(Marks: 3)
Why most of the People indulge in Stereotyping inspite of in-depth investigation?

Answer:

Why People Stereotype
People use systematic processing to try to understand other people only if
a) They have plenty of time and resources to devote to the task,
b) They are highly motivated to understand the situation accurately
In the absence of these two requirements, people will use categories, such as stereotypes, to draw inferences about people

(Marks: 3)
Write down any six dimensions of ethics in mediation.

Answer:

Dimensions of Ethics in Mediation
Following are the 8 dimensions of ethics in mediation.
1. Self-determination
2. Impartiality
3. Conflicts of interest
4. Competence
5. Confidentiality
6. Quality of the process
7. Advertising and solicitation
8. Fees

(Marks: 3)
Why 'Dual Concern Model' of negotiation can not be considered as the perfect solution of conflict?

Answer:

'Dual Concern Model' of negotiation can not be considered as the perfect solution of conflict Because of its limitations.

Limitations of Dual Concern Model

Research in the field of negotiation is highly complex and situations vary significantly.

Dual concern model assumes that no disputant has negative orientation, which is not the case. Sometimes, a disputant may be sadist and get pleasure by harming others.

Negotiation style is an overall strategy not just a tactic.

(Marks: 3)

Define the concept of Collaborative Law.

Answer:

Cognitive Load

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

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

(Marks: 3)

There are some factors that distinguish one mediation style to another. Discuss these factors.

Answer:

Important distinguishing factors

1. Is the process more facilitative or more evaluative?
2. Does the mediation deal narrowly with the presenting dispute, or deal with the entire landscape of the disputants’ relationship?
3. How much coercion is placed on the disputants to settle?

Question No: 49 (Marks: 3)
List down the six stages of mediation process?

Answer:

Stages of Mediation
Mediation is a highly fluid process; it is possible to conceptualize mediation as occurring in a series of stages.
Following is the list of all the stages of mediation
1. Initial client contact
2. Introductory stage
3. Issues clarification and communication
4. Productive stage
5. Agreement consummation
6. Debriefing and referral

Question No: 50 (Marks: 3)
What do you understand by Neutral Evaluation?

Answer:

Neutral Evaluation
Neutral evaluation is a process in which an expert in the subject matter of the dispute, or a legal expert, is hired to give an assessment of the strengths and weaknesses of each side's case. Neutral evaluation has many variations and is known by a variety of terms, used in often inconsistent fashion.

(Marks: 3)
A major reason of regulating the mediation is to protect the rights held by the participants in mediation and others affected by the process ; discuss three points for protecting others rights in mediation.

Answer:

Protecting other Rights:
The third major reason for the regulation of mediation is to protect the rights held by the participants in mediation and others affected by the process.
1. Due process consideration
2. Safety issues

3. Conflict with other rights

1. Due Process Considerations:

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

2. Safety Issues:

Mediation in abuse situations is concerned with the safety issues.

3. Conflict with Other Rights:

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

(Marks: 3)

What factors should be considered before conducting the process of arbitration?

Answer:

Before Arbitration

When should a dispute be arbitrated?

Enforceability and arbitrability.

Enforceability: Whether the contract to arbitrate is valid and can be enforced against the party seeking to avoid arbitration.

Arbitrability: Whether a particular dispute is subject to an agreement to arbitrate.

(Marks: 3)

In how many ways dispute resolution can be conducted online?

Answer:

ODR Varieties

Following are some of the ODR varieties.

1. ADR by email
2. ADR with web-based conferencing
3. ADR using technologically sophisticated, multimodal platforms
4. Analytical tools added to multimodal platforms
5. Blind bidding sites
6. Online summary jury trial

Question No: 52 (Marks: 5)

How a mediator can help disputants in the conflict resolution?

Answer:

Mediators act directly on conflict cycles, reducing conflict escalation and promoting cooperation. It increases efficiency of dispute resolution behavior, increases likelihood of settlement, increases likelihood that settlement will be good for all concerned. It lessens likelihood of conflict spreading and intensifying it.
If mediation does not result in agreement, it will make it easier to use other forms of dispute resolution. It improves and preserves trust and relationships.
Mediators diagnose the conflict and act accordingly. Mediators (particularly facilitative) promote interests analysis.

Question No: 53 (Marks: 5)
Which type of powers Jirga posses according to the "Frontier Crime Regulation (FCR) 1901"?

Answer:

Frontier Crimes Regulation (FCR) of 1901
Due to efficiency and people's acceptability, sometimes tribal jirgas are recognized as lawfully established judicial tribunals, although the law under which they are created, the (Frontier Crimes Regulation (FCR) of 1901), has been generally denounced by the superior judiciary of the country and also by some people.
Powers of Jirga under FCR
Theoretically, a Jirga's findings are in the form of an advice, but custom has elevated these findings to the level of a court verdict which usually translates into law. (a kind of ADR). This law is applicable only to the tribal areas. The council of elders has jurisdiction in both civil and criminal matters. No appeal is generally allowed against Jirga verdicts although the commissioner can review any case.
A jirga has sweeping powers to impose penalties in criminal cases. It can award punishments in the shape of fines, whipping, life imprisonment, demolition of a convict's house and the blockade by a hostile or unfriendly tribe. Technically, under the FCR, a jirga cannot award capital punishment

(Marks: 5)

List down at least 6 method of conflict resolution

Answer:

A conflict can be resolved in a number of ways. The methods which are usually employed are given below
• Negotiation
• Mediation and Conciliation
• Adjudication
• Arbitration
• Litigation
• Avoidance
• Violence

(Marks: 5)

Match the following primary mediation goals with the type of mediation by placing the appropriate type against its particular goal.

• Therapeutic
• Transformative
• Pure
• Triage
• Bargaining-based

To facilitating “empowerment” and “recognition”
To get an agreement quickly and cheaply
To get a fair agreement
To help the disputants negotiate effectively
To get agreements to improve disputants’ relationship

Answer:

Therapeutic Mediation
Goal: To get agreements to improve disputants’ relationship
Transformative Mediation
Goal: To facilitating “empowerment” and “recognition”
Pure Mediation
Goal: To get a fair agreement
Triage mediation
Goal: To get an agreement quickly and cheaply
Bargaining-Based Mediation
Goal: To help the disputants negotiate effectively

(Marks: 5)

List down at least Five main steps of Arbitration process.

Answer:

Process of Arbitration

Arbitration consists of eight basic steps:

1. Creating the arbitration contract
2. Demanding, choosing, or opting for arbitration
3. Selecting the arbitrator or penal of arbitrators
4. Selecting a set of procedural rules
5. Preparing for arbitration
6. Participating in the arbitration hearing
7. Issuing the arbitration award
8. Enforcing the award

(Marks: 5)

What steps should be followed after the arbitration process for making it successful?

Answer:

Process of Arbitration

Arbitration consists of eight basic steps:

1. Creating the arbitration contract
2. Demanding, choosing, or opting for arbitration
3. Selecting the arbitrator or penal of arbitrators
4. Selecting a set of procedural rules
5. Preparing for arbitration
6. Participating in the arbitration hearing
7. Issuing the arbitration award
8. Enforcing the award

After Arbitration

1. Enforcement of arbitration awards.
2. Review of arbitration awards.
3. Choice of law during arbitration.
4. Choice of law in matters of enforceability, arbitrability and reviewability.

(Marks: 5)

List down the disadvantages of ADR conducted Online.

Answer:

Disadvantages of ADR Conducted Online

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

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

(Marks: 5)

Describe a situation in which 'Avoidance' could be the best possible solution.

Answer:

Conflict between wife and husband. On the basis of money being earned or money which is being spends.

They are trying to cope with this situation and they will keep quit instead of fighting each others. And this way they can avoid the conflict.

And this may the situation where avoidance is the best possible solution.

Question No: 46 (Marks: 5)

Which factors are evaluated while assessing each alternative listed in BATNA?

Answer:

Assessing the BATNA

BATNA assessment follows a six-step process.

1. Conduct an Interest Analysis
2. Brainstorm the Alternatives to a Negotiated Agreement
3. Fine-tunes the Alternatives
4. Assess Each Alternative Realistically
5. Choose the best alternative
6. Regularly Reassess the BATNA

Understanding and appreciating the BATNA has many advantages. Having a well-conceived BATNA in mind can lead to better decisions about whether to accept a (1) settlement, (2) "hang in" with a negotiation or (3) end a negotiation. Moreover, the other disputant's BATNA can help you gain needed leverage and make more realistic assessments of the prospects of negotiation.
BATNA analysis has three drawbacks. The first is that it's often difficult to perform BATNA analysis accurately. And, when you misconstrue a BATNA, the effects can be unwanted.
1. A common mistake in BATNA analysis is to omit the non-monetary implications of ATNAs (for example bad relations).
2. The second drawback to BATNA analysis is that it often takes a great deal of time, money, and resources.
This is particularly true when litigation is involved.
3. The third drawback to the BATNA is that, in some circumstances, it is not relevant.

(Marks: 10)
Elaborate some of the varieties of Mediation.

Triage mediation (court-connected process)
Triage mediation is believed to be relatively uncommon today. Formerly, it was widely seen in court systems and was developed to divert large numbers of cases away from the trial system.
This sort of mediation is typically very brief and focused. The *goal* of triage mediation is to get the dispute out of the court system as quickly as possible by seeking a quick settlement. The *focus* of triage mediation is typically narrow – it is focused in the short term on *this* dispute because that is all that's needed to get the case out of court.
The main advantage of triage mediation is that it's cheap, it's quick, and it clears court dockets. However, triage mediation presents a number of significant problems (Beck & Sales 2000). Because its principal goal is to save money and avoid court, mediators are often poorly trained and poorly and carry overly heavy caseload.

Bargaining-Based Mediation
Bargaining-based mediation is an extremely common form of mediation. Sometimes it called concessionhunting.
It is the predominant style used in court-connected civil dispute mediation, as well as the mediation of commercial, construction, and personal injury cases.

The primary goal of bargaining-based mediation is to attain a fair agreement through compromise. Lawyer mediators are more likely to use this form of mediation than any other. The focus is usually *narrow* and the process is typically *evaluative*.

Bargaining-based mediation is particularly good for cases in which there are highly divergent perceptions of fact or law – because the divergent perceptions may be the most important impediment to settlement. It's also good for cases involving highly complex legal issues, since lawyers tend to be closely involved in the mediation process.

Because the process is evaluative, bargaining-based mediation tends to cause the disputants to become increasingly position-bound. In other words, the focus is on each disputant's position and how successful he or she is likely to be with it.

Therapeutic Mediation

Therapeutic mediation is generally designed to improve the relationship of the disputants, so that they are able to settle their conflicts. However, it is sometimes unclear what the goal of therapeutic mediation is.

This is a problem. Mediation has many similarities to therapy, and, because there are so many varieties of mediation, it can be difficult to define the difference. The problem with therapeutic mediation occurs when the neutral is unclear about what the goals are.

Nonetheless, therapeutic mediation, if its goals are clearly defined, can be both necessary and very helpful in high-conflict situation, particularly those involving a disputant who has a mental illness or an emotional or personality disorder requiring high levels of professional support before he or she can negotiate effectively.

Pure Mediation

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

Transformative Mediation

Transformative mediation resembles pure mediation, except that its goals are even more completely removed from "getting an agreement." There are two primary transformative goals:

Empowerment: the improvement of the personal power of each disputant

Recognition: the ability of each disputant to take the perspective of the other disputant and to communicate this sense of understanding to the other disputant.
Transformative mediation's advantages are similar to those of pure mediation. Agreements reached in transformative mediation are psychologically owned in full by the disputants, who are very likely to abide by them.

(Marks: 10)
What are the main differences between Facilitative and Evaluative mediation?

Answer:

Facilitative mediation
In facilitative mediation, the mediator's primary function is to promote effective negotiation or dialogue.
Facilitative mediators use techniques designed to promote effective negotiation as they view it: they lay ground rules for effective communication, help participants discover their interests and those of their counterparts, guide the disputants in the steps of cooperative negotiation, and intervene at all stages of the conflict cycle to keep the conflict as noncompetitive as possible. The strictly facilitative mediator assiduously avoids any evaluation of the merits or strengths of either disputant's case.
Evaluative mediation
In evaluative mediation, the mediator's primary function is to narrow the gap between the positions taken by the two disputants.
Evaluative mediation assumes that negotiation will be a process of positional bargaining.
Another way to think of this process is that evaluative mediation is a process of BATNA clarification.
Nonbinding evaluation is different from evaluative mediation. Mediator will go beyond evaluation and broker settlement.
In nonbinding evaluation, the process generally stops with evaluation.
In evaluative mediation, the mediator works to narrow the gap between the demands of each disputant by expressly evaluating the merits, strengths, and weaknesses of each disputant's position and by strategically communicating these evaluations to the disputants.

In extreme forms of evaluative mediation, the centerpiece of the process may be a single evaluation of the likely outcome if the dispute is taken to court.
An extremely evaluative mediation may closely resemble nonbinding evaluation: the neutral hears all sides of the issue and then issues an opinion regarding how the case might be decided if it were to be litigated.
There is also much blurring in practice between facilitative and evaluative mediation. Many mediator practice midway along this continuum, and some mediators jump from facilitative to evaluative approaches based on what they think will promote the goals of the mediation.

(Marks: 10)
Discuss why is it good to adopt BATNA (Best Alternative to a Negotiated Agreement)?

Answer:

Alternative to Negotiated Agreement, or BATNA.
Knowing, the BATNA protects a disputant, and the team, from irrational action. Trying to resolve a conflict without knowing the BATNA put the team in the untenable position of not knowing whether to negotiate or to stop negotiating. Many disputants deal with this pressure to act irrationally by developing a bottom line. If the negotiation leads to deal that's as good as the bottom line, the negotiators will settle; otherwise they won't.
Knowing the BATNA also helps a disputant and the team to act with efficiency. The team chooses to negotiate only if there appear to be potential benefits to negotiating, stays in negotiation only as long as it appears to be potentially beneficial, and gains a clear idea of what to do in the event that negotiation does not lead to settlement. There is less wasted time, money, effort and trauma.

(Marks: 10)
Elaborate at least Five contents of the 'Arbitration Act'.

Answer:

Contents of Arbitration Act

1. The matters to be arbitrated should be set out explicitly.
2. The expenses of arbitration (arbitrators' fee, cost of transcripts, and cost of hearing room) should be shared equitably among disputants.
3. Arbitrators' selection and qualification should be considered carefully.
4. The agreement should specify whether discovery is to be permitted.
5. The hearing of hearings and their duration may be explicitly scheduled.
6. Privacy and confidentiality should be addressed.
7. The roles of arbitrators should be clarified duly.
8. Rules of evidence may be specified with mutual agreement.
9. The disputants should agree about the provision of specified documents with a schedule for submission.
10. The contract should specify the nature of arbitrators award (just outcome or with explanatory opinions).
11. Reviewability and enforcement of the award may be specified (law must be in purview).
12. Choice of law may be spelled out in the agreement, especially if the arbitration is between different states.
13. Provisional remedies or temporary injunctions may be needed in an arbitration contract.
14. Disputants may like to include a class providing mediation as a first resort in any executory agreement to arbitrate.

(Marks: 10)

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

Answer:

Pure Mediation

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

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

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

Pure Mediation

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

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

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

Advantages:

1. Best at retaining the advantages of cooperative negotiation – optimal outcomes, preserved relationships, psychological ownership.
2. Even if agreement isn't reached, substantive improvements in relationship and narrowing of conflict often result, making other dispute resolution easier and faster.
3. Disputants often have issues clarified, which empowers them if other dispute resolution processes are needed.

Disadvantages:

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

If mediator is incompetent this is a poor option.

(Marks: 10)

Elaborate at least Five contents of the 'Arbitration Act'. is not necessary .

Do you agree? Discuss.

Answer:

Contents of Arbitration Act

1. The matters to be arbitrated should be set out explicitly.
2. The expenses of arbitration (arbitrators' fee, cost of transcripts, and cost of hearing room) should be shared equitably among disputants.

3. Arbitrators' selection and qualification should be considered carefully.
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