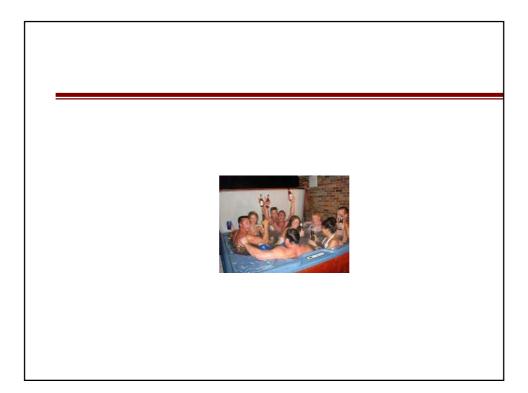


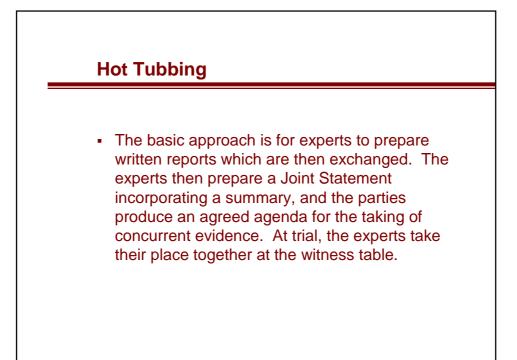


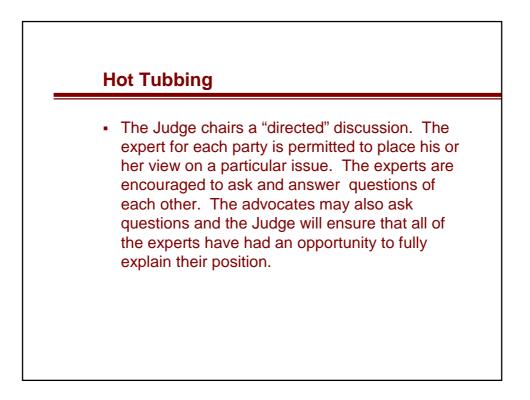
- Professor Dame Hazel Genn
- UCL Judicial Institute
- January 2012





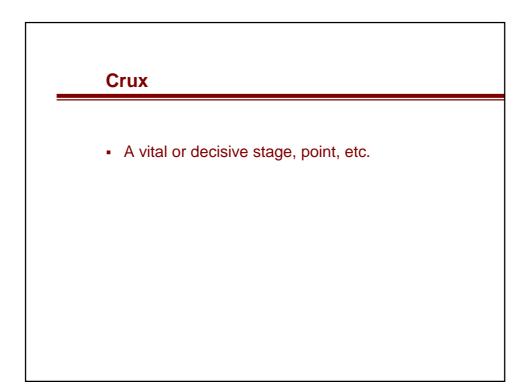


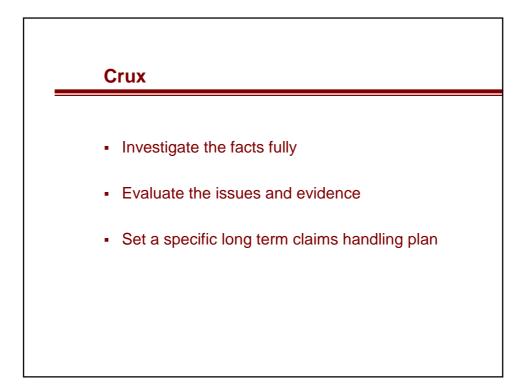


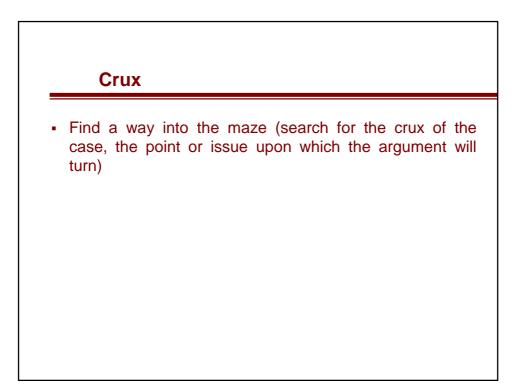


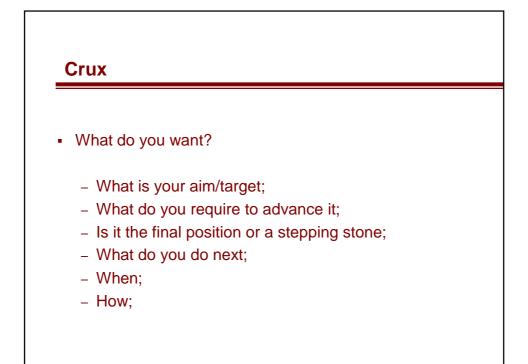
Hot Tubbing

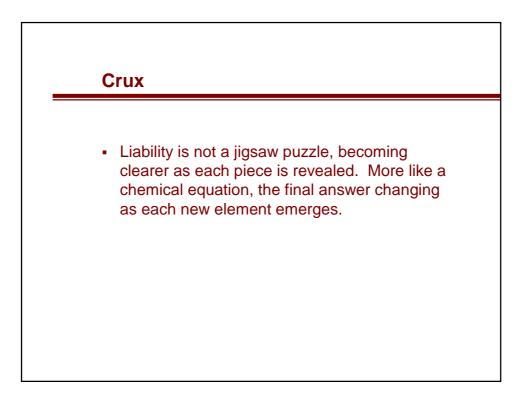
- As part of the Manchester Pilot, parties were invited to submit their experts to hot tubbing. It appears that 18 cases agreed to take part in the pilot, of those 15 subsequently settled before trial.
- Hot tubing was adopted in three cases.
- The report noted, that there was insufficient data to reach solid conclusions on the effectiveness of the procedure.
- The procedure is to be adopted from 1 April 2013.

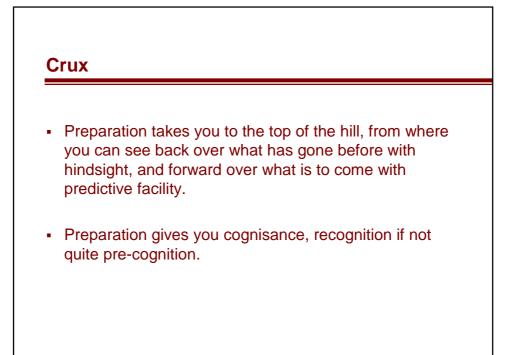




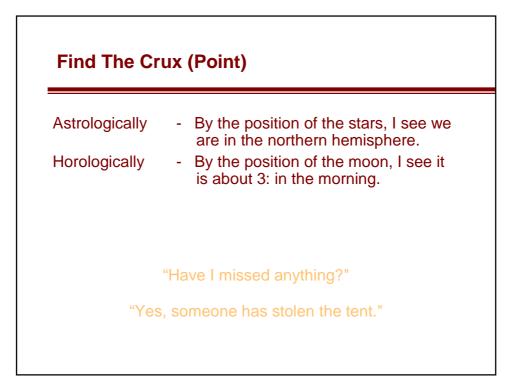


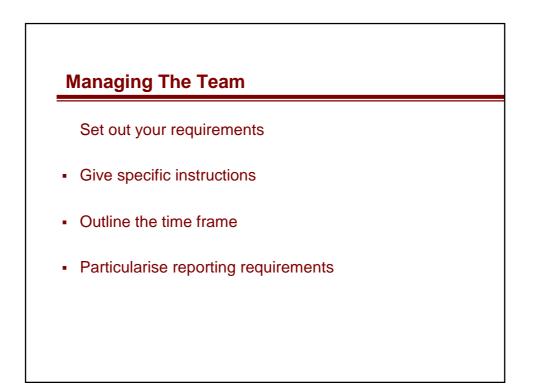






hound of the Bas	skervilles. They are tracking across		
Sherlock Holmes and Doctor Watson are hunting the hound of the Baskervilles. They are tracking across country when night falls, they pitch their tent and go to sleep. In the middle of the night, Holmes wakes Watson. "What do you observe?" he asks.			
Watson replies.			
Horticulturally -	I observe that we are on the moor.		





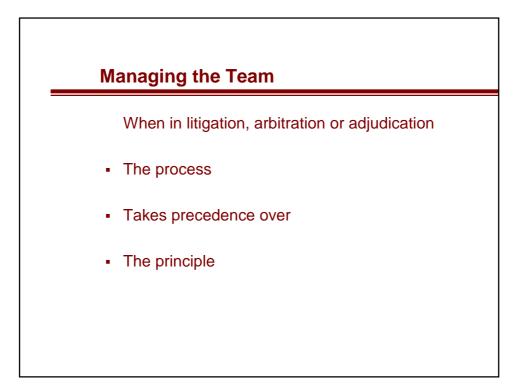


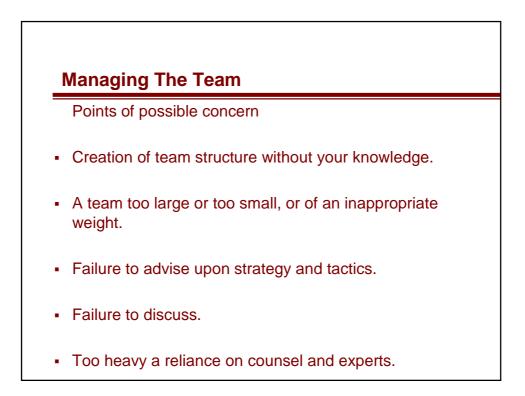
The team should assist you to consider the claim by

- Identifying the claim's most important features.
- Crystallising the issues.
- Weighing all the considerations.
- Separating the heads of claim.
- Considering liability and contribution issues.
- Meeting with Counsel and experts.
- Bring forward ideas for the disposal of the claim.



Your expert will always let you down





Managing the Team

Dear Sir

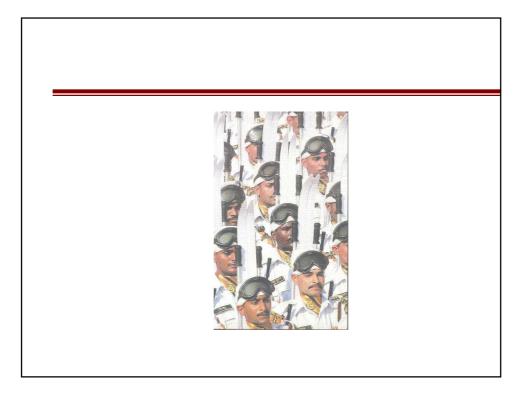
- A motion has been laid against an assignation and requiring an inhibition on debate, if necessary going on to poinding.
- In view of events at tabling we shall crave protestation and a caution for expenses, which we shall follow by diligence.

More importantly, at the proof before answer, we shall press for assoilzie, without avizandum.

Managing the Team

Dear Sir

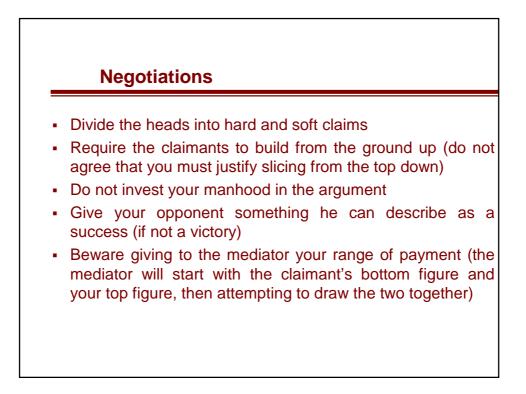
- An application has been made against the disposal of land and requiring an order against sale at a preliminary issue, if necessary we shall proceed to an order for sale.
- In view of events at the first hearing we shall request costs for the other parties' failure to appear, and provision for future costs, which we shall follow with recovery of money if appropriate.
- More importantly, at the hearing of evidence and arguments on the law, we shall press for dismissal of the claim without the judge reserving the decision for consideration.



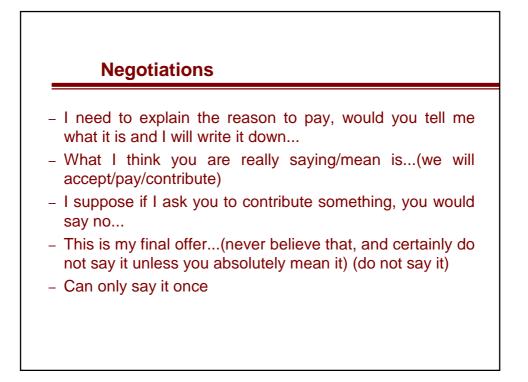


<u>Remember</u>

- Negotiation is a vehicle, not an event (it exists to do, not to be)
- There is no format, there should be a planned structure
- Every point, issue or tactic may be a two edged weapon (it can be used against you as easily by you)
- Move the other side from their safe place, to a place which exposes their risk (nudge with questions, only drag with allegations if all else fails, unless you are playing the Mr Nice/Mr Nasty game)

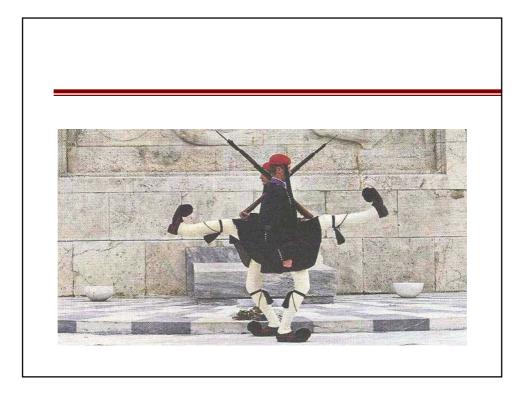


- This is an agenda for conflict
 - Help me with this...
 - What if...
 - (Agree with your opponent) yes but...
 - I agree, however...
 - Yes, but what you are really saying is...

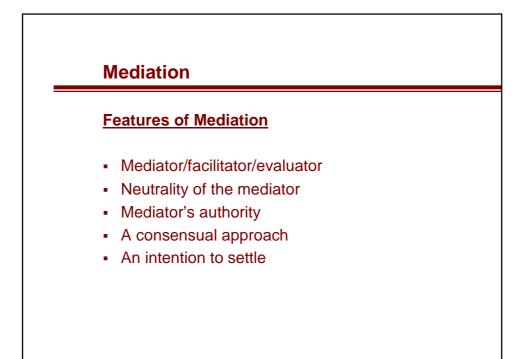


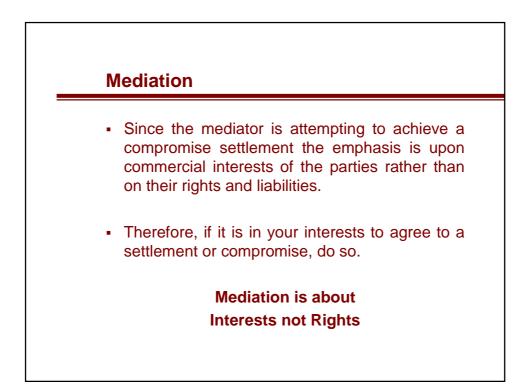
Differences between Negotiations and Mediation			
<u>Negotiations</u>	Mediation		
Face to Face	Through the mediator		
You ask questions/make points	The mediator does so		
t is like a trial where you put your case	It is like the Court of Appeal where you are questioned by the tribunal/mediator		
It is about law/fact/evidence	It is based on but not about these, but about relationships/commerciality/added benefit		

Differences between Negotiations and Mediation		
<u>Negotiations</u>	Mediation	
It is about rights	It is about interest	
It is about proof (liability and quantum)	No proof required	
Purpose payment of case immediately	Flexible/structured settlements permitting non-monetary elements	
Emphasises differences and argument	Emphasises shared goal of settlement	



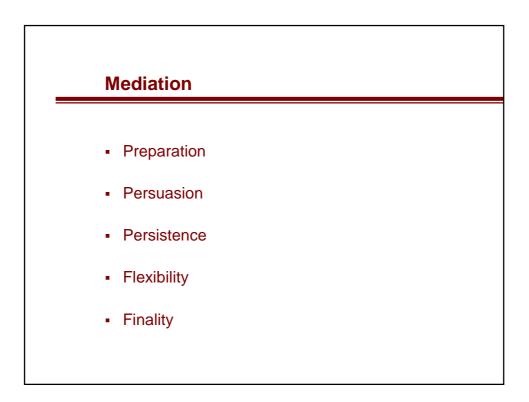
Differences between Negotiations and MediationNegotiationsMediationPredominately solicitor managedClient centredStructured/restricted formatFluid ad hoc patternsPlay to winPlay to settleRisk of continuing dispute & adverse
resultAims for certainty of settlement

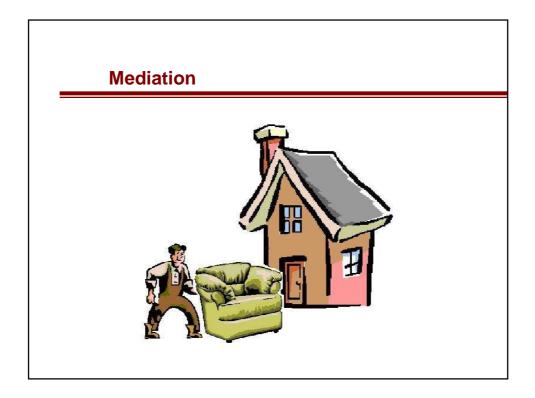


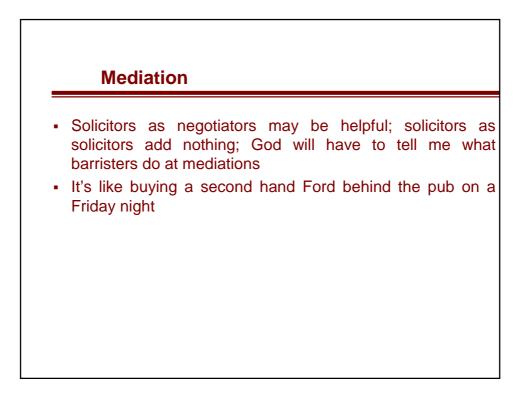


What Mediation Does Not Mean

- Mediation does not mean no preparation (there is no substitute for genuine lack of preparation)
- Mediation does not mean no team (consideration should be given to whether solicitors and experts should be consulted before mediation entered into)
- Mediation does not mean no plan of campaign (consideration of the wishes and requirements of Insured/Insurer, and how to achieve them should be given)





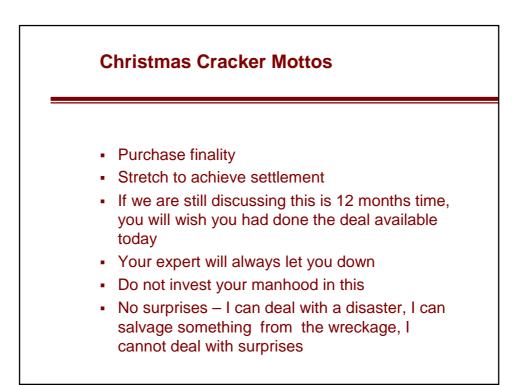


 If possible, give your opponents something they can sell to their own boss/client/insured/people as reasonable, if not quite successful.

Negotiations

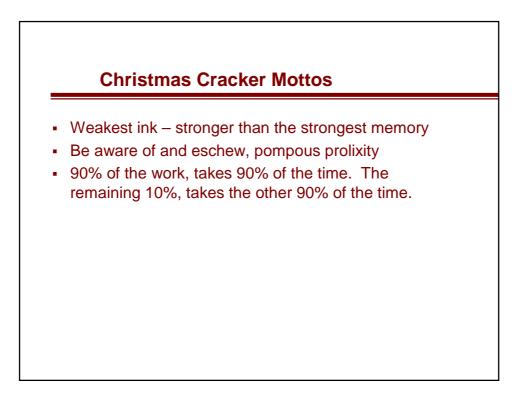
- Why do I fail in negotiation?
- Failure to observe and listen
- The tendency to reject or ignore information
- Underestimating the other side.
- Overestimating your own side's arguments (experts, law, witnesses).

- How can I be a good negotiator?
- You need a talent but not too much
- You must have a good plan
- You must practice
- You must be focused and persistent



Christmas Cracker Mottos

- Head lines and bottom lines
- Solicitors are always preparing for the trial I want to avoid
- A bad settlement is better than good litigation
- Cases are rarely won in court, only lost
- Settlers bring express relief
- Solicitors, it is not your case
- Ask Counsel or solicitors, what you decide if you were trying this case today? Things may change, but what would you decide today?



Christmas Cracker Mottos

- There is no substitute, for genuine lack of preparation
- No preparation and you are busking
- When putting together the team, consider the kite and the anchor.
- It is about judgement, not necessarily expertise
- Don't do "Ya Boo" correspondence
- Remember the three keeps.
- Keep out of litigation; keep costs down; keep control.
- You are judged by the company you keep.