Open-ended questions
- **Deepening questions**
- Disentangle a “chunk of words” (chunk-down)
- Pay attention to trauma → observe the client closely.
- Do not hasten or force the client to give an answer.
- There are feelings that cannot be expressed by language.
- Do not demand that the client answer logically (such as coexistence of anger and loneliness).
- Center on “nodding.”
- If the counselor simplistically paraphrases the client’s feelings, the actual feelings may fail to be grasped accurately.

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When listening to feelings, open-ended questions (such as "What kind of feeling did you have at that time?" and "How did you feel at that time?") are appropriate.

It is important that the counselor should not simplistically paraphrase the feelings expressed by the client.

Devise Questions

Questions about demands and grounds

- Make confirmation.
- The counselor helps the client focus instead of focusing by him- or herself.
- If the counselor fails to grasp the process and the client's feelings, the counselor may focus "strictly."
- Think about the relations with the process, the background, and the facts at all times.
- Think about the relation with the client's feelings at all times.

Even when listening to requests and grounds, the counselor should listen to (question) them without mediator focusing or guiding to them.

Devise Questions

Notice your habits when questioning.

- Ask questions about facts in spots.
- Overwhelmed by the client's feelings.
- Can accept logical expressions only.
- Ask questions about "demands" and "grounds" hastily.
- Misunderstand "demand" as "conclusion."
- Limit grounds to "legal" grounds.
- The counselor soon draws a conclusion and focuses on the client's specific feelings.
- And more other things.

Since consultation is an activity that we unconsciously do on a daily basis, our own daily habits and styles come out.

It is also necessary that your own consultation should be observed by a mentor, etc. who points out aspects of style that are difficult to notice in oneself.

Common habits as professionals and habits peculiar to that person will be surely observed.

From Consultation to Negotiations then to Mediation

- Give consultation about what can be solved by consultation.
- There are problems that cannot be solved by consultation.
- What cannot be solved by consultation?
- What can be solved by negotiations?
- Initiate negotiations if the problem can be solved by negotiations.
- Some problems cannot be solved by negotiations.
- What cannot be solved by negotiations?
- What can be done by mediation?

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Now, move on to negotiations from consultation. Give consultation about what can be solved by consultation. However, if there is an adverse party, it will not be solved by consultation.

9. Negotiation

Whether you prepare or not matters for
the results of the negotiation.

Non-Prepared Negotiation

In negotiation, what you can do and
what you cannot do.

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First of all, we perform negotiation without preparing for negotiations and without having prior knowledge about the negotiations.

By doing this, you will experience the feelings of the parties in negotiations.

Negotiation for Actress Poster [Common Facts]

- **Hama Agency** (Advertising agent) accepted an order of a poster production project from the Noodle Industry Association in Tokyo. The poster is for a campaign that publicizes that the substance contained in Soba noodles has effects to make blood stream smooth,
- Then Hama Agency asked **Hideko Hisamatsu**, an actress, to serve as the model for the poster.
- Hideko Hisamatsu (aged 53) is a famous actress. When she was young, she was recognized as an idol, and, till 7 to 10 years ago, she was frequently shown on prime-time TV programs. For your information, a Wheat Flour Organization paid 20 million yen last year to Yukiko Naniwa (aged 54), for a poster campaign to ensure booming of Sanuki Udon in Kanto Area. Ms. Naniwa was known as a rival of Ms. Hisamatsu, as well as the actress who performed the mother of the main character in a year-long famous drama series broadcasted in last year.
- Please conduct **negotiations about the amount of the performance fee between Hama Agency, and a representative on behalf of Ms. Hideko Hisamatsu.**

Protocol

Before Starting the Role-Playing

1. Since this is only a training, please don't feel embarrassed and devote yourself into the role by imagining what the role would be feeling. However, don't intentionally lead the negotiation to the bad end. It's both important to sincerely play your role and not to take away the chances to learn from other participants.
2. We will review the session, because understanding what parties think is essential for a mediator. In the review, you will be requested to specifically explain to what you pay the attention, what goes well and what is wrong. Can you tell your true feeling in the role play? After the playing, please write down on the worksheet, before your memory disappears.
3. Please carefully go through the Fact Sheet that contains common facts and confidential facts. If there is anything unclear, please ask the lecturer. Please don't disclose the Fact Sheet to your counter part. By using your healthy common sense, you can add the facts that are not written in the Fact Sheet.
4. The role-playing is planned to be about ____ minutes.

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[Tips to Trainer]

- (i) Fact sheet containing common facts will be distributed to everyone.
- (ii) Set up a pair, assign a role of "Hama Agency" or "Eiko Hisamatsu" to either person and provide the fact sheet containing confidential facts to each participant. In this case, it will take about 5 minutes to prepare.
- (iii) Have the parties conduct negotiation. In doing so, each party should read this protocol. It may take about 15 minutes.

Role-playing

Distribute to the Players

Negotiation for Actress Poster

[Confidential Information held by Hama Agency (Ad agent, Representative Director Toshio Hama)]

- Hama Agency is a small ad agent. While it usually works as a subcontractor of major ad agents, through an introduction by some acquaintance, it accepted an award of a project (Total Sum is 12 million yen plus up to 4 million yen of direct expenses such as printing cost, etc.) to produce a poster to publicize that the substance contained in Soba noodles has effects to make blood stream smooth, from the Noodle Industry Association in Tokyo. He decided to ask Hideko Hisamatsu (age 53) who worked together for the project of a major ad agent before. Although she is perfect in name recognition, it is rumored that she has not received so many offers for several years. The budget to pay to her is 3 million yen, assuming that she will appear on the poster (A2 and A3 size) posted within Tokyo Area. If its reputation is excellent, production of another poster distributed to neighboring prefectures surrounding Tokyo in Kanto Area may be possible (In such a case, her remuneration will be doubled). Because the Agency has no direct connection with the entertainment industry with which it has been involved just as a subcontractor for a long time and thereby there is no other prospective nominee, he plans that the Agency may accept increasing her remuneration in some degree. But Ms. Hisamatsu is not active in front lines, and thus he thinks this amount is good enough. Nevertheless in bygone years, now Ms. Hisamatsu may be lower-ranking than Naniwa. And on this occasion, he intends to increase direct awards from the clients, not as a subcontractor. If an appropriate nominee cannot be found within 6 weeks, another related award in an amount of 50 million yen will be unsuccessful, in addition to the award in an amount of 12 million yen.

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Negotiation for Actress Poster

[Confidential Information held by Michiya Arita, agent of Hideko Hisamatsu (age of 53), actress]

- Hideko Hisamatsu is famous actress spotlighted in bygone years. However, since she moved to another entertainment production three years ago, she could find few opportunities to work and she has not been able to get major appearances nowadays. Notwithstanding the current situation, during such period, through her performance on the theater stage or personal lessons, she is confident she has accumulated more skills as an actress than before and she is now ready to stand in the spotlight again. At this time, Hama Agency, with which she worked together before, offered her an appearance on the poster campaigning "Smooth Blood Stream by eating Soba noodles." When she was an idol in the past, her performance fee to appear on a poster had never been less than 20 million yen. There are a number of actresses belonging to same generation as her who don't get any work for less than 10 million Yen.
- Actually, she was asked by a director of Shibusawa Food, who is also an officer of the Noodle Industry Association, to appear in a drama in prime time zone sponsored by Shibusawa Food. To avoid giving him any unfavorable impression, as a matter of fact, that work would be accepted even free of charge. That said, however, because she still has pride as a professional actress, she wishes you, as an agent, to make you best effort to negotiate to get a better contract amount.

Lecture

Dance of Contract Amount

Hama Agency

Hideko Hisamatsu

100

2500

300

1800

500

1200

700

1000

850

Fair but bad timing proposal is a bad proposal.

Should Dance of Contract Amount be continued?
(Time constraints, a margin for compromise)

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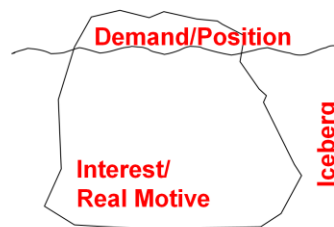
Well-prepared Negotiation

By being prepared well, recognize a part of better performance and another part remaining still insufficient.

Integrated Negotiation = The Harvard Method of Negotiation

In the Negotiation:

- 1) Separate the people from the problem
- 2) Focus on the interests (real and credible motive) of the parties involved, not on the positions of demands
- 3) Generate different options
- 4) Emphasize objective criteria
- 5) Consider Best Alternative to a Negotiated Agreement (when unsuccessful : BATNA)



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- (i) Separate the people from the problem.

Assertion that the other party is wrong will not solve the problem. It is natural that there is emotion. Instead of blaming the other party, attack the problem together.

- (ii) Focus on the interests, not on the demands.

Behind the scenes, concomitant interests may exist, as well as conflicting interests. Think that there is also a valid point in the other party's assertion. One negotiation involves a lot of interests (money, inter-personal relationships, reputation, emotions, personal honor, etc.). The greatest concern lies in the basic needs (safety, money, sense of belonging, being admitted, deciding one's own direction, etc.).

- (iii) Prepare multiple options and make decisions afterwards.

Separate planning and decision. Conduct brainstorming, and consider and create the options advantageous to both parties. Think about what you will agree.

- (iv) Emphasize objective criteria

Agreement should be reached, using objective criteria (market price, professionals opinion, customs, laws, etc.). Determine fair procedures. Adhere to the principle, not pressure.

- (v) Consider best alternative (when not agreed) to a negotiated agreement (BATNA).

Think about the significance considering BATNA and method thereof in case you

cannot agree to.

BATNA is different from the bottom line in negotiations.

It is necessary to forecast and calculate the situation prior to starting negotiation in case of breakdown of negotiation. If the agreement below the level of BANTA is pressed, the negotiation should be terminated.

7 Typical Types of Cognitive Bias

- (1) The irrational Escalation of Commitment
- (2) The mythical fixed-pie
- (3) Anchoring and adjustment
- (4) Framing negotiations
- (5) Availability of information
- (6) The winner's curse
- (7) Overconfidence and negotiator behavior

Cited from "Negotiating Rationally" by Max H. Bazeman and Margaret A Neale
(Japanese Translation by Tetsushi Okumura, Hakuto-Shobo Publishing)

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(i) Escalation of activities

This means the tendency to get deeply involved into the initial policy without considering the situation change afterwards, once a certain action is selected. Even though the conditions surrounding the activities change with the passage of time, which shows that the course of action taken previously must be changed, a party is bound by the cost, effort, and time already invested, and allocation of resources in a way that justifies the first decision continues. Avoid self-denial when deciding initial action.

Thought and superstition that the size of pie is determined.

This is likely to happen in the case of negotiations that compete for pie divided by the two parties (in the case of labor-management negotiations, etc.). If there are multiple negotiation items with priorities, it is possible to make it a problem-solving type negotiation by realizing a tradeoff.

Mooring effect (anchoring) and adjustment

This refers to the psychological effect in negotiations that a person considers an initial stance when entering negotiations and the condition presented by the person and the other party at the initial stage to be standards and sticks to them, as if a ship stays at the same spot by dropping an anchor even though it

moves slightly due to waves and flow.

The final agreement as a result of negotiation is influenced by the conditions presented at the initial stage rather than the concession action in the negotiation. Establishing high goal targets prior to a negotiation helps to limit the anchoring of the other party's first offer.

(iv) Framing negotiations, framing function (framing)

Even in exactly the same condition, positive framing or negative framing affects the psychology of the person who has made the selection of which result would be different. Depending on the method of framing, an unreasonable judgment may be made, selecting a thing with a higher risk. Selective attitudes are classified into risk avoidance type, neutral type, and pursuit type.

Availability of information, information that is easy to obtain

Information is a key in negotiations. However, in reality, there are memories that are easy to recall and those that are difficult to remember, information that is easily caught by fixed search patterns and information that is hard to catch, information that is noticeable and information that is inconspicuous, and others. This is greatly influenced by the preference of the person processing information, and at the same time, these trends would affect a negotiator's judgment.

Winner's curse

"purchased at the auction = won the auction" In many cases, when a person has made a successful bid for an item at the auction, the person falls into the illusion of "winning the auction." However, having made a successful bid for an item at the auction may be simply stated as "Other parties did not bid at that value = other parties judged that there was no such value."

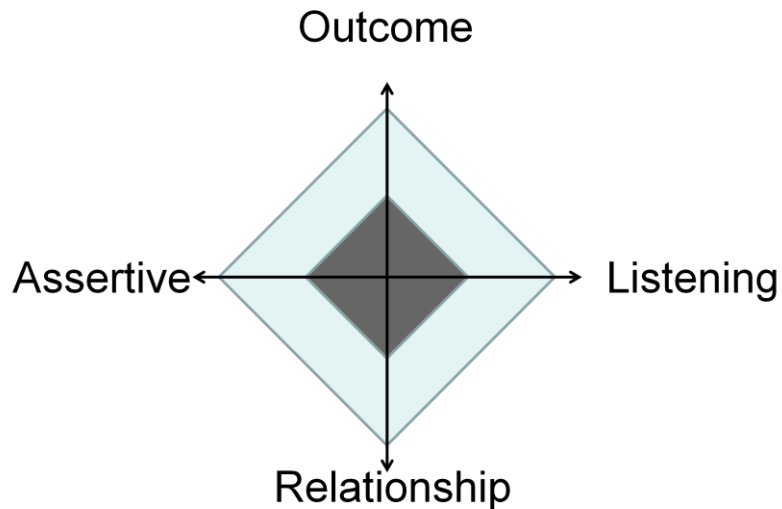
By decomposing the situation from the viewpoint of the other party, the position and the basis of the other party becomes easier to see, and predicting the behavior of the other party becomes easier. However, under the actual situation of negotiations, the viewpoint of the other party is easy to forget.

Overconfidence and negotiator behavior

The higher the degree of difficulty of the negotiating case, the more often the confidence and bias against judgment and choice of the person are combined.

Work

Support for Good Negotiation



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Have the negotiating parties score points on the above 4 items.

For example, make the highest point of "Assertive" as 5 and the lowest point as 1.

Good outcome and good relationship have difficulty in coexisting (money secured but relationship collapsed). I cannot comprehend that I was able to talk, and assertive and listening also have difficulty in coexisting (while I said what I want to say, I could not listen to the other party's story at all).

Success of negotiations (success) will be evaluated according to the size of this



Negotiation for Actress Poster

Having the knowledge on the negotiation, negotiate again with another participant.

What is impossible in **negotiation**?

What is possible in **mediation**,
where a third person get involved?

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[Tips to Trainer]

Please ask these two questions to the participants.

Now, the participants have conducted negotiations with preparation and without preparation. The answers to what is impossible in negotiation may contain the following: I cannot speak of my real intention, I cannot listen to the opinions of the adverse party, I push myself trying to win, and I end up with emotional remarks, etc.

That is where the mediator comes in.

10. Attitude Training of Mediators

4 Basic Concerns arising from Social Interaction

J. Gibb "Climate for trust formation"

Acceptance Concern -Primary

- Concern feeling "**whether this person accepts me or not**" upon the first contact.
- This concern is in relation to the membership and preventing others from entering it.

Data-flow Expressing Concern

- Concern in relation to communication such as "**I am afraid to say such a matter**" or "to what extent can I say?"
- This concern prevents oneself from freely expressing what the person is feeling or thinking.

Goal-formation Concern

- Concern in relation to motivation such as "**is there any merit for me in this occasion?**" or "I cannot understand what the other person aims for."
- This concern comes from discrepancy between self target and others' or such occasion's target.

Interpersonal or Regulatory Mechanism Concern

- Concern in relation to leadership such as "**who presides over this occasion?**", "can't I take initiative?", or "rule to control this occasion should be determined."
- This concern comes from the exercise of influence.

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Our daily inter-personal relations are established on the basis of some degree of relationship of mutual trust. Conversely, we are trying not to have much relationship with those with whom we cannot build trust. Coming to think about it carefully, when we meet a person for the first time, we notice that we feel some kind of anxiety and fear. Jack Gibb, a psychologist, categorizes anxiety and fears wriggling in our daily interpersonal relationships into four concerns, and says that trust is formed by reducing these concerns.

The most fundamental concern is called "acceptance concern" which relates to one's membership, such as "Who is this person?" or "Can I get along with this person?" which is the feeling when seeing a person for the first time and is also the concern that hinders accepting others. The second one is called "data-flow expressing concern" which relates to communication such as "I am afraid to say such a matter?" or "To what extent can I say?" which is the concern preventing you from freely expressing what you are feeling or thinking. The third one is called "goal-formation concern" which arises from the discrepancy between your goal and the other's goal such as "Is there any merit for me on this occasion?" or "I cannot understand what the other party aims for." which is the concern hindering your motivation for negotiations. The fourth one is called "social control concern" which relates to leadership such as "Can I take initiative?" or "It is better to determine rules?" which is the concern preventing you from freely approaching effectively. Gibb hypothesizes that a trust

relationship will be formed by appropriately reducing these four concerns.

Of course, these four concerns also exist in the mediation scene. Rather, these concerns are very strong, since the dispute has already started and it can be said that **an untrusting relationship may be a starting point**. It is no exaggeration to say that successful mediation depends on whether or not a trusting relationship can be built by reducing these four concerns that hinder normal and good processes.

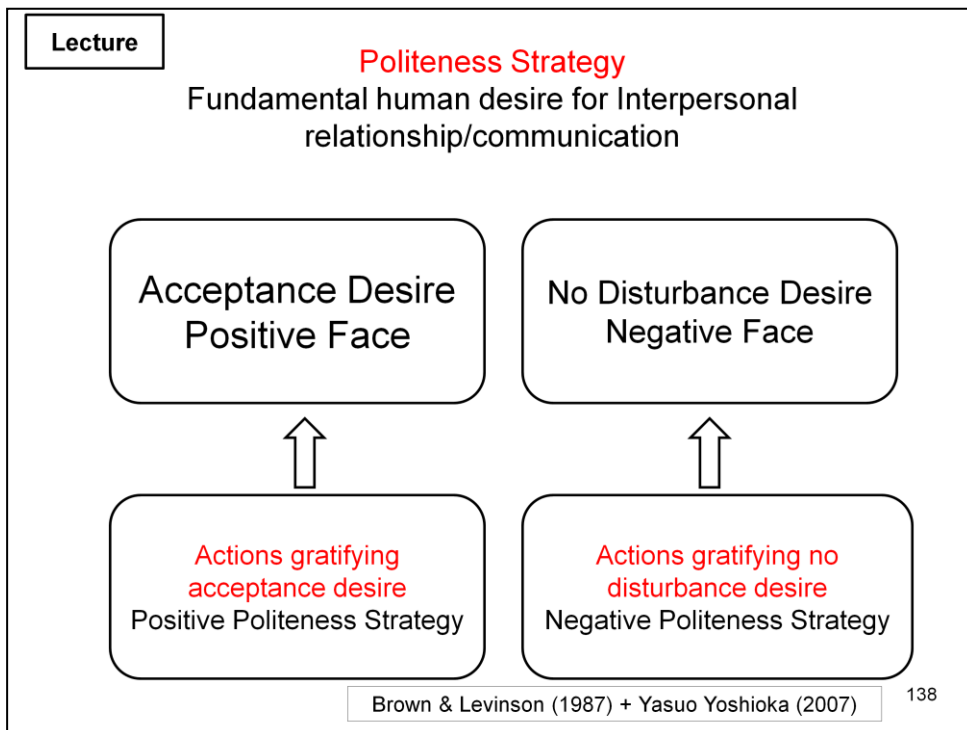
If a mediator notices a concern during mediation, it is necessary to start efforts to reduce concerns by putting the latent concerns into words such as “While you may be worried about whether a mediator is really neutral, I will properly conduct the mediation in a neutral position.” or “Do you have any worry that the other party will not talk to you honestly?”

Mediators are required to refine their ability to form a climate of mutual trust through honing sensitivity of concerns arising in these interpersonal relationships and reducing the concerns that the mediators themselves have and the concerns that the parties have against the mediators, as well as reducing the concerns that the two parties have against each other.

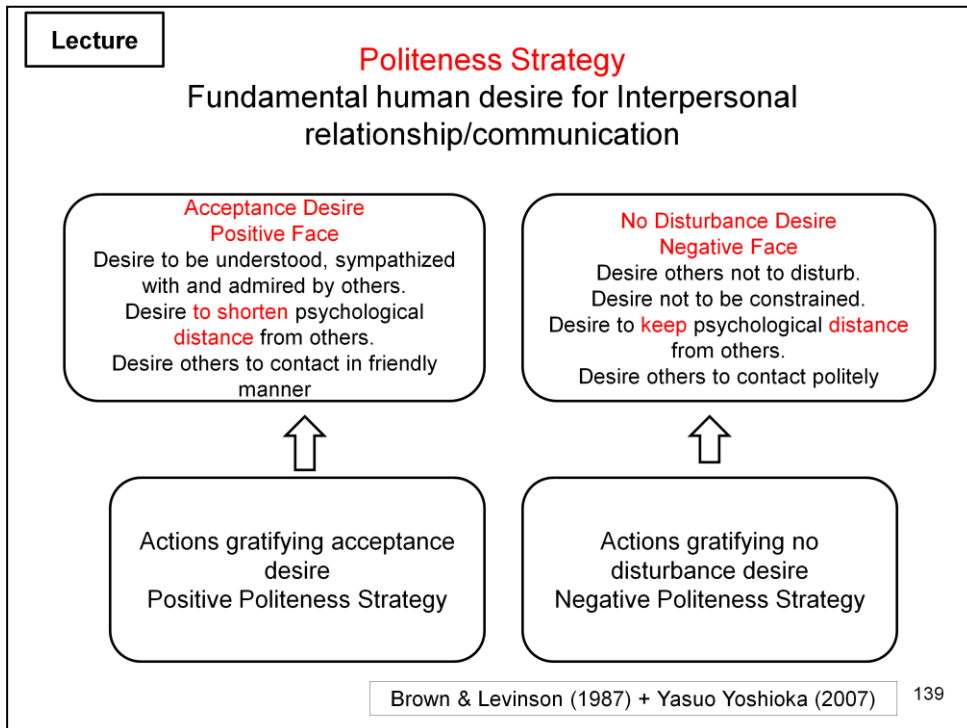
Party recognizing Dispute

- A party recognizing the dispute is likely to feel “4 basic concerns” deeply with anxiety.
- Activities of the person who coordinates interpersonal relationship are **endeavors to lower “4 basic concerns” that discourage smooth communication.**
- Try to reveal latent concerns (which the party may not express). But such revelation is also conflicting with a concern of “expressing.”
- “4 basic concerns” have interrelationship, which is circulative; one of the concerns is lowered, then another is lowered, and such lowering causes further lowering.
- **The most primary concern is the acceptance concept** and other concerns may only lower to the extent the acceptance concept lowers.

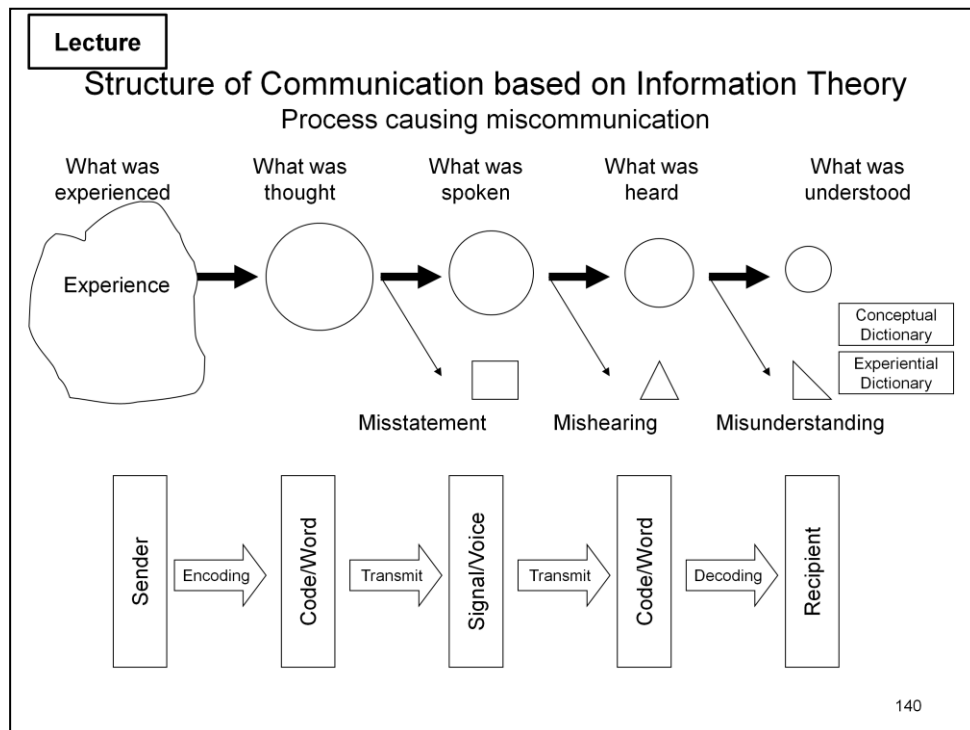
Matters should be determined in a democratic manner.



Brown and Levinson's politeness theory is based on the concept of "face" as a key concept. In other words, they comprehend that people have two kinds of faces, "positive face" and "negative face," as "basic desire" for the interpersonal relationship.



The positive face is "desire towards positive direction" of the desire to be understood, sympathized with, and admired by others, and a negative face is understood as "desire involving negative direction" that at least you do not want to be disturbed or intruded on by others, even if you are not admired. "Negative" here never means "denial." It is reasonable to understand it as direction of desire. That is, "desire to shorten psychological distance" from others is the positive face and "desire to keep psychological distance from and not to be intruded on by others" is the negative face.



Since mediation is basically conducted through language-based communication, maintaining the appropriate communication process is required. The above figure is the model of communication when people try to communicate information to others created with the application of the theory of Shannon, who made the most simplified communication model based on information theory.

I will explain the figure step by step. In step (i), a person experiences something. The experience is colored by various nuances and the shape is not certain. People want to tell others of such experiences and start communication as a sender.

In the next step (ii), the sender converts what was experienced into generalized "words" (encoding). At this time, subtle nuances of the experience and information beyond words that cannot be put into words will be missed, and the amount of information will be less than the original.

In the next step (iii), the sender voices what was thought within the mind (transmission). However, in reality the person sends only a small part of what was put into words in the mind. For example, while there are many things you've experienced or want to talk about when you tell your one day experiences, you may end up with a phrase of "I had a good time today" when you actually tell it to others. And it may sometimes happen in this step that you say XXX although you intend to say YYY. It can be said that it would be within

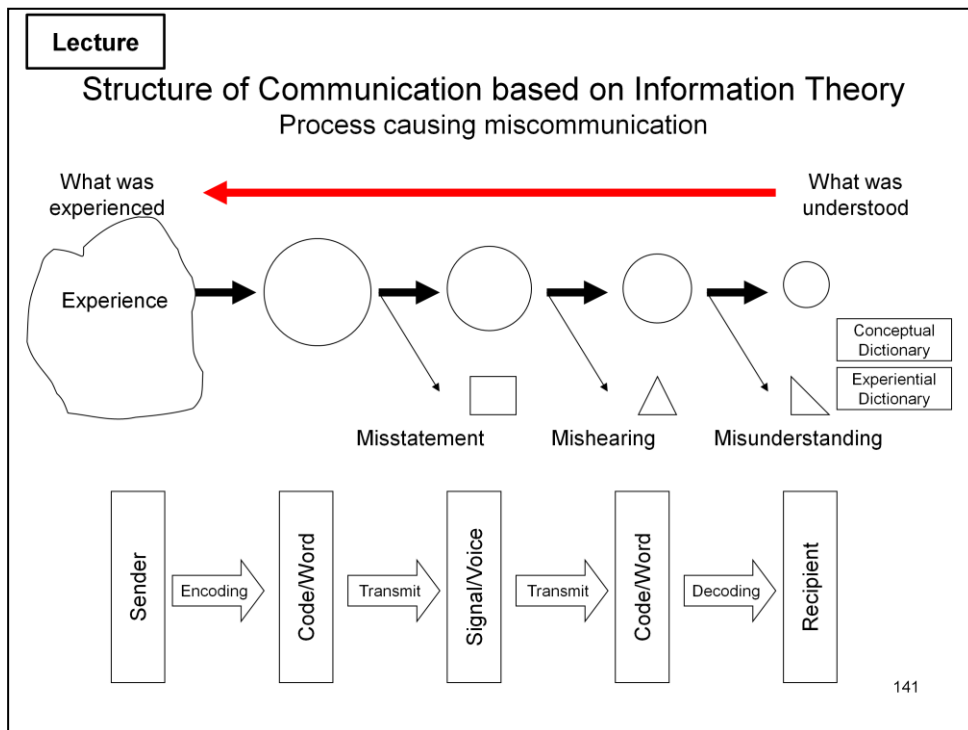
the sender's working area, but from the next step it would become within the recipient's working field.

In the step (iv), the recipient listens to the words spoken by the other party using ears (reception). However, we do not always listen to everything without leaving out a word of the other party. Therefore, the information falls out again here as well. There is also a mishearing that the recipient hears as ZZZ while the sender has said YYY.

Furthermore, in step (v), the recipient interprets words heard from the sender in his/her own way in order to understand it (interpretation). The point of "in his/her own way" is problematic, and there are quite different interpretations (AAA) from what the sender has intended (YYY). Occasionally, an interpretation that is completely the opposite (BBB) to the intention of the sender is even done.

And, in the final step (vi), as a result of decoding which has generated "meaning" in the recipient's mind, the recipient believes that s/he "has understood" what the other party has said, but that is already a considerably biased understanding.

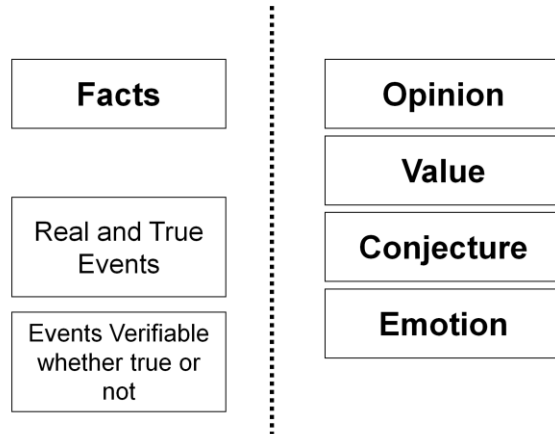
C. E. Shannon "A mathematical theory of communication" Meijitoshō 1969. N. Wiener "Cybernetics" Iwanami Shoten 1984.



As described above, there is a complicated process in just performing linear one-way information communication, and as you see the processes from (i) to (vi), you can understand that the information is lost and deteriorated more and more in that process. For example, comparing with the communication between machines such as fax machines and personal computers that is done with 99.9999 ...% accuracy (although sometimes garbled characters or the like may occur), we must recognize that interpersonal communication is extremely inaccurate, and, to be exact, what you want to say has not been accurately conveyed and what the other party wants to say has not been precisely received.

That is the reason why we "confirm" the sender's statements.

Grounds of Human Judgment (decision-making) Facts and Opinion/Value/Conjecture/Emotion



Organize Facts and Opinion, etc.



Facts

Opinion

Value

Conjecture

Emotion

1 Bear is stingy.

2 He gave me a book on my birthday.

3 The book was dirty.

4 He said "I read it so many times."

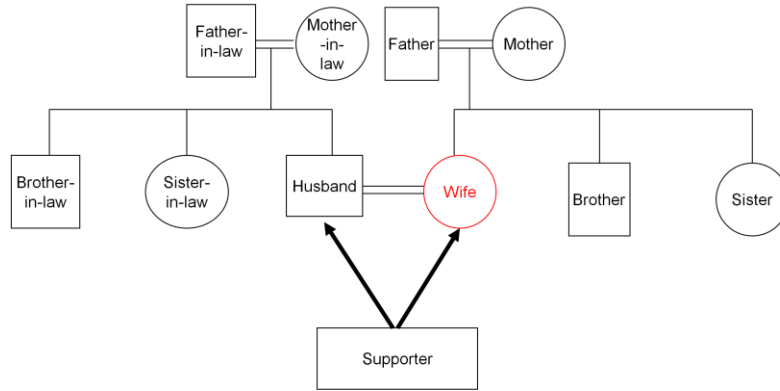
5 He gave me the book he was tired of reading.

That's why Bear is stingy.



Family Model Chart

Person does not make decisions in isolation



11. Trust, Safety and Security

Mediators' attitudes that host parties to
speak out without feeling insecure

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Let's think about the mediator's behavior and the environment improvement that will enhance the trust with mediators and allow the parties to speak safely and securely.

Eye Contact

- When I am talking with someone, if the person never looks at me, looking in a different direction, I think **“the person is not seriously listening to what I am saying.”**
- If the listener has a higher social status, it does not matter to the person whether the person looks at the speaker with a lower social status. It is even all right to listen to what the speaker is saying, while looking outside the window. However, if the listener’s social status is lower than that of the speaker, the listener must look at the speaker.
- How should the counselor deal with this problem? If the counselor sees the face of the client at a distance of two meters, the client will feel that the counselor is looking at his or her eyes. If the counselor sees the client’s forehead or nose tip, it is unnecessary to look at the client’s eyes.
- (Narisuke Utsuki, Professor, Communication Course, Faculty of Intercultural Studies, Kobe University)

Before Talking with Someone Kinesics(non-verbal communication)

- A greeting is a “word or move that is exchanged as etiquette when people meet or part.”
- Although language communication is “mutual, unilateral, and conscious,” body language is “**simultaneous, bilateral, and unconscious.**” Communication between people at a face-to-face scene is a complicated process through many channels. However important language is, it is only one of the channels (R.L. Birdwhistell).
- Usually, before saying something, people mutually recognize each other through exchange of eye contact and behavior. They begin to talk just after that.
- (Masaichi Nomura, National Museum of Ethnology)

Before giving words to someone

Proxemics (Comparative Interpersonal Distance Study)

- From experiences in which a person can't be patient and wants to run away when a stranger gets close within a certain distance from him/her, we found that human existence needs to preserve **the personal space** further outside the surface of skin, rather than the human existence means an individual inside the skin. (by E.T Hall).
- The personal space varies depending on culture or gender.

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[Training Tips] There is a simple training exercise as follows: A trainer and a student face each other about 5 meters apart.

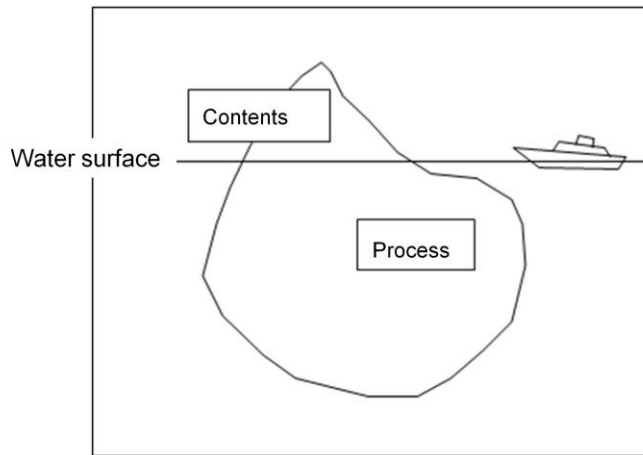
The trainer slowly approaches the student. The student says "stop" at the point where s/he is troubled with the trainer getting any closer.

By changing this combination of men and women, etc., you can see that this personal space differs depending on country, gender, etc.

So, What to Do?

- Decide the sitting place, once,
- Ask “Is it comfortable to everyone?”
- Tell “Please do not hesitate to call on if feeling uncomfortable.”

Contents and Process



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The scene where we are doing something can be seen from two sides like two sides of a coin. One is the aspect called content, which represents what we are doing. When we are working, it is the content of job, and when we are talking, the content is topics and subjects at that time. Another aspect is called process, which is what is happening inside the person or among people when doing such thing, such that various emotions are born and changed and various interpersonal relationships and their changes occur.

This content and process are often explained by comparison to an iceberg. If the content is the part appearing on the surface of the iceberg and the process is hidden under the water surface, the content appearing on the water surface is easily visible from the outside. In discussion scenes, anyone can tell what they are talking about as a theme, as long as they are listening to the conversation carefully. On the other hand, the part of the process hidden under the water is hard to see although it is big, and as the famous Titanic collided with an iceberg and sank, it is said that the danger exists at the portion under the water.

What kind of feelings the two persons talking with each other have, whether they are carefully listening to each other, how they think about the other party, and how they feel about the current situation are of course hidden and hard to understand. Also, as it is said that most of the reasons why people quit their jobs are interpersonal relationships, when one is confronted with difficulties in process that the person's feelings are ignored or what the person has said

cannot be understood, the person gets angry or wants to quit the job, which leads to the work failing to progress well. As such, you can see that the process has a big influence on the outcome of the content.

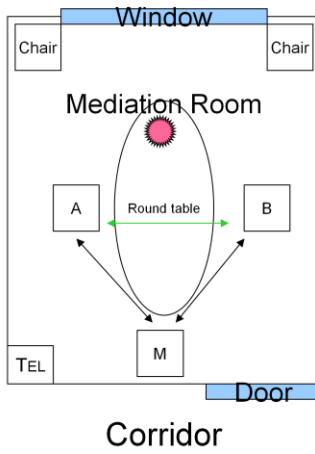
Of course, there are two aspects of content and process in the scene of discussion in mediation.

For example, let's assume that the apple tree branch of Mr. A's house came into the garden of Mr. B's house, which bears delicious apples. Mr. B harvested the apples and made an apple pie, since he thought that it would be no problem to take them borne on the branches which have been getting inside his premises. However, Mr. A got angry with Mr. B, who took the apples without permission, and it became a dispute.

If this problem results in a lawsuit at a court, the court will spell out in black and white the factual relationship from the legally reasonable viewpoint instead of the two parties having a discussion. Naturally one will win and the other will lose. In other words, this is a content-centric solution.

Hikaru Yanagihara "Creative O.D. Vol. 1" Presstime 1976

Mediation by a single (one) mediator



Think about the Parties' Feelings

Let's think about the feelings towards a mediation mechanism and a mediator experienced by a party (consulter/applicant) utilizing a mediation and the other party called out to the mediation.

There may be misunderstanding, expectation, and anxiety. Let's consider the typical "misunderstanding," "expectation," and "anxiety" from the experiences dealing with many cases, although the parties' feelings differ depending on the content of a dispute and the other party.

It should be noted that there is a difference in degree of interest between the applicant positively using the mediation and the other party to participate therein.

Parties' Feelings

Applicant	Other party

[Training Tips] Prepare two kinds of "sticky notes" with different colors and have each person write out experiences (not correctly oriented) as much as possible.

You might use the method to write the above frame on a sheet of large-sized paper on which those notes are pasted or to paste them on a white board.

Distribut Later

Client/Applicant	Other party
<ul style="list-style-type: none">• I am not wrong.• I have anxiety that the dispute might not be settled satisfactorily.• <u>I want to settle the dispute.</u>• I want to <u>win the mediator over to my side.</u>• I want to proceed with the process favorably.• I have anxiety that the relationship with the other party might worsen.• I do not want to be patient or suffer a loss.• I want to know how the other party thinks.• I want to avoid a lawsuit.• I want the mediator to understand what I want to say.• I want to settle the dispute as I wish.• <u>The first move gave me an advantage.</u>	<ul style="list-style-type: none">• Why have I been summoned? (<u>unwillingness</u>)• When I was summoned, I felt hatred.• I feel this is troublesome.• I want the applicant to assume responsibility.• I feel anxiety because <u>I know less about mediation than the applicant does.</u>• I feel anxiety that I might be pursued.• I feel anxiety that I might be treated unfavorably.• <u>The mediator may be on the applicant's side.</u>• I want to settle the dispute.• I am right.• I feel anxiety that <u>the mediator might not be reliable.</u>• I moved <u>second.</u>

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Work

First Meeting

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The first meeting between the parties and the mediator is an important scene that foretells the success or failure of subsequent mediation.

What Can Be Done

Attitude and environmental adjustment	Words

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The parties get nervous. The mediator also gets nervous.

There are things that can be done as "attitude and environment adjustment" and "words" at the first meeting.

Let's have everyone write it out.

[Training Tips] Prepare two kinds of "sticky notes" with different colors and have each person write out experiences (not correctly oriented) as much as possible.

You might want to use the method to write the above frame on a sheet of large-sized paper on which those notes are pasted or to paste them on a white board.

Distribute Later

Attitude and Environmental Adjustment

- Preparation of the mediation room

Lighting, number of chairs, equipment (such as whiteboard), writing tools, drink, food, waiting room (persons in charge)

- Guidance

Eye contact, attitude, ushering to seats

- Creation of atmosphere

Speak slowly with a soft face; do not use technical terms.

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I think there are additional items other than the above. I want to share everyone's ingenuity.

Distribut Later

Checklist

- ✓ Guiding to seats.
- ✓ Give your name.
- ✓ Check the names of the parties.
- ✓ Roles of the parties (speak, listen, think)
- ✓ Listen until the end without interruption.
- ✓ No conflict of interest in the parties
- ✓ Explain that the mediator will not make any judgment and the parties themselves will find a solution.
- ✓ Question whether the parties have experience in participating in mediation procedures.
- ✓ Caucus
- ✓ Mediator's obligation to maintain confidentiality
- ✓ Parties' obligation to maintain confidentiality
- ✓ It is possible to hear technical opinions from the outside.
- ✓ Necessary time
- ✓ Electronic equipment (cellular phone, recording tool)
- ✓ Building equipment (lavatory, parking lot, etc.)
- ✓ Explanation, entry, submission form
- ✓ Are there any other questions?
- ✓
- ✓

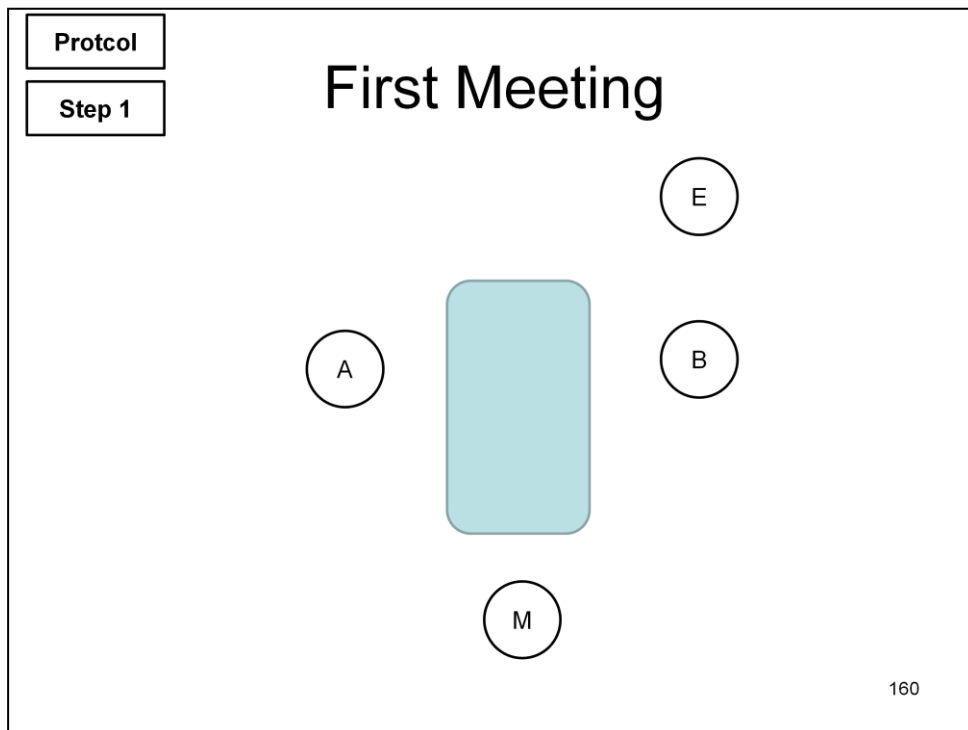
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Role-playing

First Meeting

Let's do it.

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Let's start by inviting the parties to the mediation room.

This is finished before listening to the parties.

[Tips to Trainer]

When there is an observer (C), C will act as a moderator and point out what is good about the mediator and issues.

If there is no observer, the parties will point out what is good about the mediator and issues.

Then, the mediator will also give his/her impressions of what was done.

Distribute later

What Can Be Done by Words and Attitude First Greeting (Example)

- Thank you for your visiting.
- I'm XX. Today, I would like to mediate between the two of you. Do you have any objection against your seating position?
- Today, Mr. YY and Mr. ZZ have visited here. I would like to call you Mr. YY and Mr. ZZ. I would like you to call me Mr. XX.
- Mediation aims to find a satisfactory solution through frank discussions. My role is to give assistance to you.
- I will never leak what I will hear in this place.
- Then, I will explain the rules on discussions.
- I would like you to speak alternately.
- When the other is speaking, listen to what he says as carefully as possible. If you have something to say, jot it down and wait for your turn. I would like to have enough time for both parties to speak fully.
- I never force my conclusions on you, such as "one of you is right" or "one of you should do such-and-such." My role is to give assistance so that both of you can be satisfied.
- Do you have any questions? (→ take questions)
- According to custom, the party who filed the application will speak first. Do you have any objection? If not, I would like (Mr. YY or Mr. ZZ) to speak first.

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The trainer will show this to everyone.

Work

Chapter 3. Advance

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Work

1. Technique to Reconcile the Relationship between the Parties

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Work

What Does Mediation Encourage?

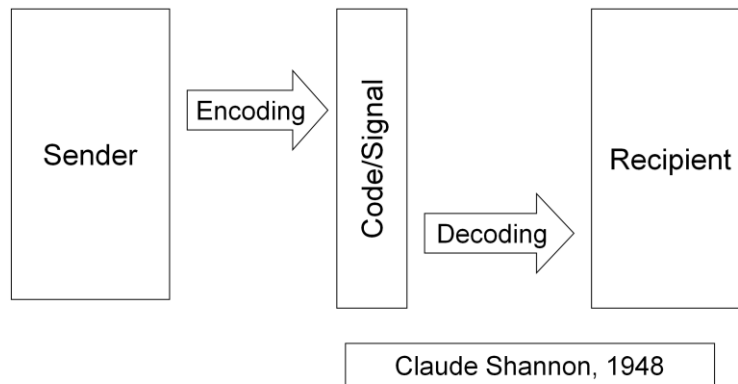
Training on Mediation

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Work

Mechanism of Communication

A human being is different from a Computer



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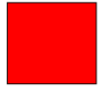
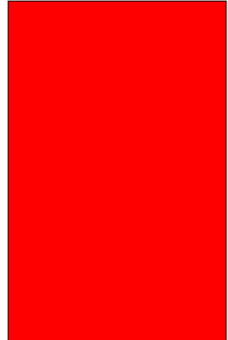
Mr. Shannon wrote a monumental article "A Mathematical Theory of Communication" when employed by Bell Laboratories in 1948 and is widely known as having created a field which became known as information theory. In this article, he expresses the idea that "the basic problem of communication lies in precisely or approximately reproducing a message existing in one point at another point" and mathematically showed that it would be sufficient to just send a combination of 1's and 0's in transmitting some information. This has become the basis of digital communication technology such as today's Internet, optical communication, and wireless communication.

Work

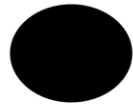
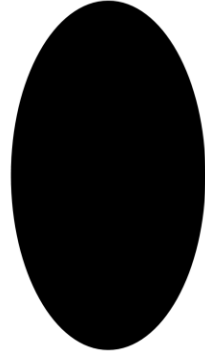
First Step of Communication

Throw a ball

A's framework



B's framework



Many frameworks and styles

Factors constitute my present self

Frameworks for Thought/Feeling/Behavior

- Ancestors/Family
- Gender
- Region
- Age
- Education background/Career
- etc.

Know my own style (habits)

- Play rock-scissors-paper with your neighbor.
- First, play it as usual. “Loser” shall survive the game. Can you do that?
- Second, play normal rock-scissors-paper in the same fashion as before, and this time “Winner” shall be left out.
- How was that?
- Next, cross your arms over your chest. Then, move the under arm to the top. Can you do that?

Work

Everybody has likes and dislikes.
Sense of worth differs among people.

Inside a train around 5 p.m., a high school boy
sits in front of you. He starts munching on a
hamburger.

Inside a train around 10 a.m., a high school girl
sits in front of you. Suddenly, she takes out a mirror,
and starts putting on makeup.

Work

Rock the framework

Reframing

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Work

Rock the framework

Reframing

Using a different perspective, a mediator paraphrases what a party indicated.

3 hours left until the time when my best friend leaves.

Only 3 hours left

Still 3 hours left

↓
Feel sad

↓
Let's enjoy

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Questions to rock framework

- Turn current focus (ex. Current relationship with the adverse party) toward the past (ex. Past relationship with that) – Note timeframe
- Divert from a present interest to a long-term interest – short-long frame
- Avert a viewpoint from risk (ex. This may result in discontinuation of the relationship with the adverse party) to goodness (ex. What merits are expected from good relationship) – positive/negative frame
- Diversion from the idea that the fact is absolute to the idea that the fact can be evaluated from various viewpoints depending on the supporting evidence – absolute/comparative frame
- The perspective of the same event of a party itself can be different from that of the other party – self-other frame
- etc.
- Question to rock the framework means indication of a different viewpoint from “the party itself”

In Specific

- “Will you be concerned with it in the same way after a year?”
- “If you were the other party, how would you feel with your current proposal?”
- “What kind of change of the other party can change your mind?”

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(1) Ask “Will you be concerned with it in the same way after a year?”

This is a hypothetical question that is often used. Since deadlock is sometimes related to the current persistence, have a party imagine the case where a little time has passed and ask himself/herself to consider the nature of time of his/her obsessiveness.

(2) Change roles and think from the other party's position.

This is also a hypothetical question that is often used. For example, “If you were the other party, how would you feel with your current proposal?”

(3) Urge the change of the proposal of the other party to be indicated as his/her change of the condition.

A stalemate is sometimes caused by fear to move first. It would be mutually beneficial if it is possible to indicate that one party can move if the other party will change a certain point. For example, “What kind of and degree of change of the other party's position can change your mind?” It is also possible to open a caucus here.

Work

Paraphrasing the Emotion

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Work

Paraphrasing (Facts/Emotion)

Paraphrasing

Using different wording without any change of meaning, a mediator paraphrases what a party indicated.

Subjective expressions are paraphrased to objective ones.

Paraphrasing what "you" subjectively explained to what "I" do.

"You" Message

"I" Message

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Work

Convey “Emotion”

Sense in relation to mental or physical conditions internally arising from when a person contacts something.

Remove one's eyes from emotion.

Express emotion.

Become **emotional**.

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Work

Express Emotion

Your friend who is a beginner driver speeds up suddenly on a freeway. You're being scared and desiring that he slows down the speed. What would you do?

"It is dangerous to drive so fast."

"You may get arrested for speeding."

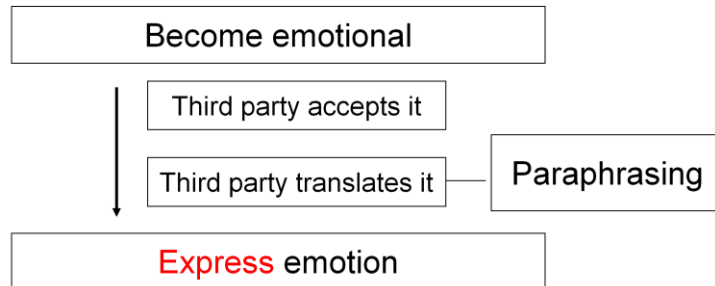
With shivering, "I get scared."

Cry and scream.

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Work

“Accept” “emotion” and “translate” it



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Work

Open-ended question

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Work

When a conversation is not going smoothly

Ask yourself if questions are posed one after another without being aware that one's way of questioning is wrong.

Inquire

Interviewer shall think about the speaker's position and speak kindly in a supporting manner so that the speaker may speak as specifically as possible.



Open-ended Question

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Two Conversations

Closed Question

- Mother: Did you have fun in school today?
- Child: Yes, I did.
- Mother: What did you do in gym class?
- Child: Horizontal bar.
- Parent: **Did you do a good job?**
- Child: Yes, I did.
- Parent: Then, what did you do in math class?
- Child: Test.
- Parent: **Was it good?**
- Child: Bad.

Two Conversations

Open-ended Question

- Mother: What was happened in school today?
- Child: Nothing happened....
- Mother: I get worried because you look like something was disappointing.
- Child: Really?
- Parent: **Tell your story, saying specifically what happened.**
- Child: Yes. Today, classmate ○○ bullied me.
- Parent: **Bullied? What kind of thing did he do?**
- Child: He hid my schoolbag...

Open-Ended questions

Recognize the strangeness by Closed Questions

1. Make a pair.
2. One plays a role of a speaker and the other plays that of an interviewer.
3. Purpose of questions is to know "**how the speaker spent last Sunday.**"
4. The interviewer shall pose questions that can be answered by "Yes" or "No." (**Closed Questions**).
The speaker shall answer only "Yes" or "No."
5. Switch the roles after finishing.
(Approximately 3 minutes x 2 times)
6. Review this session.

Distribute Later

Explanation

What was closed by the closed questions

- As **an Interviewer**,
- Was it easy to make questions? or Difficult?
- Did you obtain a lot of information?

- As **a Recipient**,
- Was it easy to answer?
- Didn't you feel it was compulsory to answer questions?
- Was your personality respected?

- How shall we treat a person who doesn't speak out?
- If we have to reach a conclusion, what kind of action should be taken?

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Work

Paraphrasing the Facts

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General Training

1. Form pairs.
2. One is a speaker and the other is an interviewer.
3. The **speaker** selects any of the following themes:
 - (1) Smoking while walking
 - (2) Using a cellular phone inside a train
 - (3) Waiting time in a hospital
 - (4) Mistake/misbehavior while travelling
4. The **interviewer** shall start from the question “Tell me your idea about...” and thereafter try to keep the dialogue to go on as long as possible **by nodding, paraphrasing, and posing open-ended questions** to the speaker’s story.
5. Switch the roles after finishing.

Work

Skill Training

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Open-ended Questions, Closed Questions

1. Form pairs.
2. Remember **what you did on last Sunday**. You can check your diary. (2 minutes)
3. Decide which of you questions first.
4. Ask only “closed questions” (questions requiring only “yes” or “no” answers). The other answers the questions, using “yes” or “no” only. (1 minute)
5. Exchange the roles. (1 minute)

Work

Paraphrase

1. Form pairs and decide who plays the role of speaker and who plays the role of listener.
2. The speaker chooses a topic from the following:
 - (1) Smoking while walking
 - (2) Use of a cellular phone in a train
 - (3) Waiting time in a hospital
 - (4) Failure during travel or a business trip
3. Start with the listener's request: "I would like you to talk about the topic." The listener should accept and **paraphrase** the speaker's words and return them to the speaker. If the paraphrased words are wrong, the speaker should correct them. (4 minutes)
4. Exchange roles. (4 minutes)
5. Each of the pair fills in the review sheet, and both review the impressions received as the listener and as the speaker. (4 minutes)

2 Identification of Issues

“Issue” in English means what will be discussed as a theme in mediation from now on.

This is the most important thing in mediation training; in other words, it is the most difficult point.

For example, please set the issues in the form of question such as "How are you going to do?" or as a noun indicating events to be discussed.

- Be sure to set in multiples. (Preferably three or more)
- Do not set the facts in the past or the points in dispute confirming the presence or absence of rights, but please make it the issue to be handled by both parties in the future.
- It must not be the issue involving the mediator's evaluation.

[Tips to Trainer]

In order to better understand the "identification of issues" in the voluntary negotiation assisting type mediation, let's see the methods of “identification of issues” or “arrangement of points in dispute” in evaluation type mediation which is positioned at the opposite side.

In the evaluation type mediation, it seems that emphasis is placed on

determination of past facts in general. This is because it is necessary for the mediator to recognize facts that are the prerequisites for the application of laws and regulations, since the mediator has certain legal assessment in mind when proceeding with the mediation.

By the way, if the two parties assert different facts, it is difficult to recognize facts or discover the truth. In civil court cases in Japan (civil litigations), legal technical structure is adopted such that, in accordance with the content claimed by each party, the burden of proof of certain facts is left to the party concerned, and if the party cannot prove such facts, they are not recognized. Therefore, there may be the case where determination of facts different from the objective truth is made depending on the proof by the parties, but in civil court cases (civil litigations), judgment is made on the premise of facts obtained by such determination of facts (truth in procedural law).

In evaluation type mediation, it seems that each party is generally required to assert certain facts or to provide evidence based on the burden of proof as described above, and there are many cases where the mediator is attending such mediation with a certain strong belief on each fact relating to such case based on their assertion and proof. In such a case, since there may be a case where the mediator has a strong belief different from the objective truth depending on the assertion and proof, it often happens that a solution is presented that is not sufficiently satisfactory for a party who knows the objective truth.

Identification of Problems

- This seminar aims to review the framework of both parties' assertions and identify common problems acceptable by both parties.
- (1) Individual work (5 minutes)
- Practice thinking from the standpoint of the mediator.
 - Read the assertions made by both parties during the first group work, find problems (topics, points, or issues) acceptable to both parties and enter them in the worksheet "Problem Identification 3" on hand. List them as interrogative sentences, such as "How to ...?" or nouns that indicate things to be discussed.
- (2) Group work (10 minutes)
- Share the results of the individual work and write them (at least three items) on the distributed vellum in large letters. If an expression is corrected, draw double lines through it. If there is a shortage of paper, request new paper from the instructor or the secretariat. Write them rapidly, or you may run short of time.
 - Review the results on the vellum by the whole class.

Let's use examples of negotiations, etc. used so far as cases.

Case

Use of an Event Space without Permission [Common Fact]

October 30, XX, an exhibition of office furniture was held in Convention Tower D between 10:00 and 17:00.

The exhibition charge per booth was 500,000 yen.

Manufacturer B installed several air cleaners in the allocated Space 11 from 10:00. From around 11:00, it occupied Space 21 as storage space for air cleaners and equipment.

Manufacturer B has admitted that it occupied Space 21. However, it has denied paying the charge for the space.

There was no special agreement.

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Case

Reference

Manufacturer B

Space 11	Space 12	Space 13	Space 14	Space 15
Space 21	Space 17	Space 18	Space 19	Space 20
Space at issue	Not in use	Not in use	In use	In use

Distribut to the players

[Secrets of Manufacturer B, an Exhibitor]

Manufacturer B has exhibited office furniture at the exhibition sponsored by Company A for three consecutive years. This year, it exhibited air cleaners.

Manufacturer B stored goods in Space 21 because air cleaners sold better than expected. It was troublesome to go to a distant storeroom whenever an air cleaner was sold. Space 21 was not rented by anyone and therefore was vacant. Also, because there were no passersby, Manufacturer B thought that the use of Space 21 would not hinder the management of the exhibition.

On that day, Company A said nothing to Manufacturer B. If Company A had noticed this, it should have notified Manufacturer B. If so, Manufacturer B could have carried out appropriate measures, such as removal. Manufacturer B cannot understand why Company A made its demand afterwards.

Because there were no passersby in front of Space 21 and it was not rented by anyone and was vacant, Manufacturer B cannot accept the demand for full payment of 500,000 yen, the fixed charge for use of the space.

The person in charge (part-timer) misunderstood that Manufacturer B rented both Space 11 and Space 21. Hiring a careless part-timer was Company A's failure.

Because air cleaners sold better than expected, Manufacturer B is considering exhibiting them at Company A's convention also in the future. However, Manufacturer B wants to use a space in a busier place.

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Distribute to the players

[Secrets of Company A, the Event Supervisor]

Because Manufacturer B failed to notify the person in charge of products brought in and occupied an event space, it seems natural for Manufacturer B to pay the cost. However, Company A failed to instruct Manufacturer B to remove the products that day.

Manufacturer B exhibited products for three consecutive years. Because the number of companies exhibiting their products has been on a downward trend, Company A would like B to exhibit products next year. Company A consulted with a lawyer of its acquaintance and received advice that Company A would not be able to gain 500,000 yen if it filed a lawsuit. However, because several other exhibitors complained about the unfair treatment, Company A has to do something.

According to custom, if an exhibitor rents two booths this year, Company A will offer booths according to the exhibitor's requests, such as a busy place, before next year's exhibition so that the exhibitor can secure advantageous booths.

Exhibitor: Manufacturer B	Event Supervisor: Company A
<p>(1) Manufacturer B has exhibited office furniture at the exhibition sponsored by Company A for three consecutive years. This year, it exhibited air cleaners.</p> <p>(2) Manufacturer B stored goods in Space 21 because air cleaners sold better than expected. It was troublesome to go to a distant storeroom whenever an air cleaner was sold. Space 21 was not rented by anyone and therefore was vacant. Also because there were no passersby, Manufacturer B thought that the use of Space 21 would not hinder the management of the exhibition.</p> <p>(3) On that day, Company A said nothing to Manufacturer B. If Company A had noticed this, it should have notified Manufacturer B. If so, Manufacturer B could have carried out appropriate measures, such as removal of the products. Manufacturer B cannot understand why Company A made its demand afterwards.</p> <p>(4) Because there were no passersby in front of Space 21 and it was not rented by anyone and was vacant, Manufacturer B cannot accept the demand for full payment of 500,000 yen, the fixed charge for use of the space.</p> <p>(5) The person in charge (part-timer) misunderstood that Manufacturer B rented both Space 11 and Space 21. Hiring a careless part-timer was Company A's failure.</p> <p>(6) Because air cleaners sold better than expected, Manufacturer B is considering exhibiting them at Company A's convention also in the future. However, Manufacturer B wants to use a space in a busier place.</p>	<p>(1) Because Manufacturer B failed to notify the person in charge of products brought in and occupied an event space, it seems natural for Manufacturer B to pay the cost.</p> <p>(2) However, Company A failed to instruct Manufacturer B to remove the products that day.</p> <p>(3) Manufacturer B exhibited products for three consecutive years. Because the number of companies exhibiting their products has been on a downward trend, Company A would like B to exhibit products next year.</p> <p>(4) Company A consulted with a lawyer of its acquaintance and received advice that Company A would not be able to gain 500,000 yen if it filed a lawsuit. However, because several other exhibitors complained about the unfair treatment, Company A has to do something.</p> <p>(5) According to custom, if an exhibitor rents two booths this year, Company A will offer booths according to the exhibitor's requests, such as a busy place, before next year's exhibition so that the exhibitor can secure advantageous booths.</p>
Common issues for both parties	

Exhibitor: Manufacturer B	Event Supervisor: Company A
<p>(1) Manufacturer B has exhibited office furniture at the exhibition sponsored by Company A for three consecutive years. This year, it exhibited air cleaners.</p> <p>(2) Manufacturer B stored goods in Space 21 because air cleaners sold better than expected. It was troublesome to go to a distant storeroom whenever an air cleaner was sold. Space 21 was not rented by anyone and therefore was vacant. Also because there were no passersby, Manufacturer B thought that use of Space 21 would not hinder the management of the exhibition.</p> <p>(3) On that day, Company A said nothing to Manufacturer B. If Company A had noticed this, it should have notified Manufacturer B. If so, Manufacturer B could have carried out appropriate measures, such as removal. Manufacturer B cannot understand why Company A made its demand afterwards.</p> <p>(4) Because there were no passersby in front of Space 21 and it was not rented by anyone and was vacant, Manufacturer B cannot accept the demand for full payment of 500,000 yen, the fixed charge for use of the space.</p> <p>(5) The person in charge (part-timer) misunderstood that Manufacturer B rented both Space 11 and Space 21. Hiring a careless part-timer was Company A's failure.</p> <p>(6) Because air cleaners sold better than expected, Manufacturer B is considering exhibiting them at Company A's convention also in the future. However, Manufacturer B wants to use a space in a busier place.</p>	<p>(1) Because Manufacturer B failed to notify the person in charge of products brought in and occupied an event space, it seems natural for Manufacturer B to pay the cost.</p> <p>(2) However, Company A failed to instruct Manufacturer B to remove the products that day.</p> <p>(3) Manufacturer B exhibited products for three consecutive years. Because the number of companies exhibiting their products has been on a downward trend, Company A would like B to exhibit products next year.</p> <p>(4) Company A consulted with a lawyer of its acquaintance and received advice that Company A would not be able to gain 500,000 yen if it filed a lawsuit. However, because several other exhibitors complained about the unfair treatment, Company A has to do something.</p> <p>(5) According to custom, if an exhibitor rents two booths this year, Company A will offer booths according to the exhibitor's requests, such as a busy place, before next year's exhibition so that the exhibitor can secure advantageous booths.</p>
<p>Common issues for both parties</p>	
<ul style="list-style-type: none"> •Communication method on the day of the event •Patrol method •Rules on the use of spaces •Occupation of booths this year •How to secure impartiality with other exhibitors •Next year's exhibition <div style="text-align: right; margin-top: 20px;"> <div style="border: 1px solid black; padding: 5px 20px; display: inline-block;">Distribute Later</div> </div>	

Work

3 Hints to Create Choices to Solve the Problem

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Hints to Create Choices for Problem Solution (1)

- 1 The mediator first encourages the parties to create choices instead of suggesting the choices.
- 2 The mediator should not analyze, examine, or criticize the choices created by the parties at the early stage. Keep listening to the parties.
- 3 It is necessary to encourage both parties to create as many choices as possible and not to be particular about who creates choices or which party will carry out each of the choices.

[Tips to Trainer]

1. Instead of suggesting the options, the mediator first encourages the parties to start moving forward by themselves.

In voluntary negotiation assisting type mediation, the central issue is to face with the other party and to overcome issues with the power of mutual dialogue. Since the options for solving the issues are related most closely to the interests of the parties, it is necessary for the parties themselves to think about them. To that end, we will use the brainstorming method.

2. The mediator should not analyze, examine, or criticize the options proposed by the parties at the moment. First of all, stick to listening to the parties.

We start the brainstorming by accepting proposals from the parties without first evaluating (criticizing) the proposals. It is most important that proposals are submitted. Even though it is considered ridiculous at first, it is common that the proposals are issued, corrected, and updated, and changed to those with a sense of reality.

3. Have the parties propose as many choices as possible, and the mediator is required not to stick to who proposed the choice and which party would perform the actions expressed by the content.

Choices are mainly provided by the other party first. If you understand the rules that the choice is for solving the issues and that in brainstorming it does

not matter "Who proposed it" or "To whom it is addressed," the parties would propose the choice which would put burden on the proposing party to execute by himself/herself as well as one requesting the other party to do something. Because of this, it is a violation of the rules that the mediator would use it as an opportunity to urge the proposing party to do it (trapping him/her up with his/her own words). Voluntary withdrawal of choice; that is, freedom to get on and off, is also important.

Hints to Create Choices for Problem Solution (2)

- 4 If the parties cannot come up with choices, it is possible to use some devices.
- 5 If the parties cannot come up with choices, the mediator should commence action.
- 6 From the creation of choices to their combination and "selection"

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[Tips to Trainer]

4. If the parties cannot come up with choices, it is possible to use some devices.

If choices are not coming out at all, we should consider (1) going back to the stage prior to the mediation, including identification of the issues and (2) double checking the purpose of the brainstorming. As a part of helping the parties to think concretely, certain questions are sometimes effective, such as (1) what are the matters you would like the other party to do immediately and in the future and (2) what you can do right away and in the future.

5. If the parties cannot come up with choices, the mediator should commence action.

When the choices of issues are provided by the parties, there are cases where the parties are caught in the existing framework, which sometimes causes them to be completely stuck in the mire. There, the mediator may be able to break through the state by showing different perspectives and viewpoints. For example, as for the subject "What kind of device is there to prevent a needle being mixed into a product," it would be instructive for a consumer to indicate "It is a major premise for consumers that a needle is not contained in the product from the consumer's point of view. However, if the product is manually produced, the danger remains. At the very least, consumers may want to make sure that multiple checks of each other work effectively."

6. From the creation of choices to their combination and "selection"

When choices have been largely provided, we will examine the relationships among the choices and proceed to the final "choice" considering the combination of the choices and their relative merits and demerits. But, do not hurry too fast. And, if it becomes a specific choice scene, the mediator himself/herself can also ask questions about the burden and the degree of realization when moving the proposal to the actual work as a "reality check."

Mock Mediation

fishbowl

4 Mock Mediation

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Trouble due to daily life noise between residents

Mr. **Onishi** and Mr. **Sato** are living as a next-door neighbors.

The ground Floor of the 3-story building is divided into 2 resident units separated by a wall; Mr. Onishi lives in Unit No.101 and Mr. Sato in Unit No.102. Their room layouts are structured in the same. (Their rent, etc. is also the same.)

Mr. Onishi is a budding author and works on his writing at home during the daytime.

Mr. Sato is a musician playing easy listening music.

Mr. Sato goes out at night for his performance but he practices an electric guitar in his home during the daytime.

There have already been frequent troubles between them for the last 2 years from when both of them started living in this building. Mr. Onishi complained to Mr. Sato, directly or through their landlord, about his noise, and recently, at last, Mr. Onishi called the police and asked the police to warn Mr. Sato.

The landlord, who recently heard from another resident that the two of them quarreled loudly, is not thinking to terminate their rent upon their time of renewal coming 3 months in the future (November 2016) and 6 months in the future (February 2017), respectively. He thinks that if this trouble continues, it annoys other residents.

Now the landlord informed them of his intention and recommended to resolve the trouble by all means in the Mediation Center. Then, Mr. Onishi and Mr. Sato are now gathering at the center by intervention of the center upon their request.

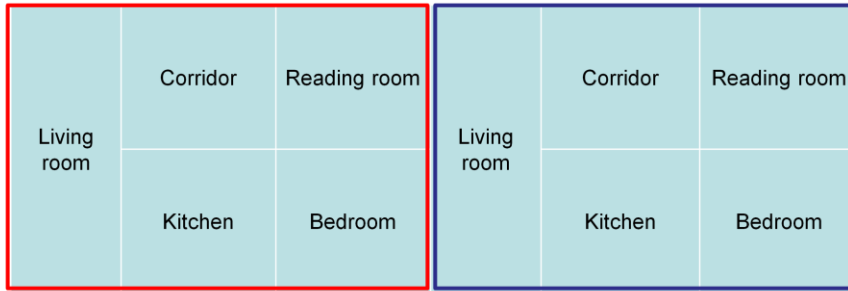
Case

Mediate a Dispute for Noise Trouble

Plain View of the Parties' Residences

Unit 101
Room Layout of Mr. Onishi's Room

Unit 102
Room Layout of Mr. Sato's Room



Protocol

Before Starting the Role-playing

1. Since this is only a training, please don't feel embarrassed but devote yourself into the role by imagining what the role would be feeling. However, don't intentionally lead the negotiation to the bad end. It's both important to sincerely play your role and not to take away the chances to learn from other participants.
2. We will review the session. In the review, the person who played as a mediator will be requested to specifically explain to what you pay the attention, what goes well and what is difficult. The persons who play as parties, please pay your attention on what attitude/behavior of the mediator you feel good during the role-playing. Not only the contents of the conversation, but please also carefully observe the mediator's movement, facial expressions and the way of making questions. In the review, you will give your feedback to the mediator and also think how you would do it when you are the mediator. After the playing, please write down on the worksheet, before your memory fades.
3. The mediators can freely arrange the setting by using the facilities (e.g. how to place chairs, whether have a table or not). It's up to the mediator how to conduct the mediation. Caucus can be utilized. The mediator can take notes, but be mindful that note taking shouldn't disturb your listening.
4. Please carefully go through the Fact Sheet that contains common facts and confidential facts. If there is anything unclear, please ask the lecturer. Please don't disclose the Fact Sheet to your counter part. By using your healthy common sense, you can add the facts that are not written in the Fact Sheet.
5. The role-playing is planned to be about ____ minutes. You don't have to reach the final₂₀₄ settlement. The purpose of this playing is that you will check what you learned.

Confidential Facts held by Mr. Sato

- Mr. Sato wants to continue to live in Unit 102, where he moved in February 2015, because of its good conditions, such as only 5 minutes' walking distance from a train station, getting plenty of sunlight in the room, and affordable rent compared to the neighborhood. He is a musician of easy-listening music, playing in a group of 5 players, which was formed 5 years ago. Until recently, the group had not got offers of performance, but nowadays it gets. Mr. Sato believes that such offers are the result of the quality of their performance.
- He practices during the daytime, as he is busy at night for the performance. He is soon going to be 30 years old and has to make his living by this music performance. In order to keep the quality of the performance, he has to practice at least 3 hours a day. However, in Tokyo, no place other than his own residence is available for practice every day, and his current income does not allow him to pay expensive studio rent charges, even if a studio is available. Only Mr. Onishi complains about the sounds of his performance. According to the room rent agreement, there is no provision to prohibit him from playing an instrument.
- "Although I already lowered the volume of my amplifier understanding the situation, Mr. Onishi still makes vigorous protests again and again. He further complains to the landlord and nowadays even makes notices to the police. Because my practice is always interrupted by him, I am annoyed so much. One day, when I met Mr. Onishi at the garbage collection point, we quarreled each other. Neighbors were watching the scene without getting close to us. Now I think he is overly nervous to complain about such minor sounds. I consulted a lawyer, who is my friend, and he said that there is a certain legal standard applicable to this situation so-called "Tolerable limit." I believe that my sound is definitely not over that limit." 205
- "Prohibiting me from making sounds means seizing my income."

Confidential Facts held by Mr. Onishi

- Mr. Onishi also wants to keep living in Unit 101 where he moved in November 2014, because of its good conditions, such as the 5 minute walking distance from a train station, getting plenty of sunlight in the room and the affordable rent compared to the neighborhood.
- Mr. Onishi is a fresh author of a mystery novels, who need to work with concentration in a quiet environment. He works in the reading room of his home. Because he is a beginner, he cannot expect any other place for his writing work. As he wakes up and goes to bed early by his nature, he feels the most comfortable to write from the morning to early evening.
- "Due to my next-door neighbor Mr. Sato's playing of his guitar, I am so annoyed as to be out of my mind. Therefore, my recent works have been delayed and I'm being pressed by publishers. The job offers from publishers may possibly cease if my writing activities are kept interrupted. Above all, my feeling of distrust against Mr. Sato is increasing as the days go by because his performance is still continued without regard to my efforts to complain to him, the landlord, and the police.
- "One day, when I met Mr. Sato at the garbage collection point, we quarreled. Neighbors were watching the scene without getting close to us."
- "As I am worried that my activities as an author will be seriously influenced by this trouble as long as this situation is unchanged and continues, I am more nervous about sounds of his guitar than before and feel that such sounds are louder."
- "I considered resolving this trouble legally, but I hesitate to spend more time and cost, as well as any further disturbance to my writing activities caused by such legal proceedings. I am convinced that this trouble may not be resolved by money, but only by restitution to the original calm environment that is good for my writing activity."
- "I believe that Mr. Sato should go out from the building, because he moved in after me and he caused trouble to other residents."

Watch the Mock Mediation

1. Observe the Mock Mediation as detail as possible.
2. Take notes of scenes that you think good or and scenes about which you feel weird or troublesome. After the demonstration, we will share these notes.
3. Pay attention to what the mediator is saying.
 - Which does each statement mean: 1) Confirmation, 2) Question to collect the information, 3) Proposal, or 4) Expression of the mediator's opinion?
 - What kinds of questions were posed, and what was their content?
4. Pay attention to the mediator's attitude (body language).
 - How is his/her body position, body direction, hand gesture, eye direction etc.?

Worksheet

See (Observe) Mediation Demonstration

What statements and questions made by the mediator seem to be effective?	What behavior and attitude of the mediator seem to be effective?

Distribute Later

See (Observe) Mediation Demonstration.

What statements and questions made by the mediator seem to be effective?

He made confirmation to accumulate small agreements.
He clarified rules, purposes, and roles first.
He introduced himself.
He proposed that each should call the others by name.
He clearly stated that he will make no evaluation or judgment.
He confirmed that the role of the mediator is to give support.
He confirmed the role of the parties also ("Both of you should finally solve the problem.").
He told that each of the parties can talk with the mediator separately.
He paraphrased the parties' statements into easy-to-understanding ones.
He drew opinions from the parties by open-ended questions.

What behavior and attitude of the mediator seem to be effective?

He came out to welcome the parties.
He was listening to the parties, looking at their faces.
He was listening, turning his body toward the speaker.
He was listening, nodding and throwing in words of agreement.
He had the parties speak equally.
He obtained confirmation from the parties one by one.
When he talked with a party, he took care of the other party, addressing and turning toward the party.
He encouraged the parties to speak slowly.
When listening to a party, he did not cut in until the party made a pause.
He created an atmosphere where the parties could say what they wanted to say.
He used body language, such as moving his hands.
He expressed thanks to the parties.

Explanation

Training in Social Skills

Learn the tips of communication

- 1 Clarify the more suitable skills.
- 2 Observe the model skills.
- 3 Do the role-playing by following the model skills.
- 4 Receive feedbacks of evaluation for the role-playing.
- 5 Practice the learned skills in the real situation.

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Work

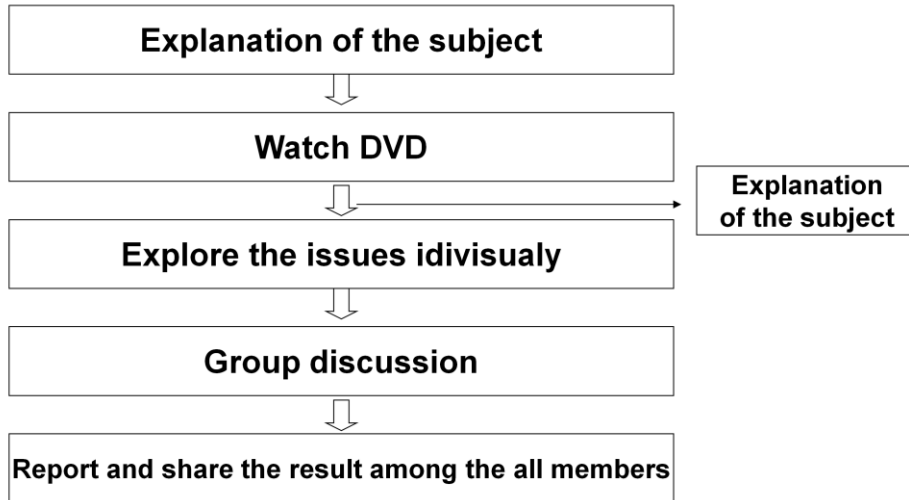
Training in Mediation

Utilization of DVD

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Work

Protocol



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5. Dealing with the Difficult Situations

Share the common situations and prepare the necessary measures by sharing repeated

There are difficult situations that would become typical "crises" in mediation. By experiencing this virtually, it is possible to "manage somehow" even if "responding well" is impossible.

There are problems that occur frequently in mediation. However, most of them arise from a typical pattern whose form may change (many of them can be predictable).

This training aims at the following three matters:

1. You first need to understand that such a situation arises in mediation. If you fully understand it (even if you do not know the answer), you will not lose your presence of mind and be bewildered, and can deal with the situation with confidence (often things may get settled as a result of having confidence).
2. If you are trained beforehand, you can respond promptly and appropriately and use the necessary resources (such as help from the administration office).
3. But sometimes it's too late if such a situation has happened. Therefore, before such a situation occurs, you should consider the importance of explanation to and understanding by the parties as countermeasures.

Work

Dealing with the Difficult Situations

Difficult Situations	What you can do in the mediation room	What you can prepare before the mediation
A party is insisting that s/he doesn't have time	•	•
Only their counsel/lawyer presents	•	•
Parties start saying "I'm leaving."	•	•
Other potential situations that cause difficulties within the mediation	•	•

Situation

After entering the mediation room, the other party started complaining that s/he was summoned

For example,

- “I didn’t do anything wrong. Why you summoned me?”
- “It’s not polite to summon me without my consensus. What kind of authority do you have?”
- “I’m too busy to attend this mediation. It’s so annoying.”
- “Why didn’t the applicant directly talk to me, before asking for the third person?”

What can the mediator do in the mediation room?

What kind of preparation can the mediator make in advance?

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- The party has appeared at the mediation complainingly.
- S/he may not understand the mediation.

Parties insisting that they don't have time for discussions

- Question
- How should we treat a party who states that they have no time to have discussions from the very beginning when they are summoned for the mediation?
- Mediator's response in the venue where that party states it.
- Prior to the mediation

Individual Meeting (Caucus)

- In what kind of situation would we be better off implementing a caucus (separate hearing)?
- What should we announce to both parties before the caucus starts?
- What rules should be explained at the caucus?
- When the caucus is held, what is required to be drawn out, what type of technique does that require?

Work

6 Ethics of Mediators

Carry out more in-depth
discussion by watching DVD

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Ethics of Mediator

Why is the code of conduct for mediators necessary?	What kind of rules does the code of conduct for mediators contain?

What is the ethics necessary for mediators the Code of Conduct

- **Why are ethics required to mediators?**
- Statements of the mediator have significant influences to the parties' decision-making process.
- The mediation is based on a relationship which is irreversible, one-time only, and closed to the public.
- The mediation is an occasion that gives tensions on the mediator's behavior and the parties' power balance.
- In the mediation, there are only the mediator and the parties, and such parties have difficulty to be against the mediator.
- In the mediation, some sort of dilemma tends to happen: such as the reliability of the organizations vs. the reliability of the mediator, and the fairness vs. the trustworthiness.
- The corruption may possibly happen in the mediation.

Situation

The mediator has known one of the parties, and the mediation starts without disclosing this relationship.

- If one party is acquainted with the mediator, what feeling does the other party, who is not acquainted with him/her, have?

Situation

Getting a job offer right after the mediation that has successfully finished

- If any new work is offered by a party, right after the mediation has successfully resulted in agreement, how should you handle it?
- If you accept it, what kind of risk may be anticipated?

Check List of the Ethics

- Before starting
 - I don't have any close/special relationships with a party.

 - The mediation is suitable for this case.

 - The parties know the cost of this mediation procedures.

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«Before starting»

- Do you have any close or special relationship with either party?

* Securing of independence and fairness of a mediator is essential for ensuring confidence in mediation and the mediator.

* If there is any close relationship or interest, you must obtain consent from the other party for becoming a mediator after having disclosed it to the other party, provided, however, that when the close relationship or interest is strong, you should not accept acting as the mediator even with the consent of the other party.

- Is the case suitable for mediation?

* If it is subjected to other dispute solution procedures (litigation, judicial mediation, etc.), as a general rule, it is not suitable for mediation.

* Do not hesitate to ask a lawyer for advice, if you think that there may be a legal problem, such as whether a claim is illegal or whether its statute of limitation has expired.

- Did you disclose the cost for mediation procedures?

* Troubles of cost for mediation procedure may un hinge confidence in mediation.

* It is desirable to clearly present to both parties beforehand, in written

form, the costs for mediation procedures such as application fee, mediation date fee, settlement fee, etc.

Check List of the Ethics

In the beginning

- I explained that the mediation is voluntary (they can quit anytime).
- I explained the roles of mediators.
- I explained that the parties can consult with experts, such as lawyers, to obtain their experts' opinions anytime.

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«In the beginning»

- Did you explain that mediation is voluntary (they can quit anytime)?
- Did you explain the roles of mediators?

* Mediators assist the parties in resolving the dispute through discussion.

- Did you explain that the parties may consult with lawyers, etc. to obtain their experts' opinions anytime?

Check List of the Ethics

During the Mediation

- I'm keeping myself neutral and fair to both parties.
- I'm supporting the parties to voluntarily make their minds.
- When I propose a solution, I'm clearly telling that they are free to deny it.
- I don't force the parties to make a decision, an agreement or settlement.
- I'm not giving them legal advices.
- I'm not disclosing the secrets.
- I'm immediately correspond a party, who says that s/he wants to suspend/quit the mediation or to change the mediator.

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«During mediation»

- Are you keeping yourself neutral and fair to both parties?
- Are you supporting the parties to voluntarily make up their minds?
- Do you clearly state that they are free to deny a proposed solution when you propose it?
- Do you avoid forcing the parties to make a decision, an agreement, or settlement?
- Do you avoid giving them legal advice?
- * There is no role for mediators to give legal advice.
- Do you maintain confidentiality?
- * Information obtained in the caucus shall not be disclosed to the other party unless the disclosing party agrees to it.
- Do you immediately respond to a party who says that s/he wants to suspend/quit the mediation or to change the mediator?

Check List of the Ethics

When closing the case

- The agreement is fair and legitimate.
- No party was forced to agree on it.
- If an agreement was made partially on the case, it must clearly show the difference between the agreed parts and the others.
- When no agreement is made, it is explained that any solution/proposal shown in the procedure doesn't have any effect outside this mediation.

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«When closing the case»

- Is the fairness of the agreement secured?

* Verify whether or not the agreement is illegal, is significantly disadvantageous for one party, is based on erroneous information, or is not enforceable.

* In principle, it is desirable to seek advice from lawyers when preparing the agreement.

* It is advisable to encourage the parties to have opportunities to consult lawyers about the draft agreement.

- Did you avoid forcing the parties to agree on it?
- If a partial agreement was made on the case, did you clearly explain the agreed part and the part for which no agreement was reached?
- When no agreement was made, did you explain that any proposed solution shown in this mediation procedure has no effect outside this mediation?

Check List of the Ethics

After finishing the case

- I discarded the note/memo
- Without a consent of the all parties, I have not disclosed any information obtained during the procedure to others.
- I don't use the information obtained within the mediation for my benefit.

Others

- I show the correct information on my career and certification.
- I'm trying to improve my skill and ability as a mediator.

Tips

7 Tips for the Mediation

You are a mediator

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Before the Mediation

1. Prepare for the Mediation (Tips from the Negotiation Theory)

1. The result of the negotiation, or further the mediation, depends on how sincerely you prepared for it.
2. Be prepared for everything you can imagine and be flexible with the unexpected situation.
3. You often encounter irrational attitudes, since you are dealing with human beings within the negotiation.
4. Sometimes, you need to be courageous enough to give up the negotiation while it seems better to reach an agreement through the negotiation.
5. It's a good option to call for help to a third person, when you find the negotiation stuck in the deadlock. You should make effort to bridge between the negotiation and the mediation.

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[Tips to Trainer]

1. The result of the negotiation, or further, the mediation, depends on how sincerely you prepared for it. Whether good results can be achieved through negotiation depends on the preparation. Proper preparation, including the other party's interests and conceivable strategies, constitutes a major part of whether the result of negotiations will be satisfactory or not.
2. Be prepared for everything you can imagine and be flexible with an unexpected situation. An important factor as to whether negotiations will proceed well or not is how to objectively and appropriately grasp the situation and flexibly respond to the change without being held by the original policy.
3. Unreasonableness always comes with work dealing with people. Negotiations are conducted by human beings. It is not always true that they make reasonable and rational judgments.
4. You need to be courageous enough to give up the negotiation. You cannot do better than reaching an agreement, but sometimes you need to decide to terminate the negotiation.
5. You should make an effort to bridge between negotiation and mediation. When you find the negotiation stuck in a deadlock, it would be a valid option to call for involvement of a third party, from the viewpoint of problem solving.

Before the Mediation

2. Tips for the setting of the Mediation

1. How you prepare before meeting the parties significantly matters in how the mediation goes.
2. You have to thoroughly see if the setting is good for the mediation or not, such as the way of arranging the furniture and the way of sunlight coming into the room.
3. You had better have a consultation with the staff of the Mediation Center so that you can obtain more information about the case.
4. By checking the summons process, see if the party is willingly to come to the mediation or not, or if they have to take a leave from their job or not. You may have to give more thoughts to them.

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[Tips to Trainer]

1. The game of mediation has already started before the mediation actually begins.

Speaking of mediation, everybody thinks about interaction coming after the scene where you met the parties, but the game of mediation has already started before mediation begins.

2. Setting the place for mediation to make it suitable.

It is appropriate if you can look at the mediation room in advance and consider the positions of desks, chairs, air conditioning, and daylighting. Let's also consider the arrangement of furniture. Let's see whether there is anything that may distract the parties and other matters from the standpoint of the parties. You can also devise small matters to create a comfortable and safe atmosphere.

3. You should have a conversation with the administration office staff.

If you are setting up mediation as an institution, it is desirable to have a meeting with the administration office staff. During the meeting here, you should discuss what kind of irregular scenes are expected, what can be done in advance, how to cooperate in the case where irregular scenes actually occur, etc.

4. Check the summons process.

Situation of the parties' response to the summons (or calling) will become valuable materials for mediation proceedings. If there are troubles causing the party to come to the mediation or the party has taken leave of absence to attend the mediation, etc., further consideration as a mediator is required.

In the Beginning of the Mediation

3. Tips for the First Contact

1. First impression matters a lot.
2. Maximize the positive effect of your explanation in the beginning.
3. Be mindful that parties are looking at your attitudes.
4. Make a check list for what you cannot forget to explain the first session.
5. Imagine what kind of feelings each party is having, such as confusion, anger and misunderstanding. "If I were she/he..., I would feel..."

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[Tips to Trainer]

1. You should consider the first impression important.

It is necessary to create "an atmosphere where the parties will tell true intentions easily and safely" in voluntary negotiation assisting type mediation, on which the mediator's behavior, etc. will have a big influence. Let's consider the first impression important.

2. Think about what you can do with words.

Let's think about what the mediator's words can do. For example, "I would like to start the mediation from now; My name is XXX acting as a mediator; First of all, I would like to confirm the names of persons who are present here; (Confirmation of the parties' names) Here, ----."

3. Think about the parties' attitudes and what you can do for preparation at the scene.

The parties are looking at what the mediator says and does. Mediator's words are valued by the parties only if his/her attitudes are consistent with them.

4. Make a note of what you should not forget.

What you should explain at the beginning of mediation includes the purpose of procedure, the roles of the parties and the mediator, consultation with lawyers, the right of access to the court, confidentiality obligation, etc. You must have

your own checklist.

5. You should have the luxury to think about the parties' feelings that have brought them here.

The parties bring a lot of confusion, anger, misunderstanding, etc., until sitting in front of the mediator. I think that you can imagine such feelings if you were a party. Also, the party who makes a petition and the other party have different stances. You should be aware of the feelings of such parties as much as possible.

In the Beginning of the Mediation

3. Tips for the First Contact

6. Listening consumes a lot of energy from you. Arrange other schedule with sufficient spare time so that you can concentrate on the mediation. Build your own personal foundation.
7. Not only explain what you prepared, but draw questions about the mediation from the parties.
8. Every time, confirm if the parties understand your each explanation or not. Such confirmation gives the parties the feeling of ownership and makes them follow the rules.
9. Even an experienced mediator becomes nervous in the first session. Formal explanations let him/her start the mediation smoothly.
10. The explanation in the beginning such as "the mediator, does not judge," does not fully and immediately reach the parties who are stuck in a trouble. Thus parties often seem to forget your explanation and ask you to decide the case. Every time, you should explain it as if you've never explained it.

[Tips to Trainer]

6. Build your own foundation.

Mediation cannot be done if the mediator does not have energy. In particular, the work of "listening" in voluntary negotiation assisting type mediation will make you unexpectedly exhausted.

If you have anything to worry about, such as what you left behind, or the place you have to go after you finish the mediation, you cannot concentrate on the parties. This is called personal foundation. Therefore, you should get in shape as much as possible, complete phone calls, etc., in advance, not bring in any concern, and have room for about 30 minutes' scheduled completion time.

7. Encourage the parties to ask questions.

It is important to encourage the parties to ask questions as well as explain what the mediator has prepared. Since the parties have different levels of uneasiness depending on their positions, the parties can understand the mediator's points of consideration through the mediator listening to their questions, thereby increasing the relationship of trust with the mediator, and the parties realize that this is a "safe and secured" space where the mediator will "listen to" what is said through the parties' questions and the mediator's faithful answers.

8. Proceed with confirmation.

It is important that the explanation of the mediator should be done while

confirming the understanding of the parties. You should give the parties a look and give the explanation while checking whether they understand it. The matters confirmed will enhance the participation awareness of the parties and encourage compliance therewith. In this case, the confirmation includes not only the contents of what the parties said but also the procedure of how to proceed with the mediation (which party talks first, etc.)

9. The first meeting is also beneficial for the mediator.

While the parties are becoming nervous in the mediation as a matter of course, no matter how much experience they accumulate as mediators, even a veteran mediator becomes nervous when meeting new subjects and parties. The main purpose of the words of introduction with a little official tone in the first meeting is of course consideration for the tense parties, and it is also for the mediator to grasp his/her own pace.

10. First time encounter anytime

The words in the first meeting such as “the mediator does not judge” or “the parties are major players” do not immediately reach the parties who are stuck in the dispute. Thinking of the mediator as a person to make a decision, the parties often seek evaluation and advice from the mediator. In that case, the mediator and the parties encounter each other for the first time with a different form. Therefore, it is the first time encounter anytime.

During the Mediation (early stage)

4. Tips for Finding (setting) the theme

1. The theme of the case must be set neutral to the all parties. You should set the theme like “How was the needle packed together with the clothes?” not like “Did the second party put the needle by accident?”
2. Try to avoid the theme that inquires the past facts but instead express the themes in a way for which the all parties can work for their better future, such as “what can we do in order to prevent the needles from getting into the package.”
3. Set the theme on which the both party can do something so that only one party has burden and feels it unfair.

[Tips to Trainer]

1. The issues must be neutral for all parties.

The issues are what the parties will face from now on. In the voluntary negotiation assisting type mediation, you should use expressions that are neutral to both parties as much as possible, instead of adopting the issue according to one party's argument. The reason is to indicate that the mediator is not biased at the stage of issue selection, leading to all parties being able to easily accept the issue due to the mediator's neutrality. For example, the expressions should be made like “How did the needle come to be packed together?” rather than “Did A put the needle in by accident?”

2. It is desirable to express the issue in a way for which all parties can work for their better future, instead of an issue that inquires about the past facts.

When the task is relevant to discovering the past facts, it is likely that its direction will be inevitably towards <past thinking>, <responsibility pursuit>, <proof>. In this situation, the cooperative dialogue will be cut off. For example, the expression should be like “What can we do in order to prevent residual needles?” not like “How did the residual needles happen?”.

3. It is desirable to set an issue on which all parties can do something (some ingenuity).

If you set up an issue that only one party will bear burden to solve the problem,

it gives the impression that the mediator has taken hold of one side, and the party expected to bear the burden will react. For example, rather than saying "What kind of means should be taken in order to prevent the residual needles during the sewing process?" a better expression is "What kind of ingenuity is possible during the sewing process, mutual inspection process for residual needles, and delivery process in order to prevent the residual needles?".

During the Mediation (early stage)

4. Tips for Finding (setting) the theme

4. The theme must not be one that pursues the responsibility of one party.
5. While specifying the theme, you do not have to stick on the thinking framework of trial or judgement, such as how you calculate the amount of compensation for the damage.
6. If it is difficult to set the theme you should move back to the stage former where you simply listen to parties' opinions, claims and concerns. The more serious a case is, the parties are more likely to stick on the way of thinking to pursue the past and

[Tips to Trainer]

4. The issues must not be those that pursue the responsibility of one party.

At the beginning of the mediation, an exchange of words is conducted such that one party claims the other party "has" a responsibility and the other party says it "does not have" the responsibility. If you set up the issue at this stage, it will definitely become a type of "arrangement of issues" in judicial proceedings, and you will have a tendency to set as the issue negligence (fault), damage, causal relationship between them, etc. all of which are requirements for one party being held responsible. However, in voluntary negotiation assisting type mediation, it is first necessary to avoid setting the issue containing such requirements to hold one party responsible. For example, rather than saying "Was A able to avoid the residual needles?," it is better expressed as "What kind of ingenuity can be taken so as to avoid the residual needles, and which part thereof can A undertake?".

5. In specifying the issue, you do not have to stick to the legal judgment or framework.

If the issue is set with consideration to the future of the parties, there is no need to stick to legal judgment and framework (grounds for deriving damages, etc.). For example, rather than "How much damage has been caused to B due to residual needles?" the expression "what kind of improvement does B request A as a result of the residual needles situation?" is suitable.

6. If it is difficult to set the issue, you should move back to the former stage where you listen to the parties' claims, opinions, and real concerns.

The more serious the points of dispute are, the more natural it is for the parties to stick to points such as <past thinking>, <responsibility pursuit>, and <proof> from the standpoint of the parties. In such a case, if you forcefully present the expression with neutrality, non-responsibility pursuit, and future-oriented from the earlier stage, it will be opposed by the parties. In such a case, please do not rush, and think about going back to the previous stage.

During the Mediation (later stage)

5. Tips for Creating Options for Solutions

1. Recommend the parties, by themselves, to find the options. Since the options that enable the parties to overcome the theme significantly matters for the parties interest, it is very important to make the parties voluntarily think about the possible options. You can use the brain storming method.
2. Don't promptly analyze, criticize or judge the options shown by the parties. You have to listen first. While the brain storming, options that seem unrealistic are often revised to practical one before you give them advice.
3. Maximize the number of options from the parties. Don't stick on who showed the option or who would realize the option. Be mindful that parties should be free from the responsibility to realize the option which they themselves showed in the brain storming. Otherwise, the parties would hesitate to tell you the possible options that could often give them a burden.

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1. The mediator first encourages the parties to start moving forward by themselves instead of suggesting the options.

In voluntary negotiation assisting type mediation, it is the central issue to face the other party and to overcome issues with each other's dialogue power. Since the options for solving the issues are most closely related to the interests of the parties, it is necessary for the parties themselves to think about them. To that end, we will use the brainstorming method.

2. The mediator should not analyze, examine, or criticize the options proposed by the parties at the moment. First of all, stick to listening to the parties.

We start brainstorming by accepting proposals from the parties without first evaluating (criticizing) the proposals. The most important point is that proposals are submitted. Even though some of the proposals are considered ridiculous at first, it is common that the proposals are issued, corrected, and updated, and changed to those with a sense of reality.

3. Have the parties propose as many choices as possible, and the mediator is required not to stick to who proposed the choice and which party would carry out the content.

Choices are mainly provided by the other party first. If you understand the rules that the choice is for solving the issues and in brainstorming it does not matter "Who proposed it" or "To whom it is addressed," the parties would propose the

choice that would put burden on the proposing party to execute by himself/herself as well as one requesting the other party to do something. Because one party just so said, it is a violation of the rules that the mediator would use it as an opportunity to urge the proposing party to do it (trapping him/her up with his/her own words). Voluntary withdrawal of choice; that is, freedom to get on and off, is also important.

During the Mediation (later stage)

5. Tips for Creating Options for Solutions

4. If the parties cannot make any options, there are some ways you can try. For example, you may go back to the former stage where you found the theme or you may again explain the purpose of the brain storming. Questions such as “What do you want the other party do for you immediately and what in the future?” and “What can you do immediately and what in the future” may help the parties think specifically.
5. Sometimes, you need to disclose your opinion in a situation where the parties cannot create any option. When the parties are stuck in their own thoughts, such as blaming others, you can give them a third person’s point of view which could help the parties get out from their shells.
6. After creating the options, you will move forward to the stage where the parties compare, integrate and choose the options. Never work in hurry. Make questions about the reality of the options.

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[Tips to Trainer]

4. If the parties cannot come up with choices, it is possible to use some devices.

If they do not come out at all, you should consider (1) going back to the stage prior to the mediation including identification of the issues and (2) double checking the purpose of the brainstorming. As a part of helping the parties to think concretely, questions are sometimes effective, such as (1) what are the matters you would like the other party to do immediately and in the future and (2) what you can do right away and in the future.

5. If the parties cannot come up with choices, the mediator should commence action.

When the choices of issues are provided by the parties, there are cases where the parties are caught in the existing framework, which sometimes causes them to be completely stuck in the mire. There, the mediator may be able to break through the state by showing different perspectives and viewpoints. For example, as for the subject "What kind of ingenuity is there to prevent a needle being mixed into a product," It is a major premise for consumers that “a needle is not contained in the product” from the consumer's point of view. However, if the product is manually produced, the danger remains. It would be beneficial for you to indicate “At the very least, consumers may want to make sure mutual multiple checks work effectively.”

6. From the creation of choices to their combination and “selection”

When choices have been provided in sufficient number, we will examine the relationships among the choices and proceed to the final "choice" considering combination of the choices and their relative merits and demerits. But, do not hurry too much. And, if it becomes a specific choice scene, the mediator himself/herself can also ask questions about the burden and the degree of realization when moving the proposal to the actual work as a "reality check." For example, when it becomes a scene where it seems to be settled in the option of “purchasing and installing a metal detector to prevent the residual needles,” it is possible for the mediator to ask questions such as "How about the purchase cost (leasing cost) and the installation place?”

During the Mediation(later stage)

6. Tips to Overcome the Impasse

1. Check out if the deadlock is really an impasse or necessary time for the parties.
2. Think of the causes of the impasse by reviewing how the process of the mediation went, before exploring the solutions of the impasse.
3. Have a break which could refresh the party and you.
4. Propose the parties to put aside the deadlocked theme and start working on an easier theme.
5. Ask for the explanation from the parties what makes you them in stuck, and then you will understand which point of the deadlocked theme the party is afraid of. After that, you will request him/her to express their concern as if he/she looks at it from a remote place (telescoping). It might be a good option to hold the caucus.

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[Tips to Trainer]

1. Think about what kind of scene would indicate deadlock.

Negotiation and mediation do not progress linearly, but rather go in zigzags. Even if it seems to be a deadlock, it may be necessary for the parties to have time for consideration, so you need to deal with the situations calmly at first.

2. Think of the causes of the deadlock from the viewpoint of process.

If the negotiation becomes deadlocked, you tend to turn your attention to solutions, but let's think about whether there was no problem with the process so far. An especially important aspect is whether the parties were able to tell each other their real intentions. If the parties need to get acquainted with each other closely before considering solutions, it is also beneficial to return to the previous stage (identifying issues and exchanging opinions with each other).

3. Take a break.

It often happens for the parties and the mediator that things look slightly different when returning from a break.

4. Propose that the parties put aside the deadlocked theme (issue) and start working on a different issue.

The bigger the theme is, the more likely the parties are to face a deadlock. So, try to suggest that the parties start working on a "smaller" theme that seems

easier to solve.

5. Ask for an explanation from the parties about why the negotiation has been deadlocked.

By having the parties talk about the reasons for the deadlock, you can understand what the parties are afraid of, which points they cannot come to a compromise on, which points they want the other party to compromise, the reasons thereof, etc. In such a case, you should request the parties to express their sticking points as if they look at them from a remote place (telescoping). At this point, it might be an option to hold a caucus.

During the Mediation(later stage)

6. Tips to Overcome the Impasse

6. Propose the caucus, but you should not easily escape to the caucus.
7. By reviewing what you all achieved together through the process, give the parties feeling of that they can deal with the problems.
8. Throw a conditional question "Will you be still sticking on the same issue after one year later?"
9. Make them think from other parties' point of view. You can use questions such as "If you were the other party, how would you feel with this proposal?"
10. Request the parties to show a condition in which s/he can change his/her attitude upon the change of the other party. It could be useful to use the caucus here.

[Tips to Trainer]

6. Propose a caucus.

If you think that it may possibly be the reason for the deadlock that they could not say their real intentions, think about suggesting a caucus to the parties. But, you should avoid using caucus as a means of easy escape.

7. Confirm the outcomes that the parties have achieved together during the dialog.

If the deadlock occurs after the middle of mediation, there is a result that the parties have examined together in difficult times, so it is also beneficial for the parties to have the feeling that the parties can solve (have solved) the dispute by themselves by showing the result.

8. Regarding the deadlocked theme, ask "Will you be sticking to it in the same way after a year?."

This is a hypothetical question that is often used. Since deadlock is sometimes related to the current persistence, have a party imagine the case where a little time has passed and ask himself/herself to consider the nature of time of his/her obsessiveness.

9. Tell the parties to change roles and think from the other party's position.

This is also a hypothetical question that is often used. For example, think of the

question such as "If you were the other party, how would you feel with your current proposal?"

10. Urge the change of the proposal of the other party to be indicated as his/her change of the condition.

A deadlock is sometimes caused by fear to move first. It would be beneficial if possible to indicate that one party can move if the other party will change a certain point. For example, "What kind of and degree of change of the other party can change your mind?" At this point, it might be an option to hold a caucus.

Use meta communication (dialog).

This refers to changing the direction focusing on procedures, etc. rather than contents, when it seems that the parties do not have serious conversation, there is uncomfortable feeling in the atmosphere, the parties are not motivated, and the parties meet an obstacle and do not offer positive opinions. Since the parties and the mediator stick to the solution by all means, they meet the obstacles as indicated above. Therefore, it is effective to offer a proposal or to seek an opinion on the method of dialog itself which is away from the content, saying "Do you have a problem with something in the way of speaking?" or "Please say any points of concern about the order and time to talk, if any" and so forth.

During the Mediation (later stage)

7. Tips for the Caucus

1. Carefully think about the purpose of the caucus. In the facilitative mediation, the main purpose of using the caucus is to accommodate the while conducting
2. Listen first to the parties' opinions before deciding to hold the caucus so that you can smoothly conduct it.
3. There are a variety of scenes that fit the caucus, from the beginning, where the parties are not prepared, to the end, where they have to negotiate the amount of the payment. However, you should not easily jump into the caucus.
4. The rules and purpose of the caucus must be clearly told to the parties. If not, parties could start talking irresponsibly or overly accusingly.
5. Be careful to give the same amount of time for both parties and be noticed that while waiting, people feel the time lengthy.

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[Tips to Trainer]

1. Carefully think about the purpose of the caucus.

In the voluntary negotiation assisting type mediation, the main purpose of using caucus is to create the atmosphere where the parties can easily talk about their real intentions which cannot be spoken out in front of the other party.

2. Listen to the parties' opinions as much as possible before deciding to hold the caucus.

The decision to conduct the caucus while listening to the opinions of the parties will help the mediator to proceed with the subsequent procedures smoothly.

3. There are a variety of scenes that fit the caucus, from the beginning, in the middle (halfway), and at the end for conclusion.

If the parties are still not ready for a face-to-face conversation and the conversation does not go well since the parties cannot tell their real intentions in the middle stage as well as the case of final money negotiations, there is always a possibility to have a caucus. However, it is also important that you do not use caucus as an easy means of escape every time a difficult situation arises.

4. The rules and purpose of the caucus must be clarified.

Since the caucus is separately conducted without the adverse party's presence, there is a risk that one party may talk about an irresponsible story or may

unilaterally accuse the adverse party, so it is important to conduct the caucus with clear purpose and rules. For example, "I would like to talk with you in a separate room from now. How do you think about this? (Approval by the parties) Then, I would like to talk with you in a separate room from now. I would like to confirm the purpose and rules for having the meeting in a separate room. Now, I would like to have separate sessions between party A and the mediator and between party B and the mediator. Please talk about your real intentions in a separate room. However, please refrain from unilaterally blaming the other party. The mediator will treat what you talked about there as confidential and will never reveal it to the other party even if requested by the other party. If you would like to tell the story told there, please convey it to the other party in person when you meet with the other party." (Explanation of starting a separate room meeting)

5. When conducting the caucus, treat both parties fairly.

Waiting time feels longer than talking time. It is necessary for you to give consideration to the other waiting party and pay attention to time allocation, etc.

During the Mediation (later stage)

7. Tips for the Caucus

6. In the caucus, mediators tend to convince the parties to tell them what he/she really thinks, but you shouldn't do it. You had better focus on accommodating the atmosphere where the parties voluntarily show their real opinions.
7. The information retrieved from the caucus must not be used for solving the problems, but can be used for moving the process forward. Tell the parties that the necessary information for solving the problems must be directly communicated between the parties.
8. The caucus often stems overly informal atmosphere. Maintain a certain degree of the formality.
9. Don't escape into the caucus every time you face the difficulty.
10. In the end of the caucus, the following procedures must be explained.
11. After resuming the normal setting where the parties sitting together, the achievement of the caucus should be confirmed as long as you don't jeopardize the confidentiality.

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[Tips to Trainer]

6. Do not try to persuade the parties in the caucus.

In the caucus where the party is supposed to tell the real intention, the mediator tends to convince the parties to tell what they really think. Let's try to change the dialog subjects by paying attention to create an atmosphere enabling the parties to talk about their true intentions, listening to what they are sticking to, and sometimes presenting a viewpoint away from the standpoint.

7. Materials in the caucus are used as those for moving the process.

You should not rely on circumstances that have not been conveyed to the other party, such as unilateral opinion of one party. In voluntary negotiation assisting type mediation, the materials that came out only in the caucus should be limited to the usage for materials in moving the process of mediation. The information necessary for solution should be conveyed by one party to the other party.

8. In the caucus, while keeping a relaxed atmosphere, maintain a certain degree of formality.

[The caucus tends to become casual compared with the same room meeting. Since overly casual procedures will prevent the parties to exhibit their abilities to solve the dispute, moderate procedural management is required.]

9. In the last scene of each caucus, you should talk about the way of future proceeding.

[Since caucus is one of the ways to proceed with the mediation, it is necessary to explain what kind of procedure will follow, such as whether the parties will talk together in the same room again, what issues and choices will be selected for the first discussion, and what role the parties will play.]

10. When the caucus is finished and the same room talk is held again, you should confirm with the parties concerning the outcome and so forth of the caucus to the extent that does not violate the obligation of confidentiality.

[When returning to the same room talk, you should express your gratitude for the parties having talked about their real intentions, explain its significance, and encourage them to have further dialog based on the points that the parties have overcome.]

11. When the caucus is finished and the same room talk is held again, you should confirm with the parties concerning the outcome and so forth of the caucus to the extent not violating the obligation of confidentiality.

[When returning to the same room talk, you should express your gratitude for the parties having talked about their real intentions, explain its significance, and encourage them to have further dialog based on the points that the parties have overcome.]

Throughout the Mediation

8. Tips for Having Multiple Mediators

1. Be mindful that the mediation with multiple mediators is different from the mediation conducted by single mediator and that many of the techniques of mediation is supposed to be applied with the single mediator.
2. You should recognize what kind of situations/cases is suitable for having the multiple mediators. Generally, cases such as the parties are highly tensed or irregular communications are expected are good to have multiple mediators since the setting turns out to be a place with the higher security.
3. Be noticed that multiple mediators could be inappropriate to some cases or give some demerits on the mediation.
4. Carefully make a pair (trio) of the mediators thinking about their gender, expertize etc.

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[Tips to Trainer]

1. Mediation with multiple mediators is different from mediation conducted by a single mediator.

Many mediation techniques are supposed to be applied to the mediation with a single mediator. However, it is also important to conduct joint mediation, and there is also a corresponding merit. Think about the advantages and disadvantages of joint mediation, improve the advantages, and devise to reduce the defects. Therefore, you must also devise the first explanation when conducting joint mediation.

2. You should recognize what kind of cases are suitable for joint mediation.

Joint mediation is generally considered to be suitable for the cases where emotions are expected to increase, the cases where irregular behavior of parties is anticipated, and the like. Mediation will become a "safe space" by having multiple people, and a sense of stability will be increased by adding a lot of sight lines and perspectives.

3. Identify the cases where joint mediation is inappropriate or the cases having disadvantages of joint mediation.

On the other hand, joint mediation is sometimes rather inappropriate as "a space for talks with a sense of security" (on private matters) in full view of everyone.

4. Consider a combination of joint mediators.

While experienced mediator and non-experienced mediator, male and female, expert and non-expert, etc. can be thought of as the combination of joint mediators, think about various possibilities without being caught too much by existing ideas.

Throughout the Mediation

8. Tips for Having Multiple Mediators

5. A good coordination/cooperation between the mediators can maximize the merits of having multiple mediators.
6. Effectively use the break (time-out) for having a consultation among the mediators.
7. You can learn a lot of things from your partner mediator.
8. Sometimes, changing the roles of the mediators could become a breakthrough, when you find the mediation is going well.

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[Tips to Trainer]

5. In joint mediation, cooperation of mediators is important.

It is necessary for joint mediators to conduct the "first meeting" of joint mediation together. Also, it is necessary for the mediators to cooperate in the middle of joint mediation. Consider the idea of cooperation as more than the mediators just sitting side by side. Also, bad cooperation will make the parties uneasy, and it should be avoided that the parties think "why is this mediator here?" As an example of ingenuity, when the main mediator is talking to one party, the vice mediator consciously considers points to which one mediator cannot give consideration, such as showing casual consideration to the other party and grasping the whole flow which the main mediator cannot take into account. However, discussion about the merits of joint mediation has just begun.

I hope that joint mediation which is conducted by multiple mediators will produce good results like a table tennis doubles with a forward player and a back player.

6. Joint mediators also need a break and meeting time.

While Time-Out (break) is very important for the parties in mediation, even in joint mediation, it is necessary for joint mediators to take a proper break to coordinate with each other when there is some progress.

7. Joint mediation is a place of study.

Joint mediation is a good opportunity to share mediation skills of the partner mediator which cannot be usually seen. It is necessary to learn a lot of good things and to work hard with each other. While it is part of study (on the job training) for the person who has become a mediator for the first time to conduct the mediation under instructions of a senior mediator, it is necessary for the mediator to make a credible response as a mediator in front of the parties.

8. Change the roles of mediators.

When the mediation does not progress well, switching roles among multiple mediators could sometimes lead to a breakthrough.

Throughout the Mediation

9. Tips for Active Listening

1. Show your sincerity that you are trying to understand the parties as they are while not trying to apply your existing knowledge to them.
2. Make the relaxing atmosphere that empowers the parties, who are the leading actors/actresses of the mediation, to comfortably speak out.
3. Improve your skills to appropriately use a variety of questions in accordance with the situations.
4. Be aware of your own attitude and body languages.
5. Use appropriate tools, such as the flip chart and white board, which could help you clearly receive what the parties tell and conduct a productive communication.

[Tips to Trainer]

1. It is necessary to show your attitude of wanting to understand the parties here.

Your attitude of wanting to know the true intentions of the parties (attitude of Not Knowing) is required. You need a feeling to face the parties from the bottom of your heart rather than applying your own knowledge to them.

You are required to have a flexible attitude to correct yourself so that you can make effective communication with your eyes to look at the scene of discussion, including yourself, from the outside (telescope, meta view).

2. You must set up an atmosphere that enables the parties to demonstrate their powers.

The leading players are the parties. You must devise as much as possible so that the parties can demonstrate their powers (empower). It is especially important to create a relaxed atmosphere and make it easy for the parties to talk.

3. Can you use the questions appropriately?

You must consider whether you are openly addressing appropriate questions, whether you are listening carefully while checking, whether you are rephrasing your questions so that the other party also accepts it, and whether you are asking both parties equally. You are required to devote yourself to your studies

every day so that you can use appropriate questions at will.

4. Do you pay attention to attitude, body posture, etc.?

You should be sensitive to your own body language, such as carefully pay attention to facial expression, gaze, and body orientation and whether you are facing downwards or treating both parties equally. A relaxed atmosphere open to questioning anything must first be acquired by the mediator.

5. Do you use tools properly?

Proper use of flip charts and white boards is effective for carefully listening to what the parties have said and making positive and concrete discussion.

Throughout the Mediation

10. Tips for the Ethics

- **Before Accepting the Case**
 1. Check out if you have a close or special relationship with one party. When the relationship is strongly influential, even if the other party agrees you to be a mediator, you cannot be appointed to that case.
 2. Check out if the case is appropriate for the mediation.
- **In the Beginning**
 3. Explain the purpose of the mediation and roles of the mediator especially that the facilitative mediation is supposed to accommodate the place of communication for the parties and they can quit it at any moment.
 4. Tell the parties that they can consult with experts such as advocates and obtain their advice at any time.

[Tips to Trainer]

«Before starting»

1. In undertaking a role as a mediator, you should examine whether you have a close relationship or interests with one party.

Securing of independence and fairness of a mediator is essential for ensuring confidence in mediation and the mediator. If there is any close relationship or interest with one party, you must obtain consent from the other party for becoming a mediator after having disclosed it to the other party, provided, however, that you should not accept acting as the mediator even if there is consent of the party when the close relationship or interest is strong.

2. You should examine whether the case is suitable for mediation.

If the case is subjected to other dispute solution procedures (litigation, judicial mediation, etc.), as a general rule, it is not suitable for mediation. It is unreasonable for socio-economic reasons that the same case is concurrently subjected to two or more dispute solution procedures.

In addition, please ask a lawyer for advice without any hesitation, if you think that there may be a legal problem, such as whether the claim is illegal or whether its statute of limitation has expired.

«When starting»

3. You should explain the purpose of mediation and roles of mediators.

In voluntary negotiation assisting type mediation, you are required to explain that mediation is a place of voluntary discussion of the parties, the parties can terminate the participation in the mediation at any time, and the mediator plays a role of indirectly assisting to promote the discussion.

4. You should explain that the parties may consult with lawyers, etc. to obtain their experts' opinions anytime.

In voluntary negotiation assisting type mediation, there is no role for mediators to give legal advice. On the other hand, the parties are free to receive advice from lawyers and other experts on specialized knowledge such as legal issues, and should be encouraged to do so. In voluntary negotiation assisting type mediation, it is expected that the parties will come into contact with professional knowledge sufficiently to find out the dispute resolution method through discussion.

Throughout the Mediation

10. Tips for the Ethics

- **During the Mediation**
 5. Keep yourself neutral and fair to both parties.
 6. Never force the parties to make a decision or an agreement. You role is only supporting the parties to make up their own mind.
 7. You cannot disclose the secrets to anyone, including to a party when it comes to the information you obtain during the caucus from the other party.
- **In the Ending of the Mediation**
 8. The contents of the agreement must be legal and implementable. You are strongly advised to consult with legal experts while finalizing the agreement.
- **After Finishing the Mediation**
 9. You have to keep the confidentiality even after the mediation.

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[Tips to Trainer]

«During mediation»

5. Keep yourself neutral and fair to both parties.

The mediator must maintain a neutral and impartial position at all times in advancing the mediation procedure.

6. You must never force decisions, settlements, or agreements on the parties; try to form voluntary agreements between the parties.

In voluntary negotiation assisting type mediation, it is expected that the parties will find out the resolution method through voluntary discussion. The mediator must not force an agreement.

7. You must keep a secret.

The mediator must not disclose the information learned through mediation to the outside, and information obtained in the caucus shall not be disclosed to the other party unless the concerned party agrees to it.

«In the ending of mediation»

8. Examine whether fairness of the agreement has been secured.

It does not mean that any content can be acceptable if the parties agree. You are required to verify that the agreement is not illegal (violation of public order and morality, violation of compulsory provisions), is not significantly

disadvantageous for one party, is not based on erroneous information, and is enforceable. Therefore, It is desirable to seek advice from lawyers in principle when preparing the agreement. In addition, it is advisable to encourage the parties to have opportunities to consult lawyers about the draft agreement.

《After the mediation》

9. The confidentiality obligation continues even after the mediation. Information obtained during the mediation should not be leaked to others without obtaining the consent of all parties and should not be used for the mediator's own benefit.

Throughout the Mediation

10. Tips for the Ethics

Others

10. Keep making efforts to improve your skills and ability as a mediator.
11. The guiding principle of the mediators' ethics is the trustworthiness from the parties and the general public to the mediation. If you damage the parties' trust or further the trust from the public, the mediation cannot be actively utilized by people.

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[Tips to Trainer]

«Others»

10. You must keep making efforts to improve your skills and ability as a mediator.

As long as you act as a mediator, there is no end to your obligation to devote yourself to your studies.

11. Guidelines for responses in ethical issues are to consider what kind of responses would not disappoint the expectations and trust of the parties and the general public towards mediations and mediators. In order for mediations in the private sector to be trusted and actively utilized by the people, mediators must behave in a disciplined manner so that mediators will never betray the expectations and trust towards mediations and mediators in the eyes of the parties and the general public.

Throughout the Mediation

11. Tips for the Cooperation with Lawyers

1. When you find anything unusual, you should consult with a legal expert.
 - ① When you feel weird, there could be an illegal claim. You don't have to be expertized with law, but don't leave such your feeling left behind before starting the mediation.
 - ② If the application is made after for a while from when its cause occurs, there is a possibility that the claim is barred by the prescription.
2. Do not hesitate to consult with lawyers when you feel weird while having the communication with the parties.
3. Even if you find the illegality of the claim, opinions, or proposals of the parties, you had better avoid from giving the legal advice to the parties. You should try to make the parties autonomously find the illegality by, for example, recommending them to consult with lawyers.

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[Tips to Trainer]

1. If you think that something is "wrong" when an application for mediation is received, you should consult with a legal expert.

(1) Does the claim contain something wrong?

When a mediation request is applied, there is a case where you must check whether the application is contrary to public order and morals, whether it violates mandatory statutes or regulatory laws, or whether the mandatory statutes or regulatory laws are applied to the dispute.

However, this does not mean that mediation cannot be done unless the mediator knows all the laws and regulations. If you feel "the claim is somewhat strange" from your past experience as a mediator, you should not start the mediation process with the feeling of "oh well," and should consult with a lawyer. And, while accumulating experiences of mediation, please refine the ability to sense "somewhat strange."

(2) Has the application been made a long time after the occurrence of the dispute?

While the statute of limitation for general civil receivables is 10 years and that for commercial claims is 5 years, there are cases where the laws specify the statute of limitation or period of exclusion shorter than these. As for an mediation applied a long time after the dispute has occurred, be careful about

the statute of limitation or period of exclusion. Please do not hesitate to consult with a lawyer in the event that there is something uncomfortable with the claim even if it is a small one.

2. If you think that something is "wrong" even during the mediation, you should consult with a legal expert.

When you encounter a scene where you think that the claim by the party is somewhat wrong amid the discussion, consult a lawyer without advancing discussion with a feeling of "oh well."

3. Even if the mediator decides that the mediation cannot be continued, you should try to encourage the parties themselves to notice the legal problems.

A mediator in voluntary negotiation assisting type mediation should avoid providing the parties with legal judgment in person as much as possible. Even if you think that the parties' arguments are contrary to public order and morals or mandatory statute and it is difficult to continue the mediation further during the discussion, you are required to devise something such as recommending that the parties themselves seek legal advice so that the parties will become aware of the problem.

Throughout the Mediation

11. Tips for the Cooperation with Lawyers

4. Do not have an argument on legal issues with the parties.
5. You have to make it sure that the agreement is legally realizable. You are advised to consult with lawyers while making the document.

[Tips to Trainer]

4. Do not have an argument on legal issues with the parties.

There are cases where the parties seek a legal opinion from the mediator or stick to their own request by insisting legal justification during the discussion.

As mentioned above, since the mediator in voluntary negotiation assisting type mediation should avoid providing the parties with legal judgment in person as much as possible, please recommend that the parties seek legal advice and know their legal positions.

Also, if the parties state legal opinions and stick to requests claiming legal justification, the mediator may want to challenge the legal opinions claimed by the parties in order for the parties to compromise. But, do not forget that mediation is a forum for discussing how to resolve the dispute here right now for the future. Even if the mediator argues the parties down on legal dispute, no solution for the future will be born. Mediators for voluntary negotiation assisting type mediation should accept the positions the parties assert as their positions and encourage them to look at what they can do to resolve the dispute.

However, in such a case, it is important for the mediator to know the legal issues as background. Therefore, do not hesitate to consult with a lawyer.

5. In forming the agreement or preparing the draft agreement, you should

confirm that the agreement is legally executable.

When the solution proposal gets close to a conclusion and reaches the stage of agreement, you are required to check that the agreement is legally executable for the parties. Specifically, please examine the following points:

- 1) Whether the agreement is in violation of the public order and morality,
- 2) Whether the agreement violates mandatory statute and regulatory laws,
- 3) Whether the agreed matters are accurately stated, (Who, to whom, when, where, what, how. What to do if not performed.)
- 4) Whether or not the provision can be enforceable,
- 5) Whether it is a full solution or partial resolution for the dispute subjected to the mediation.

Furthermore, please pay attention to the following points so that the agreed document is valid as a contract:

- 1) Are the names and addresses of the parties correct?
- 2) Do the parties signing and sealing the agreed document have authorization to agree to it?
- 3) Is the agreed date stated?

In principle, it is desirable to consult with a lawyer in preparing an agreed document.

Throughout the Mediation

11. Tips for the Cooperation with Lawyers

6. Give an opportunity to the parties to consult with lawyers so that the parties fully understand and get convinced with the agreement from the legal point of view.
7. When the mediation is about to finish, you have to clearly explain the parties about their legal status with the conflict. If you find it difficult, you should obtain the advice from lawyers.
8. Be mindful that the mediators cannot avoid legal issues and never leave your question behind unless it gets solved. When you have a concern, even if it seems a very little matter, you should consult with lawyers.

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[Tips to Trainer]

6. Give an opportunity to the parties to fully understand the agreement from the legal point of view and get convinced therewith.

If the mediator presents the draft agreement to the parties, please consider giving an opportunity to the parties to consult with lawyers so that the parties fully understand and get convinced with the agreement from the legal point of view.

7. When closing the mediation, you should give a clear explanation to the parties about their legal positions in the dispute subjected to the mediation.

In mediations, there are three cases, 1) where the mediation is over with agreement on all of the disputes, 2) where the mediation is over with agreement on a part of the disputes, and 3) where the mediation is over with no agreement.

In any of these cases, the mediator needs to clearly explain to the parties in what state the mediation will be over. Especially when you feel doubt about how to explain the legal position of the parties, please do not hesitate to consult with a lawyer, without thinking "oh well."

8. "Do not endure for sake of pride" "Do not go too far"

The mediator aims to resolve civil and commercial disputes. There, you cannot go through avoiding issues of laws. If the mediator feels even a little doubt, do

not proceed with a feeling of "oh well," and do not hesitate to seek advice from a lawyer.

Chapter 4

Referential Materials

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The following are referential materials.

1 Mediation Training in Japan

Training Resources in Japan

ADR JAPAN

FY2003

Research Institute of Economy, Trade and Industry, Ministry of Economy, Trade and Industry
Study Group regarding Development of Human Resources Playing a Key Role of ADR
<http://www.adr.gr.jp/training2003/index.html>

In FY2004 Basic Edition

Economic and Industrial Structure Bureau, Ministry of Economy, Trade and Industry
Japan Commercial Arbitration Association/Japan Association of Arbitrators
Committee to Edit Nurturing Materials for Mediator
<http://www.jcaa.or.jp/training2004/index.html>

In FY2005 Middle Class Edition

Economic and Industrial Structure Bureau, Ministry of Economy, Trade and Industry
Japan Commercial Arbitration Association/Japan Association of Arbitrators
Committee to Edit Nurturing Materials for Mediator
http://www.adr.gr.jp/edu_md1_cls.html

In Japan, in preparation for the enforcement of the ADR Law, the committee to train mediators was organized under the leadership of the Ministry of Economy, Trade and Industry, which was made public, and it was used as a standard training program in Japan for a long time.

This JICA program also refers to this, but many points of ingenuity have been adopted for international standardization.

The author, Inaba, played a coordinating role (chairperson) of this program.

Nurturing Materials for Mediator (Basic)
FY2004 edition

Ministry of Economy, Trade and Industry Japan Commercial Arbitration
Association, Japan Association of Arbitrators

Purpose	For non-lawyers
	On the assumption that a dispute occurs between small businesses or between workers
	To support voluntary negotiations
Training methodology	Demonstrating and participating instead of lecturing
	Showing a practical protocol

" Mediator Training Program" (Middle class edition)

The purposes of the middle class edition are:

1) Acquisition of the minimum necessary skills as a **non-lawyer** (such as a person retired from a company) who mainly conducts mediation of disputes between small businesses or between workers, receiving assistance from lawyers if needed; and

2) Training of mediators by the use of this program.

1) The mediation skill centers on "**voluntary negotiation support**" (which refers to **facilitative mediation**), which can be given without legal knowledge.

2) There is a **practical protocol**. We hope this will be used widely as an open resource.

DVD has been newly created for the middle class training and can be purchased.



Structure of Program

Basic edition



Middle class edition



The following are referential materials.



CHOTEI in Japan

Long history
Court annexed mediation
and conciliation

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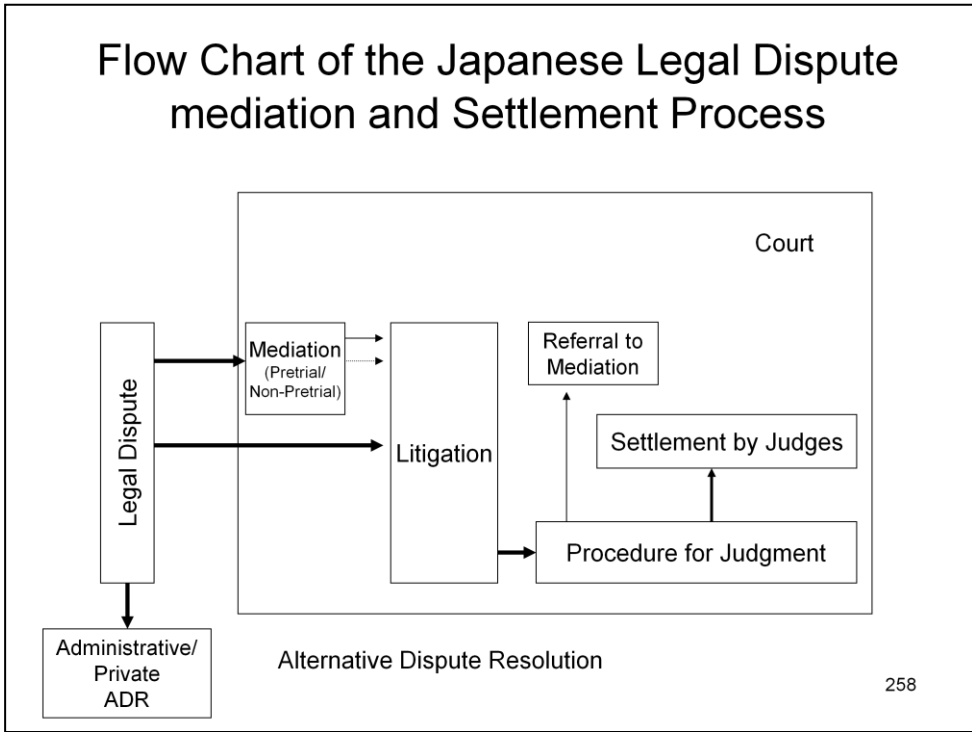
Population/Area of Japan and Number of Legal Professionals (2015)

- Population: 126.53 million
- Total Land Area: 377,835 km
- Number of Legal Professionals: 2,850 Judges, 1,816 Prosecutors and 36,415 Attorneys (2015)



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Flow Chart of the Japanese Legal Dispute mediation and Settlement Process



(Reference) History of the Mediation System in Japan (Prewar Period)

(Information provided by Mr. Irie)

- Edo period
 - *Naisai*: ••Settle internally. *Gonin Gumi* (a collective responsibility system of five households)
- Meiji period (1867 -)
 - *Kankai* (public mediation) (1875 - 1890)
- Taisho period (1912 - 1915)
 - ***Syakuchi Syakuya Chotei Hou (Land and House Rent Mediation Law)*** (1922)
 - Covers specific areas and cities. This law became a model for subsequent mediation laws.
 - Utilized in reconstruction efforts after **the Great Kanto Earthquake**, which struck in 1923, the year following the enactment of the law.
 - *Kosaku Chotei Hou* (Tenant Farming Mediation Law) (1924). *Shoji Chotei Hou* (Commercial Mediation Law) (1926)—Arbitration by an Arbitration Committee.
- Showa period (before the end of World War II) (1915 - 1945)
 - *Kinsen Saimu Rinji Chotei Hou* (Law for Interim Mediation for Monetary Liabilities) (1932)—Litigation Alternative to Mediation.
Jinji Chotei Hou (Personal Status Mediation Law) (1939)—Family affairs cases, male and female mediation committee members.
Senji Minji Tokubetsu Hou (the Special Civil Act of Wartime) (1942)—Use of mediation in all civil cases.

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(Reference) History of the Mediation System in Japan (Postwar Period)

- Showa period (after the end of World War II) (1945-)
 - Domestic Relations Trial Act (1947). **Civil Mediation Act** (1951).
 - Committee for the Adjustment of Construction Work Disputes (1956). *Administrative ADR.
 - Court ruling finding the litigation alternative to mediation unconstitutional (1960).
 - National Consumer Affairs Center of Japan (1968). *Mediation procedure for consumer protection.
 - Environmental Dispute Coordination Commission (1970).
 - Amendment of the Civil Mediation Act (1974). *Improvement in the selection and treatment of mediation committee members, etc.
 - Nichibenren Traffic Accident Consultation Center (1967). Japan Center for the Settlement of Traffic Accident Disputes (1978).
- Heisei period (1989-)
 - Daini Tokyo Bar Association Arbitration and Mediation Center (1990)
 - *Minji Chotei Jiken Shori Youkouan* (Draft Guidelines for the Settlement of Civil Mediation Cases) (1993).
 - Cabinet Office ADR Study Group (February 2002 – November 2004).
 - **Act on Promotion of the Use of Alternative Dispute Resolution (ADR Act)** (Enacted on November 2004, entered into force on April 2007).
 - **Kaji Jiken Tetsuzuki Hou (Law on Family Affairs Procedures)** (2011).

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Mediator in court

	Civil	%	Family	%
attorney	1595	14.3	1313	10.8
physician	316	2.8	101	0.8
professional	143	1.3	250	2.1
Public officials	145	1.3	184	1.5
Management	1146	10.3	1150	9.4
Staff	451	4.0	492	4.0
Farmer	180	1.6	161	1.3
Commercial and manufacturing	177	1.6	170	1.4
Religious	185	1.6	276	2.3
lawyers	3271	29.3	2114	17.4
other	426	3.8	970	8.0
Non position	3134	28.1	4998	41.0
計	11,169		12,179	

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The Characteristics of the Court Mediation in Japan

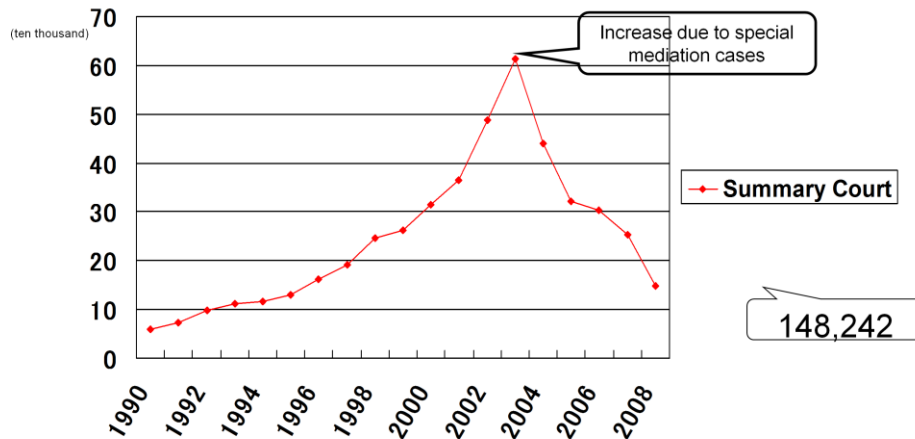
- Judges get involved. The Mediation is managed by a Mediation Panel which consists of 2 mediators and 1 judge.
- In city areas, such as Tokyo and Osaka, generally one of the mediators is an advocate.
- Mainly conducted by the caucus, and evaluative
- There is a system called “the decision in lieu of conciliation,” which could be applied when the parties cannot reach an agreement.
- When the mediation successes, the agreement has the same effect with a judgement.

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Civil Cases
in Summary Courts
and District Courts

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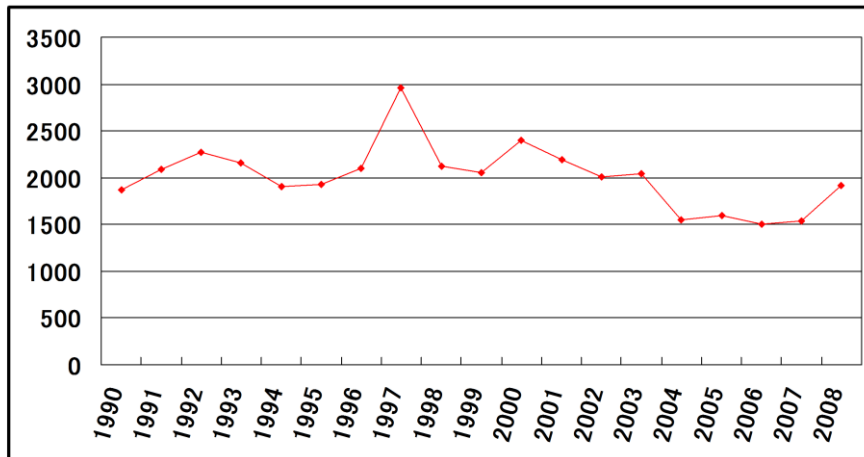
Court Mediation in Civil Cases - Summary Courts -



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There are a large number of civil mediation cases at summary courts.

Court Mediation in Civil Cases in District Courts



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The number of civil mediation cases at district courts is extremely small compared with those at summary courts. The increase that occurred around 1997 seems to be caused by approximately 1,000 applications for the cases of return for unjust enrichment associated with provisional execution of Kanemi oil symptom cases, which I handled as a main prosecutor of the Litigation Bureau of the Department Justice, filed at district courts nationwide.

Court Mediation in Civil Cases the Number of Filed Cases

Fiscal year	Filing number
2000	315,577
2008	72,446
2009	73,792
2010	73,523
2011	63,224
2012	68,598
2013	64,732
2014	61,241

Court Mediation in Civil Cases the Duration of cases

	Total number of cases	~ 1 mon	~ 2 mon	~ 3 mon	~ 6 mon	~ 1 yr	~ 2 yr	Over 2years	Avrg
2009	160,654	25,429	75,227	37,801	17,138	3,794	1,047	218	2.2
2010	112,859	21,464	45,397	25,838	15,041	3,920	993	206	2.4
2011	90,880	27,282	28704	17,266	12,482	3,848	1,064	234	2.4
2012	78,207	27,582	23,213	12,052	10,533	3,626	1,008	193	2.4
2013	57,414	19,254	15,783	8,846	8,958	3,445	958	170	2.6
2014	42,672	10,388	12,834	7,462	8,008	3,106	753	121	

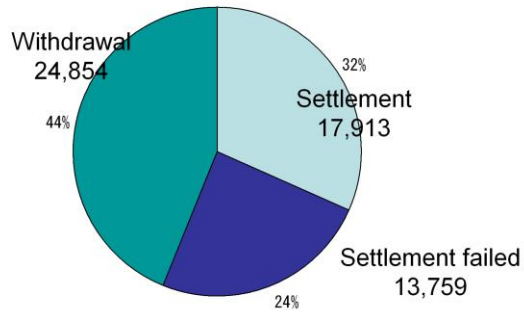
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Court Mediation in Civil Cases the Results

Fiscal year	cases	agreement	Non agreement	judgement	Withdrawal	other
2009	160,654	18,669	14,162	100,776	24,959	2,088
2010	112,859	17,895	15,066	61,597	17,048	1,253
2011	90,880	17,181	14,553	45,860	11,941	1,345
2012	78,207	13,957	13,957	35,209	8,220	1,728
2013	57,414	15,657	13,820	20,223	6,624	1,090
2014	50,132	15,098	13,481	13,981	6,560	728

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Reasons for the Termination of Mediation (Number in summary courts around Japan, 2008)



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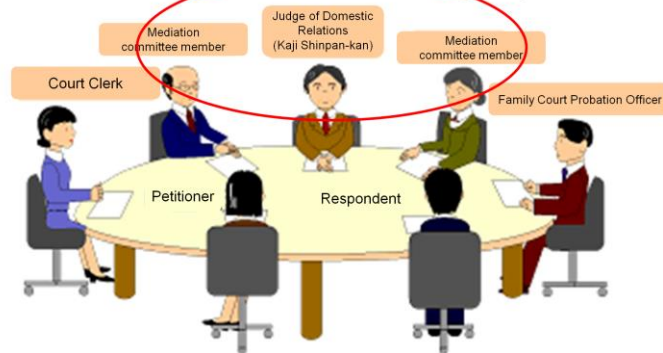
Family Affair Cases in Family Courts

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Family Court

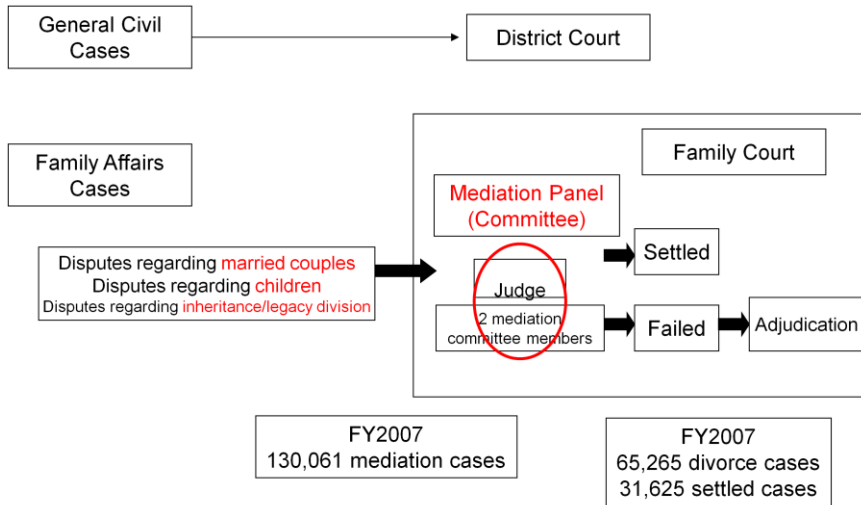
Mediation in Family Affairs Cases

Procedure in which a mediation committee (consisting of a judge of domestic relations (Kaji Shinpan-kan) or a domestic relations mediation officer (Kaji Chotei-kan) and domestic relations mediation committee members selected from among the citizens) listens to the claims of both parties and other relevant actors and advocates for an agreement in an impartial way, in order to reach an appropriate and reasonable settlement that is satisfactory to all.



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Family Affairs Cases



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751,499 cases in FY2007

130,061

Divorce 65,265

Settled 31,625

Court Mediation in Family Affairs Cases

Fiscal year	The number of new cases
2000	114,822
2008	131,093
2009	138,240
2010	140,557
2011	137,390
2012	141,802
2013	137,628
2014	137,257

Mediation in Family Affairs Cases the Kinds of Cases

	2008	2009	2010	2011	2012	2013
	131,093	138,240	140,557	137,390	141,802	139,593
Claim about the couples' responsibility to live together and help each other	181	179	183	195	193	166
Claim to share the cost of living between a couple	11,564	12,872	14,222	15,022	16,544	17,832
Claim on the care/custody of a child	23,596	27,241	28,180	28,955	31,421	32,208
Claim to share the property after divorce	1,311	1,393	1,500	1,493	1,558	1,605
Appointment or change of a person who has parental authority	8,767	8,476	8,501	7,864	7,669	7,306
Claim to support as family' members' duty	621	676	688	572	582	612
Claim to decide the amount of contribution on the inheritance	717	785	767	818	847	750
Claim to share the inheritance	10,860	11,432	11,472	11,724	12,697	12,878
Claim to decide the separation ratio of pension after divorce	770	1,126	1,238	1,275	1,412	1,311
Others	260	268	283	248	281	
Cases between a married couple	55,935	57,389	57,362	53,625	53,427	50,581
Cases between unmarried couple	581	554	507	483	455	398
Claim for compensations due to divorce etc.	1,339	1,100	1,095	1,013	879	784
Cases between relatives	3,049	2,874	3,002	2,858	2,828	2,498
Claim to dissolve an adoption	1,285	1,226	1,378	1,248	1,284	1,208
Others	5,922	6,232	5,826	5,738	5,455	5,079

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Mediation in Family Affairs Cases Results

Fiscal year	The total number of disposed cases	agreement	Not agreement	dismissed	judgement	other
2009	135,547	66,951	22,769	35,284	2,047	3,496
2010	135,384	69,871	24,290	35,412	2,140	3,671
2011	138,917	72,706	25,174	35,053	2,170	3,814
2012	136,294	70,759	25,704	35,732	2,086	4,013
2013	139,804	73,416	26,889	33,241	2,052	4,206
2014	137,627	72,893	25,783	31,997	1,845	2,836

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Mediation in Family Affairs Cases the Duration of cases

F/Y	The total number of cases	~ 1 mon	~ 3 mon	~ 6 mon	~ 1 yr	2 yr	Over 2 years	average
2009	130,547	14,942	46,801	41,252	21,284	5,298	970	4.7
2010	135,384	14,338	49,164	43,327	21,922	5,660	973	4.7
2011	138,917	14,455	49,422	45,086	23,571	5,501	882	4.7
2012	136,294	13,917	47,039	44,177	24,297	5,942	4922	4.8
2013	139,804	14,201	47,604	45,274	25,259	6,530	936	4.9
2014	137,627	13,383	44,691	43,968	27,160	7,376	1,049	5.2

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The following are referential materials.

3 Comparison of Mediation in the World

Global Standard Mediation

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System for Discussions at Court

Comparison with Systems and Management in Other Countries

	Western and other countries	Japan
Settlement by judge	Judges are hesitant to participate in settlement. Trial judges especially are resistant to participation in settlement from the viewpoint of neutrality and fairness. In the US, it is recommended that pretrial settlement should be attempted by magistrates instead of trial judges. In Asia also, judges avoid direct participation in settlement.	Judges can recommend and attempt settlement at any time and positively participate in it, consulting with each of the parties separately (including the disclosure of evaluation). (Article 89 of the Code of Civil Procedure)
History of mediation	In the US, grassroots mediation out of court began at the Neighborhood Justice Center in San Francisco around 1970. After that, it was sophisticated and adopted by courts as an annexed procedure. (Private → court).	In the Edo era, there were many kinds of public and private (community) discussion systems. After the establishment of a system for settlement out of court and a system for pretrial settlement, mediation was introduced in court in 1922. Recently, mediation has mainly been conducted judicially or by court (civil, domestic, or labor). Administrative ADR also prevails in some fields. After the enactment of the ADR Act, the ADR system, including private ADR, was introduced. (Court → private)
Mediation	There is the argument that mandatory mediation limits the right to receive a trial.	Mandatory mediation is applied to various types of cases.
Judge's participation in court mediation	There are few mediation cases in which judges participate (such as cases in early France and Germany). The EC Directive of 2008 does not deny mediation with the participation of judges, but excludes mediation with the participation of the judge in charge of the case from the definition of mediation.	A mediation committee consists of one judge and two mediation commissioners. The judge serves as chief mediator.
Number of mediation commissioners	One in principle	Two in principle (joint mediation); A man and a woman in a domestic case

System for Discussions at Court

Comparison with Systems and Management in Other Countries

	Western and other countries	Japan
Mediation model	Aiming at voluntary negotiation support mediation	Evaluation-type mediation in principle
Way of discussions	The parties sit face-to-face in principle (even in court).	The parties are separated in many cases.
Relation between mediation and trial	Any assertion during negotiations and settlement cannot be used as evidence during trial procedure.	If (private) mediation fails, assertions and evidence will be transferred under Article 17.
Characteristics	Trial and mediation (consultation) are clearly separated. Whether mediation is conducted in court or out of court, the same standards are applied. (Differentiation between court and mediation)	Court distinguishes court mediation from mediation out of court, ensuring continuity between court trial and mediation. (Relativization between court and mediation)

The Facilitative Mediation
and
the Mediation
with Both Parties in a Room

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Theoretical Classification

Mediation model	Evaluative mediation	Facilitative mediation
Basic value	Substantial fairness	Procedural justice Parties' voluntariness and self-determination Party autonomy
Essence	Theory of mediation judgment (trial)	Theory of mediation agreement
Substance and procedure	Substance-oriented, content mediation	Procedure-oriented, process mediation
Court norm/prediction	Aiming to approximate mediation	If the parties' agreement is their real intention, it is unnecessary to make mediation approximate (it is all right to make free mediation).
Role of mediator	Positively intervene in concluding mediation (agreement content).	Although the mediator can intervene in the process of consultation during the mediation procedure, the mediator does not intervene in the agreement content, but completely serves as an assistant. However, the mediator prepares for negotiations and uses mediation skills.
Role of parties	Responding to the mediator's forecast and suggestions, they understand advantages and disadvantages and decide to conclude an agreement.	At the place of dialogues prepared by the mediator, they state their assertions and needs to each other and, through integrated negotiations, find common problems and develop choices.
Negotiation method	Caucus in principle	Face-to-face mediation in principle

Theoretical Classification

Mediation model	Evaluative mediation	Facilitative mediation
Negotiation method	Caucus in principle	Face-to-face mediation in principle
How to proceed with mediation	Evaluate the dispute or the parties' assertions from legal standards and norms. If needed, examine evidence. Show the parties a mediation draft based on standards and norms. If needed, persuade the parties.	Pay full attention to the control of the process of negotiations between the parties. Create a "safe" place of dialogue for the parties. To facilitate the parties' voluntary negotiations, take into consideration facts and feelings in addition to the application of laws and give support so that a mediation agreement will be reached.
Skill	None in particular. Generally, the ability held by practical lawyers suffices (the ability to find laws, infer facts from evidence, and apply laws).*	Communication techniques are important for supporting negotiations, such as paraphrasing, reframing, and open-ended questions
Training	Training is given mainly in substantive and procedural norms as an "alternative" to trial.	Give lectures minimally. Through participatory and demonstrative training, develop the ability to coordinate interpersonal relationships and have communications.
Characteristics	This model tends to place importance on the recognition of past facts. It tends to question which party has responsibility. As a result, it tends only to reach (quantitative) settlement within the extent of the applicant's request.	This model tends to have the parties think about how they should make efforts in the future. It tends not to place importance on past facts or which party has responsibility. As a result, it tends to reach overall (qualitative) settlement not limited to the applicant's request and the problems between the parties.

Mediation Models and Advantages and Disadvantages in Management

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Disadvantages

Mediation model and management method	Evaluation-type & caucus	Voluntary negotiation support & face-to-face
<p>Disadvantages</p>	<p>System constructor The parties depend on mediation (and become irresponsible) and reluctantly accept what the mediator points out instead of voluntarily participating in concluding an agreement. As a result, it is difficult to gain consent from the parties.</p> <p>Mediator The mediator thinks that he or she has to settle the dispute.</p> <p>Parties They are exposed to excessive control by the mediator (error may arise in communicating information). Because one of the parties has anxiety about what conversation between the other party and the mediator, the party will feel distrust of the mediator and have an antagonistic feeling toward the other party.</p>	<p>System constructor If the parties are not positive about a dialogue, consent to mediation may not be gained and requires a lot of time.</p> <p>Mediator If the parties meet and become emotional, it is necessary to use some devices for coping with the situation.</p> <p>Parties The power relationship between the parties directly influences dialogue. The parties easily feel stress from dialogue between them. Once a party states something, it is difficult to withdraw it.</p>

Advantages

Mediation model and management method	Evaluative mediation	Facilitative mediation
<p>Advantages</p>	<p>System constructor This model is flexible as a system for settling every type of dispute.</p> <p>Mediator Because the parties are separated, if gaps exist between the parties (in information and power), it is possible to cope with the gaps. This model can apply if one of the parties does not have positive intention to solve the dispute. Moreover, it is easy to handle information and to create a relationship of trust with each of the parties.</p> <p>Parties Because the parties have contact only with the mediator, they can participate at ease.</p>	<p>System constructor The parties can independently settle the dispute in a private autonomous domain.</p> <p>Mediator It is possible to increase the parties' independence and autonomy. Because both parties attend the meeting, it is difficult to support either of them. In addition, if the mediator makes an evaluation, this will damage fairness.</p> <p>Parties It is difficult for errors to arise in communicating information. It is possible to observe the other party's actual speech and action.</p>

The following are referential materials

4 Mediation in Asia

286



Support for the Establishment of Laws in Foreign Countries

Revision of the Supreme Court Rules in Indonesia

New Mediation Law in Mongolia

New Mediation Law in Nepal

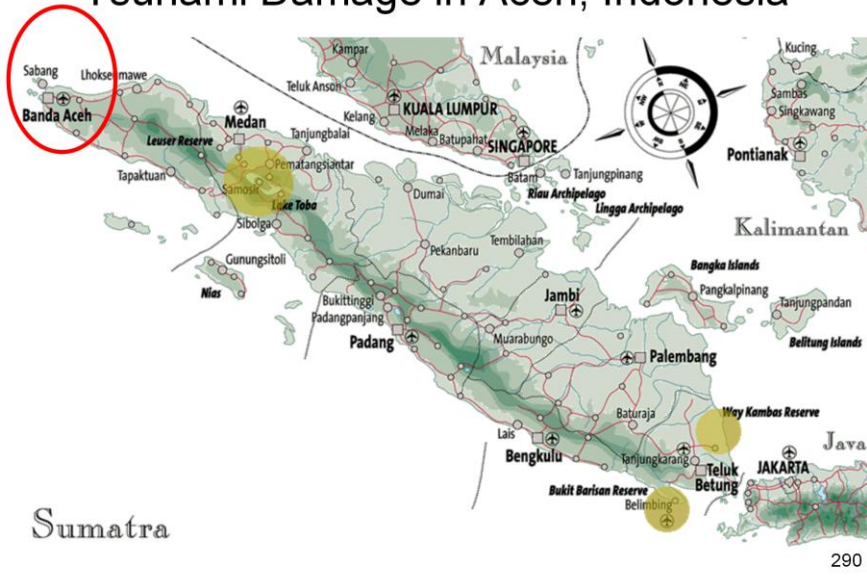
JICA's Support
Global Standard Mediation

Indonesia





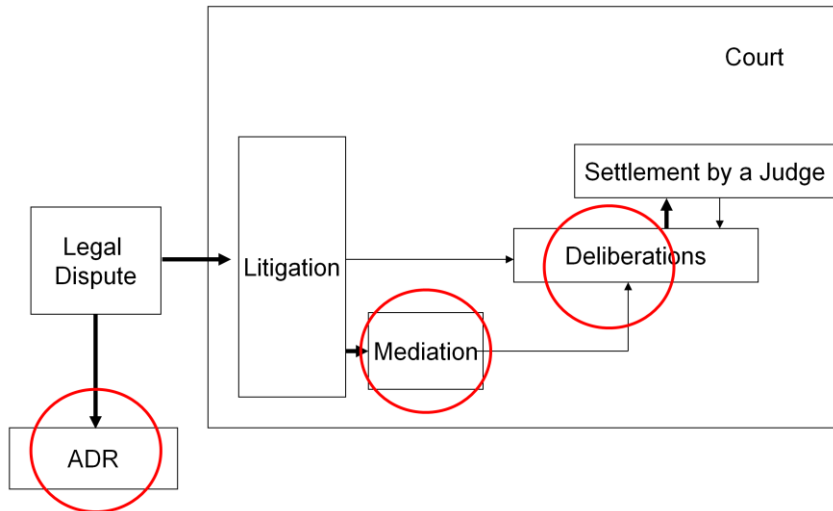
Earthquake in the Indian Ocean off Sumatra of December 26, 2004 Tsunami Damage in Aceh, Indonesia



Sumatra

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Flow Chart of the New Legal Dispute mediation Process in **Indonesia**

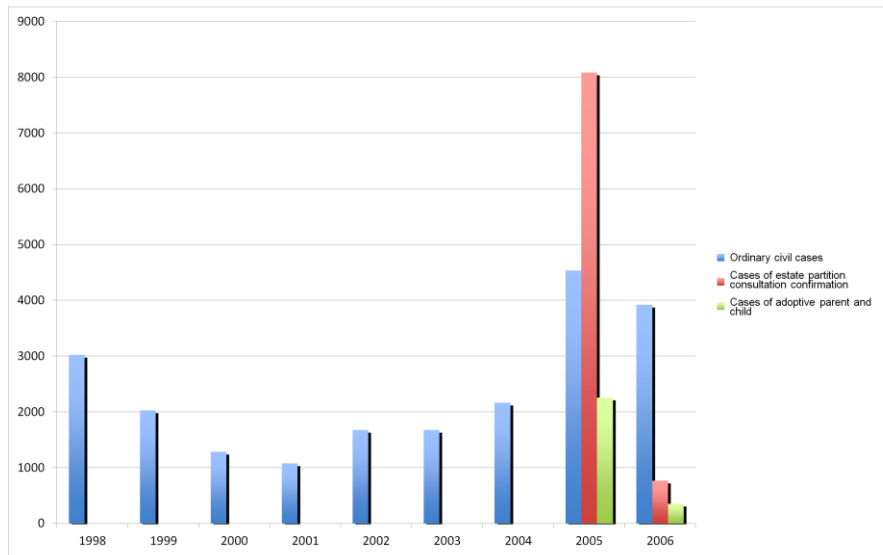


**Attempt at ex-post evaluation of the Assistance for Indonesia to
Strengthen ADR System in Aceh after the Great Tsunami Disaster
Investigation and consideration of the Sharia Court**

Table: Number of cases received by the Aceh Sharia Court before and after the tsunami disaster in 2004 (total in the Province)

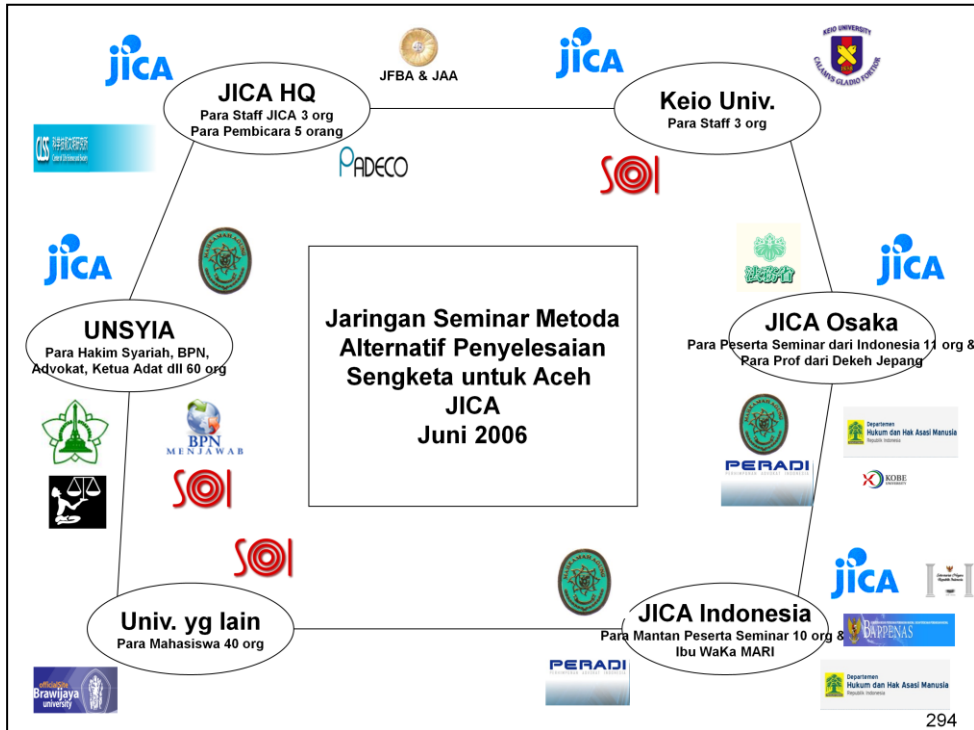
	Ordinary civil cases	Cases of estate partition consultation confirmation	Cases of adoptive parent and child
1998	3,020	.	.
1999	2,029	.	.
2000	1,288	.	.
2001	1,078	.	.
2002	1,675	.	.
2003	1,676	.	.
2004	2,167	.	.
2005	4,535	8,083	2,258
2006	3,919	770	354

Translated and provided by Mr. Mitamayama



Provided by Mr. Mitamayama

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JICA's Seminars in Remote Lands

1. Background

In Ache, where more than 70,000 people died or were lost due to the earthquake and tsunami disaster, it was predicted that many inheritance disputes would arise from the beginning of 2006, one year after the disaster (no dispute arose until the one-year period of mourning passed) and that courts would not be able to deal with all disputes. To avoid confusion by prompt treatment and preventive measures, it seemed effective to use ADR (Alternative Dispute Resolution) for settling disputes early. Receiving a request from the Ache Province Government, JICA conducted a local survey for remote training by the JICA-Net scheme. Based on the survey results, JICA will provide a series of remote training sessions in theories and practice about ADR.

Outline of Project Activities

- **Revision of the Supreme Court Rules** concerning settlement and mediation annexed to court
- Preparation of programs pursuant to the revised Rules concerning training of judges and other mediators, training of lecturers, and training of secretaries and lecturers in date management
- **Provision of training** according to the programs in cooperation with the Judicial Research and Training Institute of the Supreme Court of Japan
- Holding of seminars on public relations, etc. by inviting Japanese lecturers
- Provision of training in Japan (in 2007 and 2008)
- **Preparation of DVD for training of mediators**
- Notes to the revised Rules, preparation and distribution of a Q&A compilation
- Holding of seminars on public relations in Jakarta and other regions

Indonesia

Preamble of the Revised PERMA of 2015

- It is thought that Mediation can serve as an appropriate and effective method for dispute settlement out of court and give both parties many opportunities for satisfactory and fair solution.
- One of the elements for realizing the bureaucracy reform of the Supreme Court of Indonesia, which aims at the vision of “realization of sublime justice,” is mediation, which is a means to expand the people’s **judicial access** to the maximum and a realization of the judicial principles of simplicity, promptness, and low cost.
- If mediation is incorporated into the court proceedings, it is possible to strengthen and maximize the dispute settlement function of judiciary agencies in addition to court trials as a means for adjudicating dispute settlement.

Training at the University of Indonesia



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New Mediation Law of Mongolia

Passed on June 5, 2012
Enforced on July 1, 2013



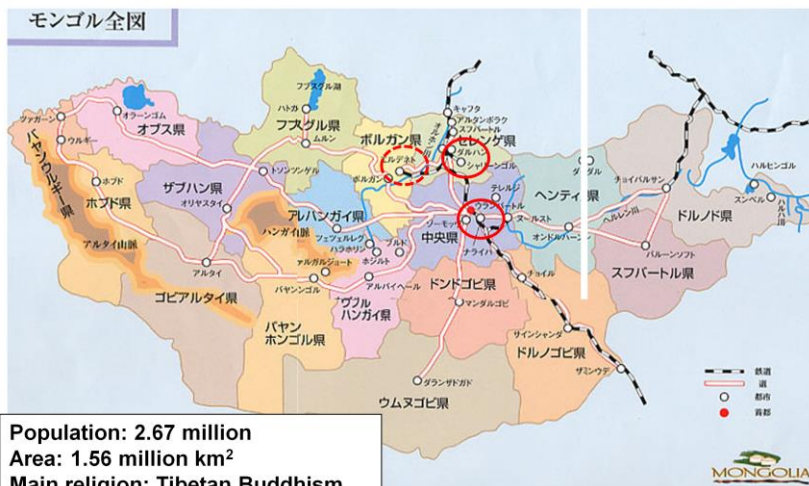
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Support to Mongolia

- 2004 to 2006: Dispatch of long-term experts
- 2008 to 2010: “Project for Strengthening the Association of Mongolian Advocates”
- May 10, 2010 to November 10, 2012: “Project for Strengthening Mediation System” **Phase 1** – counterpart agencies: Supreme Court of Mongolia and Association of Mongolian Advocates
- **Phase 2** began in April 2013 and ended on December 15, 2015.

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Mongolia: Project for Strengthen Mediation System Phase 1

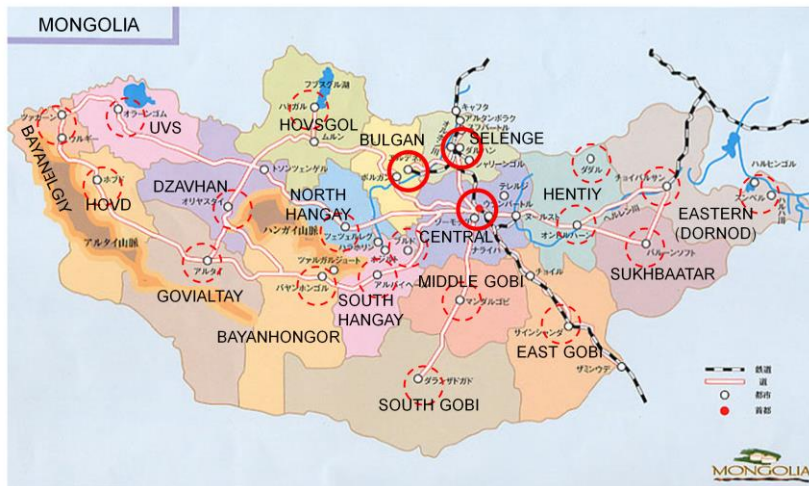


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Mongolia: Project for Strengthening Mediation System Phase 2



Project for Strengthening the Mediation System in **Mongolia**





Working group meeting
(February 2011)



Second training of mediators
(mediation training in
Mongolia in February 2011)

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Prof. Kazuto Inaba at Chukyo University
was awarded the highest decoration for
distinguished service.



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New Mediation Law of Mongolia
(Passed in May 2012 and enforced on July 1, 2013)
Chapter 1 General Provisions
1 Purpose

- 1.1 The purpose of this Law is to set up a legal basis for out-of-court settlement of legal disputes and to coordinate the relationship of rights arising through mediation.

14 Mediator's Rights and Obligations

14.2 A mediator shall have the following obligations:

- 14.2.1 Obligation to refuse to carry out the mediation procedure if it is impossible to carry out according to law
- 14.2.2 Obligation to observe the mediation principles, match the mediation to both parties' rights and interests, and ensure both parties' equal participation
- 14.2.3 Obligation to **provide information** to both parties concerning the progress, purpose, and effect of the mediation
- 14.2.4 Obligation to conduct the mediation neutrally without any interest in the dispute
- 14.2.5 Obligation to observe the code of ethics of mediators
- 14.2.6 Obligation to return the evidence received from the parties during the mediation
- 14.2.7 Obligation **not to give legal advice or service** to either of the parties
- 14.2.8 **Obligation to confirm the parties' intentions concerning each topic and establish conditions for mutual concessions**
- 14.2.9 Obligation to record the state of progress in the mediation, question the parties, and examine evidence for assertions
- 14.2.10 Other obligations specified in law

15 Lawyer's Participation in the Mediation Procedure

- 15.1 If an attorney participates in the mediation procedure at the request of the parties, the attorney is obliged to explain the conditions for mutual agreement for settlement through mediation and the effects of the agreement.
- 15.2 **If the attorney participating in a case is a professional mediator, after the end of the mediation the attorney is prohibited from providing legal service to either of the parties or serving as counsel for either of them concerning the case.** In addition, the attorney is prohibited from serving as mediator for disputes in which he or she participated as an attorney.
- 15.3 If an attorney participates in mediation at the request of the parties, the attorney is **forbidden from hindering the parties' settlement**, for example, by intervening in the mediator's activities.

24 How to carry out mediation

- 24.1 The parties must attend the first session of the mediation. At the first session, the mediator explains the mediation procedure and the parties' rights and obligations, hears the parties' claims and assertions, and establishes a mediation plan.
- 24.2 **In principle, face-to-face mediation** is carried out. Only if needed, the mediator carries out caucus mediation.
- 24.3 **The time for the first session should be sufficient for hearing both parties' assertions fully and reaching mutual understanding.**

Characteristics of the Mediation System in Mongolia (1)

(Characteristics of the system)

- The mediation department has been established within the court.
- Mediators are full-time national public employees (for court mediation only) and part-time mediators.
- There are conditions for obtaining qualifications for mediators, such as graduation from university and completion of training.
- There is no age limit to becoming a mediator.
- In domestic cases, mediation should be carried out before court trial.
- Enforceability is given to mediation through confirmation by a judge (only in the case of court mediation)
- The effect of interruption of prescription is granted.
- Mediation is held behind closed doors.
- The amount of fee is fixed (at 30,000 MNT irrespective of the amount claimed).

Characteristics of the mediation system in Mongolia (2)

(Characteristics of the way of proceeding with mediation)

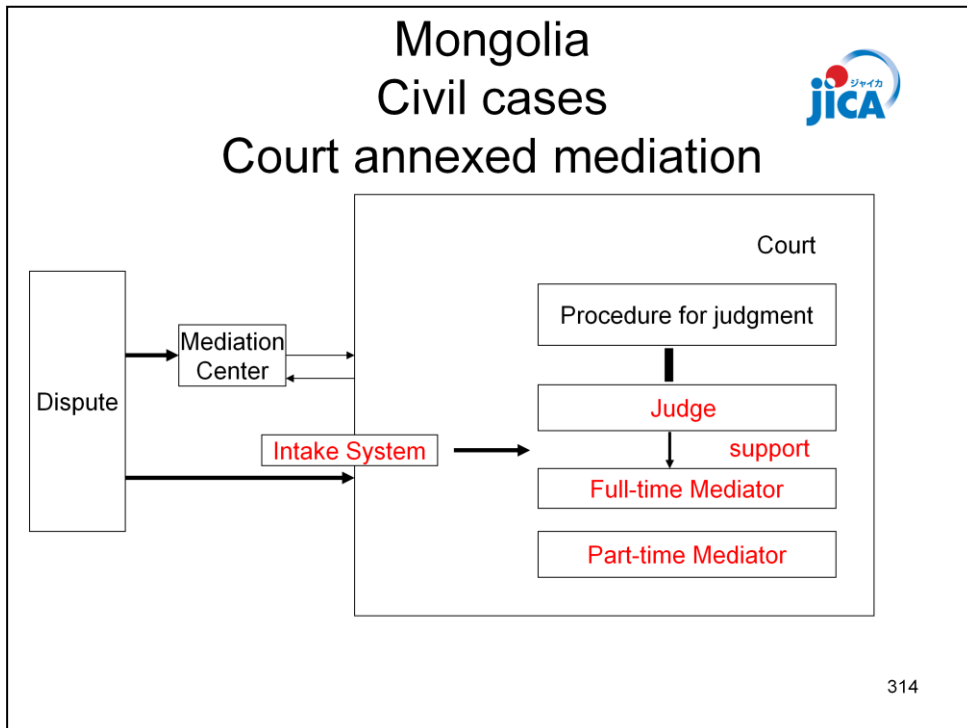
- The purpose of mediation is to support voluntary negotiations.
- Face-to-face mediation is adopted in principle (caucus mediation is exceptional).
- One mediator participates in principle.
- Although the mediator can offer a settlement plan, there is no system similar to the issuance of a necessary order under Article 17 of the Civil Conciliation Act of Japan.
- In divorce cases, mediation can be held only for the purpose of rebuilding marriage.
- It is possible to transfer cases from litigation to mediation. In this case, the judge in charge of the litigation does not participate in the mediation at all.
- One session of mediation takes about one hour. In many cases, mediation is completed in the first session.

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Outward (Statistical and Other) Results

- Establishment of curriculums for training and retraining of mediators, preparation of various training materials
- Training of mediators (505 persons); training was provided ten times
- February 4 to December 31, 2014: mediation was held in 6,427 cases (among 48,431 litigation cases in total) (Given that mediation was held in 5,122 cases among about 35,000 civil cases in 2014, it can be said that courts' burden decreased by 15%)
- The mediation system (1) creates an atmosphere of reconciliation (favorable contribution to society) and (2) reduces courts' burden. Regarding the latter, although a large number of first instance cases increased judges and courts' burden and worsened the quality of court decisions, some statistics indicate that the introduction of the mediation system reduced the burden on civil trials by 3.7%.
- High courts do not really feel this.
- The number of mediation cases increased in the quarter between January and March 2015.

Mongolia Civil cases Court annexed mediation



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In Mongolia, judges basically don't get involved in specific mediation procedures, but support the mediators.

On the other hand, there are full-time mediators, who are retired judges, and part-time mediators, who are active lawyers, in the court.

If the mediation is conducted by the full-time mediators, the court does not charge the fee to the parties.



Nepal

**Project for Strengthening the Capacity of Court
for Expeditious and Reliable Dispute Settlement**

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Federal Democratic Republic of Nepal

- Nepal is a republic nation in South Asia and abolished royal rule in 2008.
- Nepal is a long and thin inland country stretching from northwest to southeast and borders **India** on the eastern, western, and southern sides and the **Tibet Autonomous Region of China** on the northern side. The land consists of the Himalayas, including the world's highest mountain, Mt. Everest (**Chomolungma Sagarmatha**), the central hilly area, and the southern Tarai Plain. Nepal plays a role as an entrance to Himalaya climbing.
- The area is about 147,000 km², 1.8 times larger than Hokkaido.
- The population is **about 26 million**. The capital is Kathmandu.
- There is three hours and fifteen minutes' difference between Japan and Nepal. The weekly holiday is Saturday.
- The rainy season lasts for three months from the end of May.
- Nepal is a multiracial nation consisting of Indo-Aryan races and Tibetan-Myanmarese races and has a **caste system**.
- There are various religions, including **Hinduism**, Buddhism, and mixtures.
- The main industries are agriculture and tourism.

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Nepal



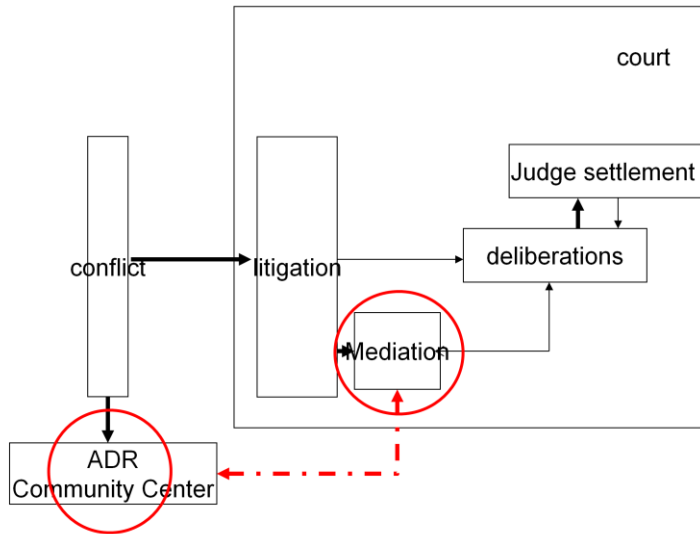
- The government introduced the " Mediation Act": To legislate " mediation" as an alternative to communities' judicial system for dispute settlement, the government **introduced the Mediation Act on April 14, 2014.**
- Before then, mediation for dispute settlement within a community did not have legal status. Only if mediation was referred to a court, the mediation was recognized legally. Under the Mediation Act, the **Mediation Council** will be established, including the secretaries of the Ministry of Local Development and the Ministry of Justice, the chief secretary of the Nepal Bar Association, and the Vice-Minister of Justice. The Chairperson of the Mediation Council is the Supreme Court Judge appointed by the Chief Justice of the Supreme Court of Nepal by recommendation of the Judicial Council. The Mediation Council issues licenses to mediators and registers agencies and associations that conduct mediation. The Mediation Act makes it possible to apply community mediation to cases related to land and property. Regarding criminal cases, the Mediation Act covers any cases other than serious crimes, such as rape and murder. The Judicial Council decided to appoint Girish Chandra Lal as Chairperson of the Mediation Council on April 16.

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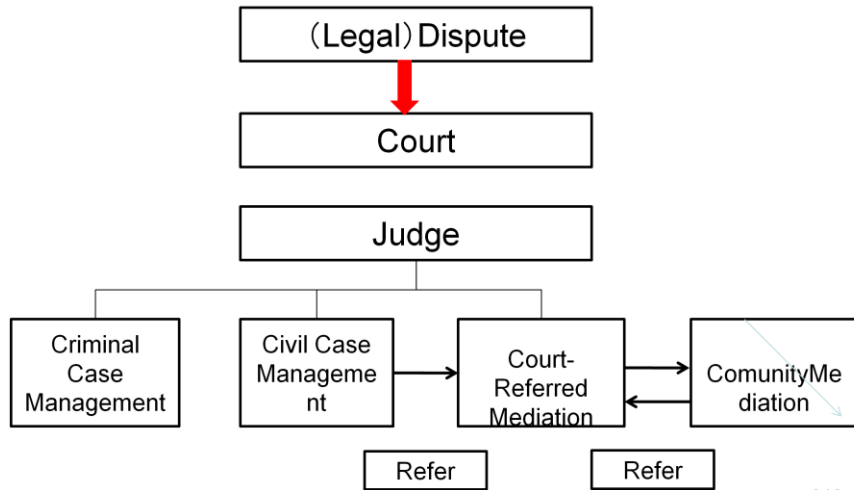


NEPAL

the flow of conflict Court annexed mediation



The Project for Strengthening the Capacity of Court for Expeditious and Reliable Dispute Settlement (The SCC Project)



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Dang District Court



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the supreme court of Nepal



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Let's Share the Culture of Dialogues as a tool to Resolve Disputes among Asian Countries

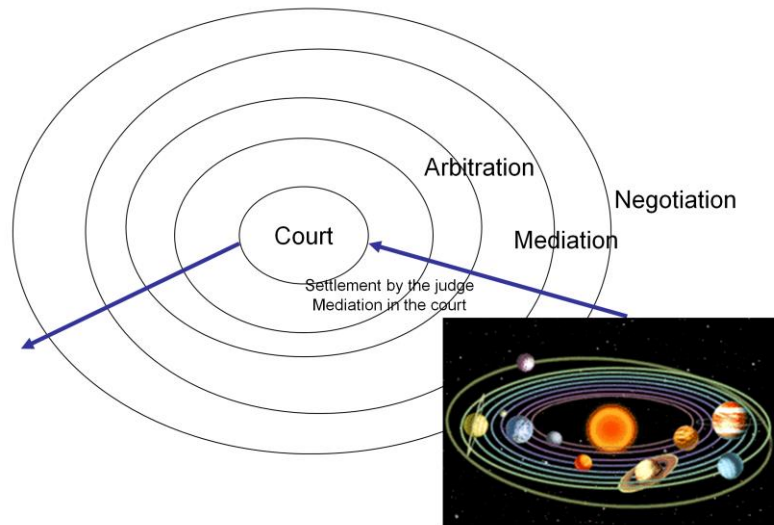


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Future of Mediation in court and private sector

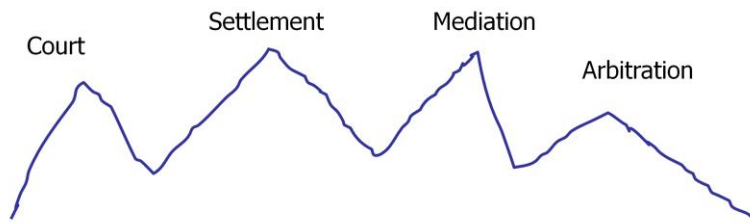
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Thoughts of ADR-Court-centered Type-



It is a dispute resolution system centered on court cases.

Thoughts of ADR-**Non Court-centered Type**-



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Mediations, etc. stand side by side with court cases.

Thoughts of ADR-**Court and private ADR cooperative Type-**

**Court annexed
Mediation**



**Private
sector
Mediation**

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In the near future, private (regional) mediations will link up with court cases and mediations at courts.