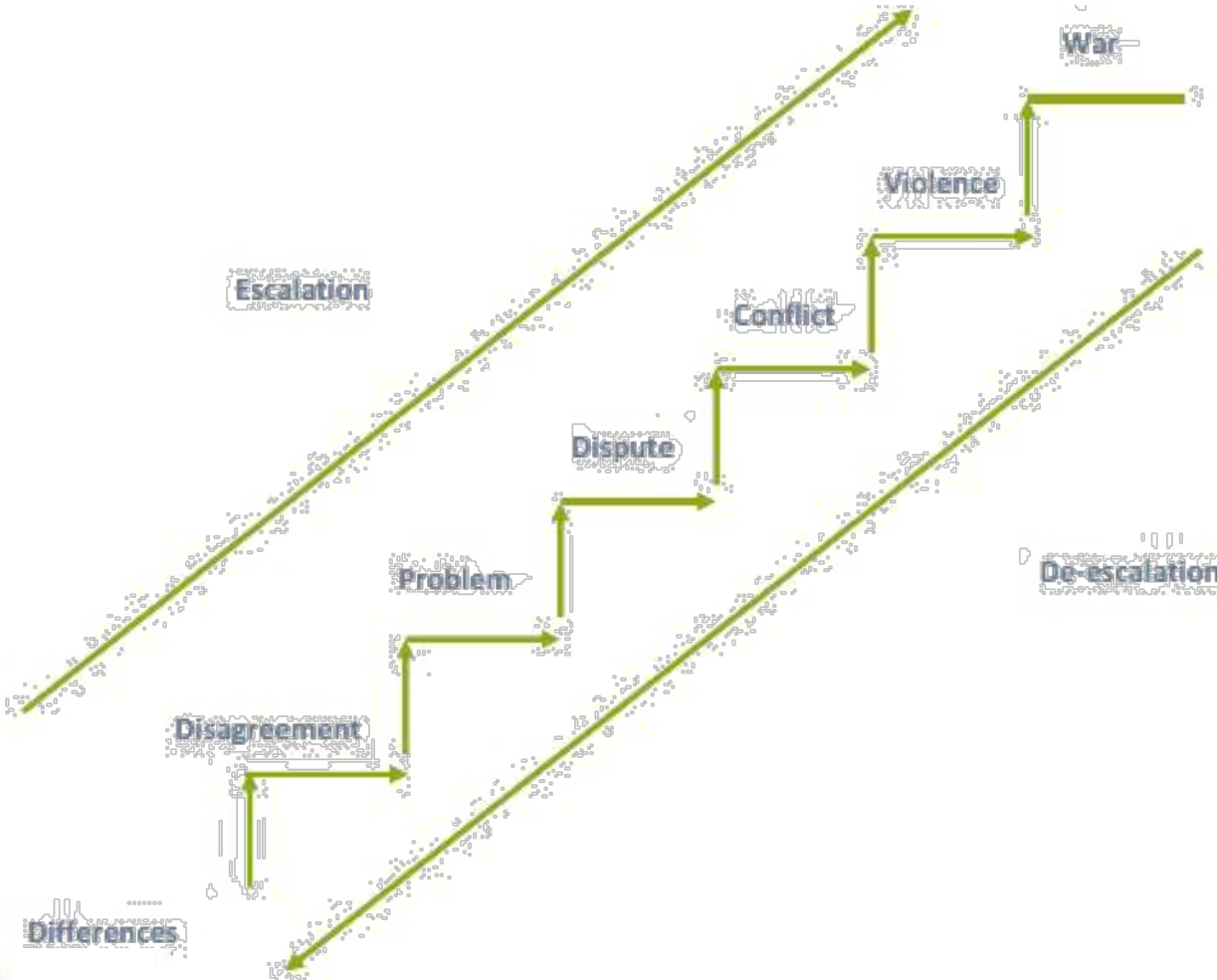


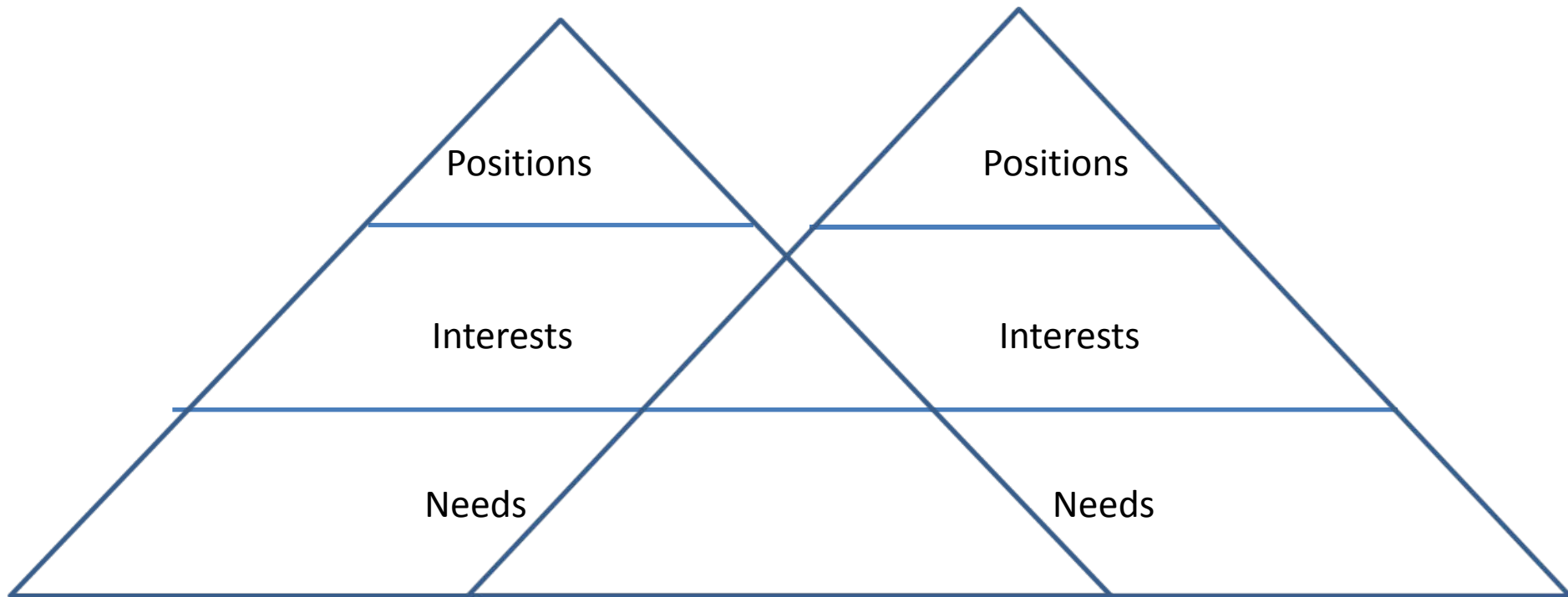
Hotel Mediation

ADR to Litigation

Disagreement, Dispute & Conflict



Positions, Interests & Needs



What's Mediation ?

- An informal, voluntary, confidential process in which parties to a dispute can, with the help of an intermediary, meet to work out a settlement.

What does a Mediator do?



All In The Family

Benson, Miller and Reisler

Background

- Co. established in the mid 60s by three partners;
- 15 mid-market hotels and 4 restaurants;
- Considered a master franchise of a budget hotel brand;
- Responsibilities amongst the partners were spread across functional and geographic lines
- Each founder had 3 children who were all involved in the business in some way.

The Message

- Mediation is a compromise procedure;
- The parties and not the mediator formulate the agreement;
- No legal commitment until the agreement is executed by all parties;
- Everybody has the right to veto;

Engagement

- Mediator met with the Patriachs on several occasions and was briefed on the business, properties and locations (Background to the positions of the children)
- Mediator wrote a letter to all 9 of the children introducing the process of mediation and suggesting that rather than take legal positions that they attempt to form an agreements based on their interests and needs.

What happened

- Mediator met with each party to determine whether the issue (position) was clear and whether they were clear on what they wanted in a deal.
- Each would conduct themselves in good faith
- The proceeding would be confidential
- Everybody has the right to veto;

Opening Questions for each Party

- Could the business be divided into 3 independent businesses?
- How did each party react to the complaints of the others?
- Would they prefer to move forward with the business in tact as a single unit or work out a spin-off (with all the financial risks)

Focusing the mediation

- The parties lacked the ability to listen to each other – Each did not understand the others ‘IN but the mediator assisted them
- The mediator used the respect for the founders as a melding agent for the way through
- Any relevance of any party free-riding over the other would disappear on separation
- The combined effort of the above, drew away the tribal them and us language and behaviour

Industry Experience, a Road Map

- Weighting the Portfolio (Worth ?)
- An internal market (Restricted Market)
- Caucus meetings on price (Value?)
- Bids disclosed but not the bidder (Open-ish Tender)

Outcome

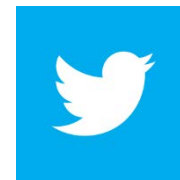
- Two of the parties wanted the same package
- There was not a divergence of values. The businesses were understood
- A package of property did emerge for the three groups. But the lots did not contain all of their preferred properties
- Each of the groups finally decided by a drawing lots out of a hat.
- 90 days after the Mediator was instructed, the purchase was agreed.

Why Mediation Works

- Industry people resolve industry disputes quickly and have a greater success of restoring fractured commercial relationships.
- Lasts one day and takes less than 10 days to schedule.
- It is affordable justice
- Parties can shape the settlement, rather than it be imposed upon them
- No dirty laundry

Hotel Mediator

Franchising; Management Contracts;
Debt Provision; Planning; Small Claims;
Workplace; Employment; Supplier
Contracts; Partnership Agreements; JV
Agreements; Succession; Negligence;
Agency; Construction;



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