1. **What is the flow of negotiations, the stages and phases?**

   The flow of negotiations can vary considerably across cases. The process is nonlinear but often includes the following phases: (1) preparation and planning, (2) opening the meeting, (3) argument and persuasion, (4) emergence of new information or crisis, (5) agreement, and (6) closing (ppt, page 40). The framework presented in Lewicki is very similar: (1) preparation, (2) relationship building, (3) information gathering, (4) information using, (5) bidding, (6) closing the deal, and (7) implementing the agreement.

2. **What is distributive bargaining? Give an example.**

   Distributive bargaining occurs when the goals of two parties are in direct conflict, and there are resource limitations – producing a win/lose situation. In distributive bargaining, a better bargain for one party directly results in a worse bargain for the other party (ppt, page 20). For example, if prize money must be distributed to a winning team, the higher the amount that one team member receives, the lower the amount that another team member receives. The finite pie must be divided among the involved parties.

3. **Why are objective criteria useful?**

   Objective criteria are useful in shifting from positional bargaining to interest-based bargaining. This focuses conversations on reasoning and explanations. Objective criteria serve as an external standard for fairness (Fisher, Ury, Patton, page 85). Objective criteria offer an alternative means for judging offers – instead of evaluating options on positions or self-interest (Fisher, Ury, Patton, page 90). Objective criteria also provide a means of counteracting pressures (brides or threats) that promote subjectivity; power does not determine the solution.
Finally, objective criteria provides information relevant to the solution of which the parties may not have been previously aware (ppt, page 91).

4. Describe the differences between Value Creators and Value Claimers.

Value creators are interested in cooperative strategies to create a win/win solution that expands the pie. In contrast, value claimers employ competitive strategies producing a win/lose solution that divides the pie. Value creators pursue negotiations with certain strategies: problem-solving, sharing information, persuasive discussions, open conversation, and principled bargaining. Value claimers pursue negotiations with other strategies: advancing own position, withholding information, coercive communication, secretive discussion, and positional bargaining (ppt, page 21).

5. Describe the differences between positional and interest-based bargaining.

Positional bargaining offers a traditional form of negotiating in which parties propose offers back-and-forth. In contrast, interest-based (or principled) negotiation offers an opportunity for parties to create solutions together for mutual gain.

Positional bargaining approaches the negotiation as win/lose while interest-based bargaining aims for a win/win solution. Positional bargaining is narrowly focused on a back-and-forth sequential ordering of offers, but interest-based bargaining strives to expand the alternatives to consider. In positional bargaining, each party tries to increase their respective benefits. In interest-based bargaining, the parties work together to maximize both parties’ benefits (Moore, page 73-75).

6. Why are constituents and context important in a negotiation?

In the planning process of a negotiation, it is important to “complete a field analysis” on the parties involved, whether directly or indirectly (Lewicki, page 103). Even parties who are not physically present at the negotiation table may influence the process. For example, the media
may be involved, and the opposing parties have vested interest in the media’s perception of negotiations. Or, the parties physically present may not have full authority to settle a dispute; these limitations are crucial to understand.

In addition to assessing constituents, the context is also important. Both the history and the perceived future of the relationship impact negotiations. The procedural context is also critical: number of rounds, time limit, rules of game, and agreed upon ethics (Lewicki, page 104) These contextual aspects of the negotiation frame the entire experience.

7. **What is BATNA? Why is it important? When is it used?**

The best alternative to the negotiated agreement (BATNA) is a party’s best option available (of all possible alternatives) if a negotiation is not reached. There is no reason for a party to continue to participate in negotiations if the party can obtain greater benefit outside of the negotiation. Defining the BATNA prior to negotiation helps the party know its “minimally acceptable agreement” (Fisher, Ury, Patton, page 106). So, a party understands when it should “walk out” of a negotiation and is confident in this decision. BATNA is particularly important for parties negotiating with a “seemingly more powerful negotiator;” a great BATNA can be a source of great power for someone with seemingly less power (Fisher, Ury, Patton, page 106).

Prior to all negotiations, all parties should define their own BATNA and guess the BATNA of the other involved parties throughout the negotiation (Fisher, Ury, Patton, page 105).

8. **What are two important tools that a mediator has to use while listening and why?**

In addition to those discussed in the prior quiz, another important tool is “active listening” instead of drafting a response. Active listening requires focused attention on the speaker’s message and what is relevant to the negotiation. Then, the receiver can repeat the content back to the speaker to clarify understanding.
A second tool is silence. Silence provides the needed opportunity for parties to further examine their own words or thoughts and those of others. Though often uncomfortable for others, silence forces parties to more thoughtfully consider negotiations. Silence may also push a party to share information that they may have otherwise not – due to the desire to get rid of the discomfort and awkwardness associated with silence.

9. **What is meant by Invent Options for Mutual Gain?**

Inventing options indicates brainstorming of various ideas. Mutual gain emphasizes both parties, not one party over the other. To do so, parties must: (1) focus on creating- not judging options, (2) expand thinking to various options – not a single solution, (3) search for mutual – not singular gain, and (4) create easy decisions for the other party – not difficult predicaments (Fisher, Ury, Patton, page 60). For example, a party may develop options that are low cost to their own interest but offer high benefit to the other party.

10. **What role do ethics play in ADR?**

There are important ethical considerations in alternative dispute resolution, especially for the mediator. This person serves in a position of privilege and is only supposed to exercise power over process. There is the opportunity for unethical behavior in exploiting this position and leveraging too much power. The mediator, however, may be privy to confidential information about the parties involved. The mediator must choose to be ethical in use this information in the manner expected by the respective parties.