

What is mediation?

- Conflict/ dispute resolution
- Convincing both parties
- Facilitating discussion between parties
- Mediator enables parties- does not decide for parties
- Confidential
- Not a judge
- Informal yet structured dialogue
- Settlement **not the end goal**
- Decisions are binding
- ~~Pre-process of arbitration~~
- ~~Mutual negotiation~~
- ~~Resolving without legal complexity~~
- ~~No written document at the end of a mediation~~

What is confidential in mediation?

- Who is bound- Mediator, the parties, the advocates, mediation centre, any observer of mediation proceedings
- Fact that a mediation happened
- All proceedings confidential
- Mediator Report- should not disclose mediation proceedings/ who did what
- Court cannot ask for information on what happened in mediation
- Any advocate cannot ask for information on what happened
- Cannot make averments, submit evidence or disclose any information on mediation proceedings
- Any offers made in mediation- cannot use against the party outside mediation
- Private meetings- added confidentiality- between the mediator and party participant
- Terms of settlement- confidential
- All correspondence related to mediation is inadmissible evidence
- All notes of the mediator
- Any minutes of meetings, file maintained in court annexed mediation

What is not covered under confidentiality?

- Any information already in public domain
- Other evidence- parties have mutually shared with each other outside of mediation
- Statutory records

What clauses does an agreement to mediate have?

- Recitals- don't write too much about the facts of the dispute- refer to agreements only
- Confidentiality
- Mediator has power to decide process
- Timeframe
- Language, place/ venue
- Governing law
- Mediator fee and engagement terms
- Authority to settle- letter of authority or board resolution

What clauses does a settlement agreement have other than terms of settlement?

- Confidentiality
- Full, final and binding
- Parties waiver right to initiate any proceeding in that cause of action
- Miscellaneous clauses- governing law, dispute resolution, force majeure, change in law, assignment, notices, severability etc.

Distinguishing Positions from Interests

PAST- POSITIONS	HAPPY PAST/ FUTURE- INTERESTS
• Proof of payments • Purchase orders and consignments sent • Statement of invoices received by buyer • Information in inventory • Payment terms and agreement • The bills and bank statements showing that payment is made and the mode of payments • Information on prior discussions • Information on loss suffered • When was the cause of action? • Have they raised issue of payment before stopping supply	• How long has Quislex and Phoenix been around in the industry? • How long is the association been? • Who are their clients? • Why is the shortage of supply occurring? • Why is there payment related issues? Is this one off or has this occurred on multiple occasions? (to understand the intention to pay as well) • Why they entered into contract? • How was everything before the dispute? • Is this happening with other clients too • Future plans?