



THEORIES OF FAIRNESS*

In helping people work through conflict to create resolutions, the concept of “fairness” routinely appears. A resource we use on a regular basis in our dispute resolution work is the *Theories of Fairness* learned in trainings with Nina Meierding, a renowned teacher, trainer, and dispute resolution professional.

[Nina Meierding - Negotiation and Mediation Training \(mediate.com\)](https://www.mediate.com/articles/Meierding.php)

The *Theories of Fairness* stem from the awareness that people walk in the world with different ideas of “what is fair.” Understanding the ways people evaluate what is fair and normalizing these differences for our clients is an important part of the dispute resolution work we do. This handout is designed to educate and spur dialogue for clients, students of dispute resolution processes, and dispute resolution process professionals.

****This handout is based on Nina Meierding’s handout of the same name, and she reserves all rights to the copyright of that material.***

Rights Based or Legal Theory

“The law determines what is fair. I will abide by what the law/court says.”

This theory relies on specific laws or statutes, such as the laws on community vs. separate property, child support, property division, maintenance, etc. While some jurisdictions’ statutory frameworks can be subjective / discretionary, we would look towards objective criteria such as case law, legal precedent, codes of conduct, and rules to determine what is fair. In the United States, the law is the default when parties rely on the court to make a decision for them. As seen below, many people are often unhappy with court decisions because of different beliefs as to which standard of fairness should have been applied.

Equity Based Theory

“What I did should make a difference.”

This theory considers the level of participation, money, time, dedication etc. that individuals contribute. Oftentimes we may hear, “I know the contract said we should divide the money equally, but I ended doing much more work.” Or “Why does he/she get half of what we acquired during our marriage. After all, I was the one who worked!” At times the underlying considerations are unconscious, and a person may not always be able to verbalize why they think something is fair. In such cases this theory of fairness can be expressed as “I’ll know it when I see it . . . “

Faith Based Theory

“God would want me to.....”

This theory is based on one’s reliance on a higher power. Fair is whatever Mother Earth / The Great Spirit / God / Koran / Bible / Torah / religious teachings directs me to do. People who believe in the faith-based standard of fairness may discount the legal theory as “man-made” and therefore of less value than the faith-based standard.

Needs Based/Cultural Theory

“I need more”, or “That person/family/group needs this more than I do.”

This theory of fairness also occurs in collective cultures where the group needs are more important than a specific individual’s needs or contributions. It may not matter who did what (equitable theory) or what the law says (legal theory). Instead, fairness may be decided by the group for the group using cultural values to determine what is fair.

Contextual Based Theory

“It depends on who they are.”

The relationship, the timing, and/or the “context” of the situation may determine what is fair. For example, what may be fair between family members may not be fair when there is no continuing relationship. Oftentimes this contextual component can combine and/or cross over to the needs-based and equity theories of fairness.

What To Do (Nina's advice)

When confronted with impasse, differences of opinion, or conflicting theories of fairness, it is not helpful to say “If you can’t reach an agreement, the court will determine what is fair” unless you know (for sure) that the client believes in the law as their primary standard of fairness. Otherwise, that statement will cause a disconnect between you and the client(s) because they will feel that you are discounting their standard of fairness and saying it is wrong.

Instead say, “I can understand how frustrating it would be to know that if we go to court on this matter that a different standard of fairness will be used than the one that you believe in. But, that’s the hard truth. The court does not have the discretion to pick and choose the standard of fairness based on the people in their courtroom. In the courts, the law is what is used.”

By not dismissing their standard of fairness, but saying that situationally it will not be used, you can connect with your client and their frustration, but also reality test at the same time.