

# LAW3105: ALTERNATE DISPUTE RESOLUTION

## CONFLICT

### Definitions

- A form of relating or interacting where we find ourselves under some sort of perceived threat to our personal or collective goals
  - E.g. conflict arising from Donald Trump presidency, Conflict regarding Roe 8 project
- Perspectives of Conflict
  - Interactionist
    - Conflict is how we develop relationships in society, by reason of interacting
  - Traditional
    - Power
  - Functional
    - Systems perspective – All of society is interrelated
    - Each conflict is a manifestation of the whole system
  - Social Constructivists
    - Assumptions about conflict linked with culture
    - The norm – Just part of life

### Nature of Conflict

- Origins of Conflict
  - Change
    - Embraced and also feared
    - We don't often like uncertainty (find it unsettling)
  - Imbalance of Power
    - Power = Ability to participate effectively and make decisions
    - Fluid – Based on perception, not necessarily true, not static
    - Sources of power? Does the person choose to exercise that power
    - Perception of persons exercising power
    - Powers
      - Time
      - Access to information
      - Positional powers
      - Style of Communication
      - Ability to disengage from process
      - What to gain/lose
  - Differing perceptions
    - Memories, recollections of events e.g. conflict about what happened, what was said
    - Personalities – How does it inform their personal style and how it informs/affects conflict? E.g. being abrasive
    - Ways of reasoning e.g. people measure success different ways
    - Control over reasoning e.g. arguing with an irrational person
- Analysing Conflict
  - Why are they behaving this way? Why did it occur at this time? Why did it escalate? Why do they now want to come to an agreement?
- Perceptions of Conflict
  - Usually become aware that there is conflict
  - Once you become aware of conflict = tension
  - Conflict then escalates e.g. making a complaint
  - After airing grievances, both parties make a decision on whether to solve conflict
  - Why would you not escalate?
    - Threat to personal safety
    - Longer term goal – Conflict might not be worth raising
  - If you decided to escalate, then need to go further e.g. bring in facilitator, mediation, discuss
  - Engagement with facilitator
- Resolving Conflict

- Peace about power
  - Resolving by imposing power
  - E.g. parents, workplaces
- Right based approach
  - E.g. courts = Based on entitlement
- Interests based approach
  - Based on wants and needs - what motivates them